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HIGH COURT OF CHHATTISGARH, BILASPUR**MISC. APPEAL No. 1241 of 1996**

South Eastern Coalfields Ltd. A Government Company within the meaning of Section 617 of the Companies Act having its registered office at Seepat Road, Bilaspur, through General Manager, Jamuna and Kotma Area, South Eastern Coalfields Ltd. P.O. Jamuna Colliery, Tahsil Anupur, District Shahdol, M.P.

---- Appellant**Versus**

M/s Sarvatra Road Runners (Pvt.) Ltd. Having its office at 58, Connaught Place, New Delhi.

--- Respondent

For Appellant	:	Mr. Vaibhav Shukla, Advocate.
For Respondent	:	Mr. Akhtar Hussain, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****28/06/18**

1. M/s Sarvatra Road Runners Pvt. Ltd., respondent herein has filed an application under Section 20 of the Arbitration Act, 1940 (herein after referred to as, 'AC Act, 1940') for claiming a relief that the arbitration agreement dated 11.02.1984 be filed before the Court and Arbitrator be appointed in accordance with the Arbitration Clause in the agreement, as he is entitled for sum of Rs. 17,59,625.68/- from the appellant herein. The said application was granted by learned District Judge by order dated 06.09.1989 and the matter was referred to the Chairman-cum-Managing Director (for brevity, 'the CMD') of the appellant company for appointing Arbitrator. The CMD, South Eastern Coalfields Limited (for brevity,

'SECL') has appointed three arbitrators but later on, at the instance of respondent herein, the District Judge, Bilaspur appointed Mr. Justice B.C. Verma, retired Chief Justice of Punjab and Haryana High Court as the Sole Arbitrator to adjudicate the dispute. The respondent herein filed the statement of claim enhancing the claim to Rs. 4,97,39,221.00/- from Rs. 17,59,625.68/-, as claimed in application under Section 20 of the AC Act, 1940 against which the appellant filed preliminary objection that no claim beyond one stated in the application under Section 20 of the AC Act, 1940 is permissible to be adjudicated. The said objection of the appellant SECL was over-ruled. Ultimately, the learned Arbitrator passed an award on 10.05.1995 to the extent of Rs. 41,29,000/- with 9% interest and rejected the counter claim of appellant. The appellant herein preferred an application under Section 30 read with Section 33 of the AC Act, 1940 for setting aside the award passed by the learned Arbitrator and submitted that the Arbitrator has misconducted himself by allowing the claim beyond the terms of reference. The learned District Judge, by its order dated 26.07.1996 rejected the application and affirmed the award passed by learned Arbitrator. Feeling aggrieved and dis-satisfied with the award passed by the learned District Judge, this appeal under Section 39 of the AC Act, 1940 has been preferred.

2. Mr. Vaibhav Shukla, learned counsel appearing for the appellant would submit that the learned Arbitrator has committed gross misconduct by traveling beyond the terms of reference and acted in excess of jurisdiction by granting an amount enhancing the claim amount to Rs. 4,97,39,221.00/- in place of Rs. 17,59,625.68/- and, therefore, it is

covered under Section 30(a) of the AC Act, 1940 and award is liable to be set aside.

3. Learned counsel appearing for the respondent has argued that the award has been passed in accordance with law and it has rightly been affirmed by the learned District Judge while rejecting the application filed by the appellant under Section 30 read with Section 33 of the AC Act, 1940, therefore, the appeal deserves to be dismissed.

4. I have heard learned counsel appearing for the parties, considered their rival submissions made herein above and gone through the records with utmost circumspection.

5. In paragraph 16 and 19 of the application under Section 20 of the AC Act, 1940 the respondent has clearly stated that a sum of Rs. 17,59,625.68/- has become due to him from the appellant company. Not only this, prior to the order passed on the said application under Section 20 of the AC Act, 1940 the respondent also made an application for enhancement of his claim from Rs. 17,59,625.68/- to Rs. 39,59,898.59/- by making an application under Order 6 Rule 17 read with Section 151 of the CPC. The learned District Judge, by its order dated 03.09.1991 rejected the said application and allowed the application under Section 20 of the AC Act, 1940 and directed the CMD of the SECL to appoint arbitrator as per the agreement. In the said order it has been recorded by learned District Judge as under :-

“6. According to the petitioner / plaintiff, the disputes have arisen between the petitioner- Company and the

respondent – Company arising out of the agreement dated 11.02.1984 on various points (in all 5 in number) as enumerated in para 15 of the petitioner giving rise to a claim of Rs. 17,59,625.68 as detailed in para 16 of the petition. The petitioner has therefore prayed for referring the matter in dispute to the arbitrator for adjudication of the claim as per terms of the agreement dated 11.02.1984.”

Thus, from the above stated order it appears that the claim which was directed to be referred to the Arbitrator and which was claimed by respondent herein is for Rs. 17,59,625.68/- only. Thereafter, on appointment of Arbitrator, the respondent filed a claim before the Arbitrator in which he claimed Rs. 4,97,39,221/-. The said enhancement of claim was opposed by the appellant SECL by filing an objection and the said objection was rejected by the learned Sole Arbitrator on 25.09.1994 finding no merit. Thereafter, the final award dated 10.05.1995 has been passed against which the application for setting aside the award was filed that has been rejected by the learned District Judge.

6. Question for consideration would be whether the learned District Judge is justified in rejecting the application filed under Section 30 read with Section 33 of the AC Act, 1940 and whether adjudication by arbitrator the matter which is not the subject matter of reference is a misconduct on the part of Arbitrator under Section 30(a) read with Section 33 of the AC Act, 1940.

7. At this stage, it would be appropriate to refer to the relevant

judgments on the point. In the matter of **Orissa Mining Corporation Ltd. Vs. M/s Prannath Vishwanath Rawlley**¹, the Supreme Court has held in Para- 11 as under :-

“11. Section 20(1) of the Arbitration Act, 10 of 1940, provides that where a difference has arisen and where any persons have entered into an arbitration agreement they may apply to the court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in court. Sub-section (4) to Section 20 provides that the court shall order the agreement to be filed and shall make an order of reference to the arbitrator appointed by the parties. When an agreement is filed in court and order of reference is made then the claim as a result of the order of reference is limited to a particular relief and the arbitrator cannot enlarge the scope of the reference and entertain fresh claims without a further order of reference from the court.”

8. Likewise, in the matter of **Associated Engg. Co. v. Govt. of Andhra Pradesh & Anr.**², the Supreme Court has held that arbitrator cannot violate jurisdiction by deciding the question not referring to him by the parties :-

“ an umpire or arbitrator cannot widen his jurisdiction by deciding a question not referred to him by the parties. If he exceeded his jurisdiction by so doing, his award would be liable to be set aside. Thus, an arbitrator cannot be allowed to assume jurisdiction over a question which has not been referred to him, and similarly, he

1 AIR (1977) SC 2014

2 AIR (1992) SC 232

cannot widen his jurisdiction by holding contrary to the fact that the matter which he wants to decide is within the submission of the parties.”

9. Likewise, in the matter of **Natarwal Shamal Das and Company, Bombay-1 v. The Minerals and Metal Trading Corporation of India Ltd., New Delhi**³, the Delhi High Court has followed the decision of the Supreme Court in the matter of *Orissa Mining Corporation Ltd.* (supra) and held in Para 24 and 28 as under :-

“24. It will be recalled that the arbitration proceedings were preceded by an application under S.20 of the Act. Under sub-s.(4) of S.20 the court ordered the agreement to be filed and made an order of reference to the sole arbitrator. Safeer J. referred to the arbitrator “disputes which are subject matter of controversy between the parties.” These disputes were specified in the application in terms of rupees, annas and pies. Now the order of reference defines the limits of the authority and jurisdiction of the arbitrator. The arbitrator's authority has its source in the order of reference. He cannot traverse beyond the reference made by the Court. If he does so he acts without jurisdiction. The arbitrator has necessarily to restrict his award only to the claim as put forward before the Court in Section 20 proceedings.

“28. There can be acquiescence in arbitration proceedings which are clearly beyond the Court's order of reference. A party is not precluded from objecting to the award later on the ground that the award was in excess of jurisdiction and the entire proceedings were invalidated thereby. Attending and taking part in the

3 AIR 1982, Delhi 44

proceedings will not cure the defect where the arbitrator lacks inherent jurisdiction. The Supreme Court in Orissa Mining case (AIR 1977 SC 2014) has definitely laid down that a fresh claim cannot be entertained by the arbitrator if it was not made before the Court in proceedings under Section 20 of the Act. A further order of reference from the Court would be required to entertain a new claim. This is the ratio of that case. The arbitrator has no power to enlarge his jurisdiction when the Court by order of reference has circumscribed the area of controversy and told the arbitrator in clear terms what he has to decide.”

