

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.561 OF 2006

1. State of Goa,
Through the Chief Engineer,
Irrigation Department,
Junta House, Panaji, Goa.
 2. The Executive Engineer,
Works Division I,
Irrigation Department,
Panaji, Goa.
- ... Petitioners

V e r s u s

Mr. T. D. Abdul Rahiman, represented
By his Attorney
Mr. C. M. A. Kadar,
Ponda, Goa.

... Respondent

Mr. Deep Shirodkar, Additional Government Advocate for the
Petitioners.

Mr. S. D. Padiyar, Advocate for the Respondent.

Coram :- C. V. BHADANG, J.

Date :- 4th June 2019.

ORAL JUDGMENT

1. The challenge in this petition is to the order dated 20.01.2000, by which the learned District Judge, North Goa, has allowed unconditional withdrawal of the objection filed by the petitioners under Section 34 of the Arbitration and

Conciliation Act, 1996, (Act, for short), challenging the Award dated 31.08.1998 passed by the sole Arbitrator.

2. The brief facts are that the respondent had taken a contract for construction of a minor irrigation tank at Amthane. As disputes and differences arose between the parties, the matter was referred to the sole Arbitrator before whom the respondent made a claim of Rs.85,05,571.45. The learned Arbitrator by an Award dated 31.08.1998 partly granted the claim in the sum of Rs.16,75,547.60 together with interest at the rate of 18% per annum from 09.10.1988, till realisation of the amount.

3. It appears that the petitioner filed an objection to the said Award under Section 34 of the Act before the learned District Judge which was registered as Civil Misc. Application No.172/1999. It was, inter alia, claimed that the award of Rs.1,08,000/- in respect of claim no.6 is by way of duplication of the payment and the amount of Rs.10,000/- in respect of claim no.8 towards the costs of arbitration is unjustified. There were certain other objections raised.

4. On 20.01.2005, Mr. V. M. Golasangi, the then Executive Engineer, (WD-I) Irrigation Department, Panaji, filed an

application before the learned District Judge, seeking to withdraw the objection. The learned District Judge by an order of the even date, permitted unconditional withdrawal of the said objection.

5. The record discloses that the petitioners sought to challenge the same before this Court in an appeal under Section 37 of the Act which was registered in AUA No.3/2000. This Court by an order dated 13.10.2006 found that the appeal was not maintainable inasmuch as under Section 37 of the Act, an appeal lies only against an order setting aside or refusal to set aside an award and the order permitting unconditional withdrawal of the objection was not appealable. While disposing off AUA No.3/2000, this Court granted liberty to the petitioner to adopt any other remedy that may be available in law before appropriate forum. It is in these circumstances that the petitioners filed the present petition on 20.11.2006 in which rule was issued on 22.11.2006.

6. I have heard Mr. Shirodkar, the learned Additional Government Advocate appearing for the petitioners and Mr. S. D. Padiyar, the learned Counsel appearing for the respondent. Perused record.

7. Mr. Shirodkar, the learned Additional Government Advocate for the petitioners has strenuously urged that Mr. V. M. Golasangi had no authority to seek withdrawal of the objection. It is submitted that the withdrawal of the said objection was totally without authority and in contravention of the applicable circulars and the policy guidelines. It is thus submitted that the order permitting withdrawal is not justified and this Court may restore the objection being CMA No.172/1999 for its disposal on merits in accordance with law.

8. The learned Additional Government Advocate has brought to my notice an order dated 03.10.2013 in Writ Petition no.402/2013 in which in a similar situation (where it was claimed on behalf of the petitioners/State that the appeal was withdrawn by the learned Additional Government Advocate for the State without authority), this Court had permitted the petitioners to approach the concerned Court. It is thus alternately submitted that this Court may grant liberty to the petitioners to approach the learned District Judge with an application for recall of the order of withdrawal and for restoration of the CMA.

9. Mr. S. D. Padiyar, the learned Counsel appearing for the respondent has submitted that the dispute relates to a

contract which was executed way back in the year 1985. It is submitted that the award of the Arbitrator itself is passed on 31.08.1998 and the objection against the said award was unconditionally withdrawn and the petitioners cannot justifiably seek recall of the said order at this distance of time. Mr. Padiyar, the learned Counsel, has pointed out that Mr. V. M. Golasangi is not made a party to the petition and in a departmental enquiry initiated against the said Officer, he has been exonerated. It is pointed out that the Government has also accepted a notice of voluntarily retirement given by Mr. V. M. Golasangi and even pension and other retired benefits have been sanctioned to him. It is thus submitted that the petitioners now cannot claim that the action by Mr. V. M. Golasangi, of the withdrawal of the objection was without any authority.

10. I have carefully considered the circumstances and the submissions made. In the first place, it is necessary to note that Mr. V. M. Golasangi is not made party to the petition and thus this Court is not in a position to examine the allegations against Mr. V. M. Golasangi, about his action of seeking withdrawal of the objection being without authority. Such a finding cannot be recorded behind the back of the concerned officer. That apart, the record discloses that the Government

had initiated departmental inquiry against the said Officer for his alleged withdrawal of the objection without authority. It is a matter of record that the said Officer has been exonerated of the said charge and the Government has even permitted him to retire voluntarily and has sanctioned pension and other retirement benefits as per order dated 30.07.2003. Thus, the petitioners cannot now justifiably contend that the action of the said Officer was without any authority. For this reason, in my considered view, it would be futile to grant liberty to the petitioner particularly at this distance of time, to approach the learned District Judge with an application seeking recall of the order dated 20.01.2000. The record further discloses that the State has complied with the order of the Arbitrator and the respondent has also withdrawn the amount as permitted by this Court vide order dated 13.10.2006 in AUA No.3/2000.

11. The learned Additional Government Advocate also pointed out that the impugned Award of the Arbitrator particularly on grant of certain claims relating to the extended period of contract is unjustified. I am afraid, these contentions cannot be considered in this petition inasmuch as the award of the Arbitrator is not subject matter of challenge in the present petition.

12. I find that the petition is without any merit and is accordingly dismissed with no order as to costs. Needless to mention, that the bank guarantee, if any, furnished by the respondent, would stand discharged.

C. V. BHADANG, J.

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