

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Appeal No. 18 of 2015**

South Eastern Coal Fields Ltd., A Subsidiary of Coal India Ltd.,
Seepat Road, Bilaspur, through its Chairman-Cum-Managing
Director.

---- Applicant

Versus

M/s S.S.B. Suraksha Sewa Pvt. Ltd. 38-A, Second Floor,
MohammadPur, near Bhikaji Kama Place, New Delhi 110066

---- Respondent

For Applicant : Dr. N.K. Shukla, Senior Advocate with Shri Anumeh
Shrivastava, Advocate.

For Respondent : Mr. N.L. Soni, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****29/08/2017**

(1) The applicant-SECL entered into an agreement with the respondent for providing security cover to the SECL and accordingly the agreement was entered into between the parties on 1st Marh, 2001, which came into an end on 14th March, 2002.

(2) During the course of providing security cover, an amount of ₹ 14,76,445/- was deducted from the respondent's bill and thereafter the dispute arose between the parties and in order to resolve the dispute , the matter was referred to the Sole Arbitrator. The Sole Arbitrator awarded an amount of Rs. 8,59,105 in favour of respondent along with interest @ 9% per annum with effect from 1.4.2004. That award was challenged by the appellant/SECL by filing application under Section 34

of the Arbitration & Conciliation Act, 1996 (henceforth "Act, 1996") before the District Judge, Bilaspur.

(3) Learned District Judge, Bilaspur, by its order dated 3rd March, 2015, rejected the application filed by the appellant-SECL under Section 34 of the Act, 1996 finding no merit.

(4) Learned counsel for the petitioner would submit that the order passed by the District Judge is contrary to the material and evidence available on record and, therefore, the same is liable to be set aside.

(5) Per contra, counsel for the respondent would support the impugned order and submits that the arbitration appeal filed by the appellant deserves to be dismissed.

(6) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(7) The respondent claimed an amount of Rs.14,76,445/- towards illegal deduction made from his bill, which he is entitled. Learned Sole Arbitrator has held that deduction of Rs.6,17,340/- is justified and the respondent is entitled to Rs.8,59,105/- along with interest @ 9% per annum with effect from 01.04.2014. Learned Sole Arbitrator while considering the submissions made by the parties and the material available on record came to the finding, which states as under:-

“ H Relief, if any, to the petitioner.

As per documentary evidence produced by the SECL FIR s, it cannot be denied that thefts have taken place causing loss to them, during the contract period many thefts have taken place due to negligence of SA security guards for which Bishram pur SECL

Management has a right to recover the cost from SA as per clause 21 of the agreement. However, as per observations above from A to G, it is established beyond doubt that action of management was not justified. Clause 21 clearly states that cost recovery should be done on the basis of joint inquiry, which in fact was never done. The deductions were made on the basis of pre prepared JIR, in more or less, standard formats. In these JIR the value mentioned in the FIR was inserted and signatures obtained at later stage, deductions were made ignoring all sorts of pleadings by SA at different period of times. The action of local management is not only unjust lacking procedural transparency but also in violation of the spirit of clause 21 of the agreement. I, therefore, hold that claimant is entitled for a justifiable relief. The details of relief are given in next chapter.

(8) The aforesaid findings was sought to be challenged by the appellant-SECL by filing application under Section 34 of the Act, 1996.

(9) The learned District Judge, Bilaspur relying upon the decision of Supreme Court in the matter of ***McDermott International Inc. v. Burn Standard Co. Ltd***¹ and further decisions came to the conclusion that the findings recorded by learned Sole Arbitrator is finding of fact based of material available on record and the court would not justify in sitting over the said finding.

(10) Now, the question is whether the finding recorded by learned District Judge is a finding of fact based on material available on record and neither it is perverse nor contrary to the records.

(11) Learned Sole Arbitrator has considered the submissions of the appellants and came to the specific conclusion that the respondent is

1 Arb. L.R. 498

entitled for ₹ 8,59,105/- and that has also been upheld by the learned District Judge in an application filed by the applicant-SECL under Section 34 of the Act, 1996, as such, the finding recorded by the District Judge is a finding of fact based on material available on record which is neither perverse nor contrary to the records. (See ***Associate Builders Vs. Delhi Development Authority***² and ***Msk Project (Jv) Ltd. Vs. State of Rajasthan***³)

(12) Consequently, the writ petition, being devoid of merits and is liable to be and is hereby dismissed leaving the parties to bear their own costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

² (2015) 3 SCC 49

³ (2011) 10 SCC 573