10. In the matter of **The Managing Director, J&K Handicrafts, Jammu v. M/s Good Luck Carpets**⁴, their Lordships have held as under:-

“ 4.... It cannot be disputed that the jurisdiction of an arbitrator flows from the reference, nor can it be disputed that a reference can only be made with regard to such disputes which are contemplated by the agreement containing the arbitration clause. If what is to be found out is whether the award is without jurisdiction being beyond the scope of reference, there can be no doubt that the agreement containing the arbitration clause has to be looked into for that limited purpose...”

11. In the identical fact situation between the same parties, this Court in **South Eastern Coalfields Ltd. v. M/s Sarvatra Road Runners (Pvt.) Ltd.**⁵, has held in paragraph – 25 as under :-

4 AIR (1990) SC 864

5 M.A. No. 1241 of 1996

“25. The referring Court was the District Judge and it had rejected the application for enhancement of the claim. When the referring Court had rejected the application for enhancement of the claim, then the Arbitrator had no business to entertain the claim beyond what was referred to him. In my view, the Arbitrator totally misconducted himself in taking the view that because the word 'inclusive' had been used, what was referred to him was all the disputes arising out of the arbitration. In the first order, it was clearly spelt out that the claim was restricted to Rupees One Crore only. The District Judge in the second order dated 03.09.1991 refused to enhance the claim amount and the action of the Arbitrator in allowing the claim to be enhanced from Rupees One Crore by more than twenty times to Rs. 20,89,76,0147.00, is itself an act of misconduct, especially when the District Judge while rejecting the earlier claim for enhancement had clearly held that fresh claims were not within the time and the arbitrator to whom the matter was referred by the District Judge had no business of sitting over the order of the referring judge, who had clearly held that the claims were beyond the limitation. Surprisingly, the Arbitrator did not even consider the issue of limitation which also amounts to misconduct.”

12. Thus, from the aforesaid judgments it is quite vivid that the arbitrator has no jurisdiction to widen the terms of reference referred to him by the Court while adjudicating the claim originally referred and cannot enlarge the scope under Section 20 of the AC Act, 1940. The Arbitrator derives jurisdiction from this order of reference which determines the limits of his authority to act thereunder. Therefore, he cannot travel beyond the scope

of reference and if he does so, he exceeds his jurisdiction.

13. Reverting to the facts of the present case, it is quite vivid that in the instance case the learned District Judge while considering the application filed by the appellant under Section 20 of the AC Act, 1940 has rejected the application for enhancement of claim made by the petitioner. Since the Referring Court / District Judge has already rejected the application of respondent herein for enhancement of claim, the learned Arbitrator could not have allowed and entertained the claim beyond what was referred to him and thereby this act of Arbitrator would fall within the misconduct as stated under Section 30(a) of the AC Act, 1940. The order passed by the learned Arbitrator holding that the word 'inclusive' has been used, what was referred to him was of all the disputes arising out of Arbitration. As the District Judge has already refused to enhance the claim amount by order dated 03.09.1991, therefore, the action of the learned Arbitrator in allowing the enhanced claim over and above Rs.17,59,625.68/- and thereby granting award of Rs. 41,29,000/- itself is an act of misconduct covered within the definition under Section 30(a) of the AC Act, 1940. In this case also, the Arbitrator failed to consider the plea of limitation raised by the appellant. As such, the learned District Judge is absolutely unjustified in fully rejecting the application filed under Section 30 read with Section 33 of the AC Act, 1940.

14. Thus, on the basis of the aforesaid discussion and in view of the decision rendered by this Court between the parties herein, this Court is of the considered opinion that the order of learned District Judge deserves to

be set aside in part and award of the Arbitrator is modified to the extent that the claimants shall be entitled only to Rs.17,59,625.28/- along with interest as awarded by the Arbitrator.

15. The appeal is allowed in part as indicated herein above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge