

HIGH COURT OF CHHATTISGARH, BILASPUR

Arbitration Appeal No.24 of 2016

1. State of Chhattisgarh, Through the Secretary, Public Works Department, Government of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
(Non-applicant No.1)
2. The Chief Engineer, Public Works Department, Bilaspur Zone, Bilaspur, District Bilaspur, Chhattisgarh
(Non-applicant No.4)
3. The Superintending Engineer, Public Works Department, Bilaspur Zone, Bilaspur, District Bilaspur, Chhattisgarh
(Non-applicant No.3)
4. Executive Engineer, Public Works Department, Korba Division, Korba, District Korba, Chhattisgarh
(Non-applicant No.2)
---- Appellants

Versus

M/s. M.K. Gupta and Company, Sarbati Bhawan, Ganeshram Compound, Church Road, Silingudi, West Bengal Represented through Shri Suresh Kumar Gupta, Partner of M/s. M.K. Gupta and Company, R/o Ganeshram Compound, Church Road, Siliguri, West Bengal, Pin: 734 001

(Claimant)
---- Respondent

For Appellants/State: Mr. P.K. Bhaduri, Govt. Advocate.
For Respondent: Miss Sharmila Singhai and Mr. Sanjay Agrawal, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

28/07/2017

1. In order to resolve the dispute arisen between the parties, the matter was referred to the Sole Arbitrator. Before the Sole Arbitrator, parties filed their statements of claim and after

recording their evidence, the learned Sole Arbitrator delivered his award on 10-1-2008. Dissatisfied with the award passed by the learned Sole Arbitrator, the State filed an application under Section 34 (2) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') questioning the award passed. By the impugned order, learned District Judge has rejected the application affirming the award passed by the learned Sole Arbitrator. Questioning legality, validity and correctness of the order passed by the District Judge rejecting the application under Section 34 of the Act of 1996, this appeal has been filed under Section 37 of the Act of 1996.

2. Learned Govt. Advocate appearing for the State Government/ appellants would submit that the learned District Judge is absolutely unjustified in rejecting the application filed by the appellants herein for setting aside the award passed by the learned Sole Arbitrator. Findings recorded by the learned Arbitrator qua issue Nos.2, 3, 5 and 8 are contrary to record and perverse and therefore learned District Judge ought to have interfered with the said findings recorded by the learned Arbitrator while answering those issues.
3. Learned counsel appearing for the contractor/respondent would submit that the findings recorded by the learned Sole Arbitrator are based on evidence and material available on record and such findings are finding of facts, it is neither perverse nor illegal and therefore learned District Judge is absolutely justified in

affirming the findings while hearing the application under Section 34 of the Act of 1996.

4. I have heard learned counsel for the parties and also considered their rival submissions and gone through the record with utmost circumspection.
5. In order to judge the correctness of the plea raised at the Bar, it would be appropriate to consider the scope of application under Section 34 (2) of the Act of 1996.
6. In a decision recently delivered by Their Lordships of the Supreme Court in the matter of **Swan Gold Mining Limited v. Hindustan Copper Limited**¹, the Supreme Court has considered the question, whether the finding of facts recorded by the arbitrator can be interfered with by re-appreciating the evidence or material available on record and held that the arbitrator appointed by the parties is the final judge of the facts and the finding of facts recorded by him cannot be interfered with on the ground that evidence has not been properly appreciated.

Their Lordships observed in paras 11 and 12 as under: -

“11. [Section 34](#) of the Arbitration and [Conciliation Act](#), 1996 corresponds to [Section 30](#) of the Arbitration Act, 1940 making a provision for setting aside the arbitral award. In terms of sub-section (2) of [Section 34](#) of the Act, an arbitral award may be set aside only if one of the conditions specified therein is satisfied. The arbitrator’s decision is generally considered binding between the parties and therefore, the power of the court to set aside the award would be exercised only in cases where the court finds that the arbitral award is on the fact of it

1 (2015) 5 SCC 739

erroneous or patently illegal or in contravention of the provisions of the Act. It is a well-settled proposition that the court shall not ordinarily substitute its interpretation for that of the arbitrator. Similarly, when the parties have arrived at a concluded contract and acted on the basis of those terms and conditions of the contract then substituting new terms in the contract by the arbitrator or by the court would be erroneous or illegal.

12. It is equally well settled that the arbitrator appointed by the parties is the final judge of the facts. The finding of facts recorded by him cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him.”

7. In the afore-cited case, Their Lordships have clearly held that the court will not substitute its interpretation for that of the arbitrator and the finding of facts recorded by the arbitrator cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him.
8. Applying the principles of law laid down in **Swan Gold Mining Limited** (supra), if the facts of the case in hand are examined and submission of the State counsel is appreciated, the argument in sum and substance would be that the findings recorded by the learned Arbitrator qua issue Nos.2, 3, 5 and 8 are perverse and contrary to record. Learned District Judge while considering the application under Section 34 of the Act of 1996 clearly and specifically considered those findings and came to the conclusion that the findings are not perverse and do not suffer from any illegality.
9. After hearing learned counsel for the parties and going through the findings recorded by the learned District Judge, I do not find

any perversity or illegality in the findings recorded by the learned Arbitrator duly affirmed by the learned District Judge, as such, following the law laid down in **Swan Gold Mining Limited** (supra), I do not find any jurisdictional error in the impugned order. The appeal deserves to be dismissed and it is accordingly, dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma