

HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Appeal No.49 of 2011**

M/s Paul Construction Proprietor Manik Paul S/o Late H.N. Paul, R/o
R.N.T. Lane, Hemu Nagar, Bilaspur, Tah. & District-Bilaspur (CG)
----- Appellant

Versus

Union of India Through General Manager South East Central
Railway, Bilaspur (CG)
----- Respondent

For Appellant	:	Mr.Anand Shukla, Advocate
For Respondent	:	Mr.H.S. Ahluwaila, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04/08/2017

1. The arbitral dispute arisen between the parties was ultimately referred to the Sole Arbitrator and the Sole Arbitrator has passed the award on 10.1.2007 and held that respondent-SECR cannot impose risk and cost on the claimant. However, in the counter-claim Rs.1,00,000/- has been awarded to the respondent. The appellant preferred an application under Section 34(2) of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'Act of 1996') challenging the said award of Rs.1,00,000/- on the ground that same is illegal and contrary to law, which has been rejected by learned District Judge, Bilaspur, against which, this arbitration appeal under Section 37 of the Act of 1996 has been preferred.
2. Mr.Anand Shukla, learned counsel appearing for the appellant, would submit that such an award is illegal as there is no issue

framed. In absence of pleading of the parties, risk and cost has been denied by the arbitrator by express award, therefore, the award of Rs.1,00,000/- deserves to be set aside.

- 3.** Mr.H.S. Ahluwalia, learned counsel appearing for the respondent, would oppose the appeal.
- 4.** I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
- 5.** Only one issue framed by the learned Arbitrator is whether risk and cost can be recovered from the contractor without formal agreement which has not been executed, which has been answered in favour of the claimant/appellant that no risk and cost can be recovered, but learned Arbitrator while dealing with counter-claim has held as under:-

3.	Establishment cost of Railways	Rs.1,00,000/-	Rs.1,00,000/-	Claimant by participating in the tender and subsequently by not executing the work, is responsible for the necessity of re-tendering by the Respondent and therefore the cost of Rs.1,00,000/- preferred by the Respondent is awarded.
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- 6.** A careful perusal of the aforesaid part of award would show that Rs.1,00,000/- has been imposed towards risk and cost of

establishment for re-tendering i.e. sum and substance the risk and cost, which learned Arbitrator has already answered in favour of the appellant that no risk and cost amount can be recovered from the appellant. No issue has been framed and decided that the Railway is entitled for establishment cost.

- 7.** In view of the aforesaid discussion, risk and cost cannot be recovered from the appellant, which is the finding of the Arbitrator. Therefore, learned Arbitrator is not justified in imposing cost of Rs.1,00,000/- against the appellant and learned District Judge is unjustified in rejecting the appellant's appeal under Section 34(2) of the Act of 1996.
- 8.** Accordingly, the arbitration appeal is allowed and the impugned order is hereby set aside. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-