

HIGH COURT OF CHHATTISGARH, BILASPUR**ARBA No. 62 of 2016**

Order Reserved On : 20/01/2017

Order Passed On : 16/05/2017

1. State Of Chhattisgarh Through The Principal Secretary, Water Resources Department, Government Of Chhattisgarh, Mahanadi Bhawan, Mantralaya, New Raipur, (Chhattisgarh),.....(Applicant No. 1).
2. Executive Engineer, Water Resources Division, Raipur, Irrigation Bhawan, Civil Lines, Raipur, District- Raipur, (Chhattisgarh),..... (Applicant No. 2).

---- Appellant**Versus**

- M/s Monnet Ispat & Energy Limited A Company Registered Under Companies Act, Having Its Company, Office At Monnet Marg, Mandir Hasaud, Raipur, District- Raipur, (Chhattisgarh),.....(Non-Applicant).

---- Respondent

For Appellant : Shri Ramakant Mishra, Deputy Advocate General.

For Respondent : Shri Satish Agrawal with Shri Sourabh Sharma and Shri Jatin Joshi, Advocates.

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order**

1. Present is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act, 1996') preferred by the State of Chhattisgarh to challenge the order passed by the District Judge,

Raipur dismissing its application under Section 34 of the Act, 1996 for setting aside Arbitration Award dated 14.6.2015 rendered by the Arbitrator, Justice V.K. Agarwal (Retired).

2. Dispute between the parties arises out of agreement dated 20.9.2000 whereby the appellant accorded permission to the claimant to draw 2 MGD of water per month from Murethi Anicut of river Kharun. Upon arising of the dispute, the respondent moved an application under Section 11 (5)(vi) of the Act, 1996 before this Court bearing Arbitration Application No.6/2009. By an order dated 3.5.2009, the High Court appointed the Arbitrator whereafter the matter was taken up for adjudication. By its award dated 14.6.2015, the Arbitrator allowed the claim in the following manner:-

“(i) It is declared that during its currency and applicability of the agreement dated 20.09.2000 (Annexure C-6) , the claimant is liable to pay and respondents are entitled to recover water charges from the claimant, as applicable to the category of consumers drawing water from the category of “Natural/Created Own Source” and that change of claimant's category from the said category of “Natural/Created Own Source” to “Government Source” is held to be illegal.

(ii) It is further ordered and awarded that the claimant shall be entitled to and respondents would be liable to refund Rs.6,67,32,125/- (Rs. Six Crores Sixty Seven Lakhs Thirty Two Thousand & One Hundred Twenty Five Only), as shown in tabular statement (Annexure C-25), being the difference between water rates applicable to consumers drawing water from “Natural/Created Own Source” and that of water drawing from “Government Source”, paid upto date of filing of the statement of claim.

(iii) The respondents would also be liable to pay the claimant interest @ 14% p.a. from the date of payment/deposit of the aforesaid amounts, till refund thereof, to the claimant.

(iv) Further, the claimant is also entitled and awarded the difference of the amount and refund of all water charges deposited by him and charged from him by the respondents by placing him in the category of consumer drawing water from "Government Source". The difference as above would also be refunded to the claimant with interest @ 14% p.a. from the date of payment till date of refund.

(v) The respondents shall bear their own costs of this proceeding, and shall also pay to the claimant's costs, which is quantified as Rs.10,00,000/- (Rs. Ten Lakhs Only) including counsel's fee as also all other counts.

(vi) The respondents are liable to pay the claimant the amount awarded as above, within 30 days from the date of this order, failing which the amount so awarded, shall carry interest @ 18% p.a. from the date of default, till payment."

3. Challenging the above award, the appellant moved an application under Section 34 of the Act, 1996 before the District Judge, which stands dismissed by the impugned order.
4. Assailing the order, Shri Ramakant Mishra, learned Deputy Advocate General would submit that initially the contracted rate for supply of water was Rs.0.30/- per cubic meter till November, 2005 and thereafter the rate was fixed at Rs.0.45/- per cubic meter. As per the agreement, the rate applicable to a natural source was Rs.0.30/- per cubic meter whereas from other Government source, it was Rs.1.00/- per cubic meter. Pursuant to the meeting of the State Investment Promotion Board convened on 15.9.2005, the State Government issued a circular

on 15.9.2005 increasing the rate to Rs.1.50/- per cubic meter and the respondent was informed about this rate on 24.1.2006 and 16.2.2006. However, the respondent continued to make payment at the rate of Rs.0.45/- per cubic meter. The Government's demand dated 7.8.2006 for payment at the enhanced rate was denied by the respondent on the ground that it has also contributed to the construction of Murethi Anicut, therefore, the rate applicable to it would be the rate applied to self created source.

5. According to Shri Ramakant Mishra, learned Deputy Advocate General, the respondent has not contributed to the construction of intake well, therefore, it is not a case where the respondent is drawing water from self created source. It is argued that the Arbitrator has recorded perverse finding by wrongly construing the documents and the terms of agreement, therefore, the award is vitiated. Reliance is placed on judgments in the matters of **Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd.¹**, **Oil & Natural Gas Corporation Ltd. Vs. Western Geco International Ltd.²**, **Associated Engineering Co. Vs. Government of Andhra Pradesh and another³**; **Rajasthan State Mines & Minerals Ltd. Vs. Eastern Engineering Enterprises and another⁴**.

6. Per contra, Shri Satish Agrawal, learned counsel for the respondent

1(2003) 5 SCC 705

2 AIR 2015 SC 363

3 AIR 1992 SC 232

4 AIR 1999 SC 3627

would submit that the Arbitrator has passed a reasoned award, therefore, merely because the Arbitrator has accepted the interpretation put-forth by the claimant and has repelled the interpretation of the appellant, the award would not be termed as unreasonable or unspeaking or partial or that the Arbitrator has mis-conducted itself by construing the documents for accepting the case put-forth by the claimant. He would submit that the award is neither opposed to public policy nor does it suffer from such infirmity shaking the judicial conscience of the Court, therefore, it is not open for interference. Reliance is placed on judgments in the matters of **Bhagawati Oxygen Ltd. Vs. Hindustan Copper Ltd.**⁵, **State of U.P. Vs. Allied Constructions**⁶, **Numaligarh Refinery Ltd. Vs. Daelim Industrial Co. Ltd.**⁷, **K.V. Mohammed Zakir Vs. Regional Sports Centre**⁸, **Steel Authority of India Limited Vs. Gupta Brother Steel Tubes Limited**⁹, **Sumitomo Heavy Industries Limited Vs. Oil and Natural Gas Corporation Limited**¹⁰, **Rashtriya Ispat Nigam Ltd. Vs. M/s Dewan Chand Ram Saran**¹¹, **Mcdermott International Inc. Vs. Burn Standard Co. Ltd. And Others**¹², **Madhya Pradesh Housing Board Vs. Progressive Writers and Publishers**¹³, **The President, Union of India and another Vs.**

5 (2005) 6 SCC 462

6 (2003) 7 SCC 396

7 (2007) 8 SCC 466

8 (2009) 9 SCC 357

9 (2009) 10 SCC 63

10 (2010) 11 SCC 296

11 AIR 2012 SC 2829

12 (2006) 11 SCC 181

13 (2009) 5 SCC 678

Kalinga Construction Co. (P) Ltd¹⁴, Union of India Vs. A.L. Rallia Ram¹⁵.

7. The main thrust of the appellant's argument is based on the document which is minutes of the meeting between the concerned Minister, the respondent's representative and the Department's officers held on 7th August, 2005.
8. Referring to clause 2 (02), it is argued that the respondent was allowed to bear 50% of the cost of construction of Anicut, therefore, it has not contributed any amount for construction of intake well, which was the only source for drawing water by the respondent. Thus the respondent having used the intake well owned by the CSIDC {previously known as Audyogik Kendra Vikas Nigam (for short 'AKVN')}, it would not amount to drawing of water from own source and thus the Arbitrator has wrongly construed that the respondent was using his own source for drawing of water.
9. Apart from legal position that this Court is not entitled to re-appreciate the terms of agreement which has been construed in a particular way by the Arbitrator, the appellant's argument seems to have no substance in view of the CSIDC's letter to the Executive Engineer, Water Resources Department, Raipur on 11.9.2008 admitting that the erstwhile MPAKVN has received a sum of Rs.73.54 lakhs and Rs.35.45 lakhs

14 AIR 1971 SC 1646

15 AIR 1963 SC 1685

from the respondent towards its share for construction of Anicut and construction of intake well respectively.

10. In addition to above submission, this Court has also perused the award running into 24 pages and the impugned order passed by the District Judge. The Arbitrator seems to have considered each and every aspect of the matter in detail. It has referred to all material documents produced by the parties, their submissions and thereafter the Arbitrator has framed issues for consideration and has recorded reasons for arriving at the findings. The reason itself is elaborate and detailed. In this part of the award the Arbitrator has again considered the documents to hold that the claimant is liable to be charged the water rates as applicable to consumer drawing water from natural/created own source and not from the Government source.

11. In **National Highways Authority of India Vs. ITD Cementation India Limited**¹⁶, the Supreme Court has held that the construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. The Court while considering challenge to arbitral award does not sit in

¹⁶ (2015) 14 SCC 21

appeal over the findings and decision of the arbitrator. The umpire is legitimately entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the agreement. If he does so, the decision of the umpire has to be accepted as final and binding. The Supreme Court further observed that the Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do.

12. The above law has been reiterated by the Supreme Court in a very recent judgment in the matter of **National Highways Authority of India Vs. JSC Centrodorstroy**¹⁷.

13. Having considered the entire material including the award, this Court has not found that interpretation of terms of the contract based on material placed before the Arbitrator is either opposed to the public policy or the Arbitrator has travelled beyond the terms of agreement and has entered in the arena which did not fall for adjudication. The Arbitrator has remained within the realm of the dispute brought before it for adjudication and has interpreted the document together with terms

¹⁷ (2016) 12 SCC 592

of agreement in a fair and reasonable manner, which perfectly emanates from the documents, therefore, no interference with the impugned order or award is warranted in exercise of appellate jurisdiction of this Court under Section 37 of the Act, 1996.

14. The appeal has no substance, the same deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve