

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A. No. 887 of 2006****Reserved on 27.08.2021****Pronounced on 07.09.2021**

- South Eastern Coal Fields Limited Hasdeo area, Bilaspur through Shri R. S. Singh General Manager (legal) and power of attorney holder of South Eastern Coal Fields Limited, A govt. Company. Registered under the Companies act, 1956. Having its head office at Seepat Road, Bilaspur (C.G.)

---- Appellant**Versus**

- M.S. Nainam R/o House No.HIG-52, Maharana Pratap Nagar, Korba (C.G.) Pin Code 495 677.

---- Respondent

For Appellant:	Shri Vivek Ranjan Tiwari, Senior Advocate appears along with Shri Shailendra Kumar Shukla, Advocate and Shri Atul Kesharwani, Advocate.
For Respondent:	Shri K. A. Ansari, Senior counsel appears along with Shri Aman Ansari, Advocate.

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J
CAV Order/Judgment

1. This appeal has been preferred by the South Eastern Coal Fields Limited (hereinafter referred to as the S.E.C.L.) under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act, 1996') questioning the legality and propriety of the order dated 31.03.2006 passed by the District Judge, Bilaspur in MJC No.73/2005, whereby the claim of the Respondent as accepted by the sole Arbitration vide order dated 03.04.2005 has been upheld.

2. Briefly stated the facts of the case are that the work of Bijuri Water Supply Scheme was awarded to the Respondent-Contractor, namely, M. S. Nainan (hereinafter referred to as the 'Contractor') for providing, laying, jointing and testing of raw water, clear water, rising and distribution mains

of Hasdeo Area for a total cost of Rs.4,29,875/- vide agreement No. C.E. (C)/BSP/AGT/2/97 dated 16.03.1990. According to the terms and conditions stipulated therein, the Contractor was required to complete the work within a period of 4 months, which was to be reckoned from 10th day of the issuing of work order dated 15.10.1988 or from the date of handing over of site whichever was later. At the time of issuing of work order, the land for construction was not possessed by the S.E.C.L., the agreement was, therefore, signed on 16.03.1990.

3. When a dispute arose between the parties in relation to the final amount, the Contractor has submitted an application under Clause 9 of the General Terms and Conditions of the agreement for its reference to the Arbitrator to resolve the dispute for due amount of compensation amounting to Rs.7,93,018/- which was opposed by the S.E.C.L. The Contractor has, therefore, moved an application under Section 11 of the Act, 1996 before the learned District Judge for appointment of an Arbitrator and, accordingly Shri C. P. Singh was appointed as the Sole Arbitrator on 24.07.2003.

4. The Sole Arbitrator so appointed entered into the reference and arrived at a conclusion vide its award dated 03.04.2005 based upon the documentary evidence led by the parties that the arbitrable dispute survived between the parties after the final payment on the ground that the Contractor had, while signing the final bill on 03.12.1997, put a rider "subject to my claims" and observed further that the final bill was kept pending for a month and signed by Executive Engineer-in-charge on 03.01.1998 where the alleged rider was got scored out and in view thereof, it was held that the Contractor was coerced and pressurized by the

S.E.C.L. to score out the said rider. The Arbitrator has accordingly passed the award as under:-

- (I) (a) Interest @ 12% per annum due to delayed payment of Rs.2,47,380/- from 01.08.1992 to 02.04.2005;
- (b) Interest @8% per annum from 03.04.2005 till date of payment on Rs.2,47,380/-
- (II) Extra overhead @5%, i.e., Rs.5,373/- per month from 13.04.1989 (date of issue of first lot of pipes) to 31.07.1992 (date of completion);
- (III) Labour escalation : since the labour escalation was paid as per Agreed formula the claim for labour escalation of Rs.62,882/- is rejected.

5. The aforesaid award has been questioned by S.E.C.L. before the learned District Judge, Bilaspur in appeal under Section 34 of the Act, 1996 by submitting *inter alia* that the Sole Arbitrator has ignored the fact that the dispute was not survived owing to issuance of “No Claim Certificate” by the Contractor and alleged further that the procedure as adopted by the Arbitrator was not fair as no effective opportunity of hearing was provided to the S.E.C.L. and that by exceeding his authority has erred further in awarding the interest by ignoring the provision and terms and conditions of the agreement.

6. The appellate Court, while considering the aforesaid contention of the counsel for the S.E.C.L., has dismissed the appeal on finding that the Contractor has not signed the “No Claim Certificate” as well as a certificate of final bill to the full of his satisfaction voluntarily while examining the bill dated 03.12.1997 wherein, he has reserved his right for his claim. It observed further that since the parties have agreed on 14.11.2003 during the arbitration proceeding while placing their reliance upon the documentary evidence alone, and therefore, it cannot be said that proper

opportunity was not provided to the Appellant-S.E.C.L. The appeal was accordingly dismissed which has been impugned by way of this appeal.

7. Shri Tiwari, learned counsel appearing for the Appellant-S.E.C.L. submits that since the Contractor has issued the “ No Claim Certificate” and has received final payment to his full satisfaction, therefore, the Court below ought not to have held that the dispute was survived between the parties. Further contention of him is that sufficient and reasonable opportunity for leading the oral evidence was not provided to the Appellant-S.E.C.L. despite an appropriate application being made in this regard and the Court below has erred further in upholding the interest as awarded by the Arbitrator without examining the terms and conditions stipulated in the agreement in its proper manner.

8. On the other hand, Shri Ansari learned counsel appearing for the Respondent-Contractor has supported the order impugned as passed by the Court below.

9. I have heard learned Counsel for the parties and perused the entire record carefully.

10. From perusal of the record, it appears that the Contractor, while signing the final bill on 03.12.1997 has put a rider while mentioning therein as “subject to my claim” and his bill was kept pending for a month and thereafter the Executive Engineer-in-charge of the Appellant-S.E.C.L. has signed the final bill on 03.01.1998 whereby the “subject to my claim” as mentioned by the Contractor was got scored out, which led to the conclusion of the Arbitrator as such, and which was upheld by the Court below by holding that the contractor was coerced and pressurized to score out the said rider. The said finding as arrived at upon due and proper

consideration of the materials available on the record, is not liable to be interfered in this appeal.

11. In so far as the further contention of the Appellant-S.E.C.L. with regard to the fact that sufficient opportunity for leading the oral evidence has not been provided is concerned, the same is, however, not acceptable as during the arbitration proceeding before the Arbitrator, both the parties on 14.11.2003 have informed that the decision in the matter will not be affected, if the witnesses are not examined in the following terms:-

“Counsel for claimant and respondent discussed amongst themselves and come to unanimity that decision in this case will not be materially affected even if witnesses are not examined. Hence both the parties agreed not to produce witnesses.”

And, in the light of the above, the prayer of the Appellant-S.E.C.L. seeking to lead oral evidence was rightly turned down in view of the provision prescribed under sub-section (2) of Section 19 of the Act, 1996 as the parties have agreed not to lead any oral evidence before the arbitral Tribunal.

12. Further contention of the learned counsel for the Appellant-S.E.C.L. that the Arbitrator has exceeded his jurisdiction while providing interest to the Contractor for delayed payment against the terms and conditions of the alleged agreement and, therefore, the same is liable to be set aside is, however, also noted to be rejected in view of the provisions prescribed under clause (a) of sub-section (7) of Section 31 of the Act, 1996. The said provision is relevant for the purpose which reads as under:-

31. Form and contents of arbitral award.—

(1) to (6) xxxx xxxx xxxx

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for

which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b)	xxxx	xxxx	xxxx	xxxx
(8)	xxxx	xxxx	xxxx	xxxx

13. According to the aforesaid provision, if the agreement bars payment of interest, then only the arbitrator cannot award interest, otherwise, he is not precluded to award the interest. In view of the aforesaid specific provision, it was, therefore, incumbent upon the Appellant-S.E.C.L. to establish the fact that by virtue of the terms and conditions stipulated in the alleged agreement, the contractor would not be entitled to interest as awarded by the Arbitrator. For the said purpose, Shri Tiwari, learned counsel for the Appellant has drawn the attention of this Court to Clause 5 of the General Terms and Conditions of the alleged agreement which reads as under:-

5. Payments: "On account" payment may be made at intervals provided that such payment shall not be made more than one in a calendar month. These "On account" payment will be for a sum equal to 95% of the value of work as certified by the Executive Engineer and the balance of 5% will be withheld and retained entire work is certified total accounting will be made and the contractor(s) shall draw final payment of all the money due or payable to them under or by virtue of the contract except a sum equal to 2.5% of the total value of the work done. The amount withheld from the final bill will be retained and paid to the contractor(s) together with the initial security deposit within a period of six months, provided that in case of building work the above said amount shall be refunded after a period of six months or at the end of one full monsoon season mentioned above the contractor shall be responsible to set right the defect or defects that might appear in the work and in case of building work the above amount shall be paid only after the buildings have proved to be completely watertight

during one full monsoon and all defect have been made good. Incase anything is found to have been paid in excess the contractor(s) shall return the same.

No interest is payable on amounts withheld under the item of the agreement.

14. According to the aforesaid clause, the payment will be made for a sum equal to 95% of the net work done by the Contractor and as certified by the Executive Engineer and the balance of 5% of the final bill will be withheld and retained and which will be paid to the Contractor together with the initial security deposit within a period of six months, but in so far as the withheld payment is concerned, the same shall not carry any interest. In view thereof, it is difficult to accept the contention of Shri Tiwari that the interest has wrongly been awarded by the Arbitrator as the Contractor's claim was with regard to his final bill and not with regard to the withheld payment of him. In so far as the reliance of him in the matter of ***Sri Chittaranjan Maity vs. Union of India*** reported in **(2017) 9 SCC 611** is concerned, the same is, however, held to be distinguishable as in the said matter, there was a specific prohibition of payment of interest on the amounts payable to the contractor as stipulated in the agreement. In absence of such a clause in the alleged agreement, the Arbitrator has not committed any illegality in awarding the interest as such and the same has, therefore, rightly been upheld by the Court below in appeal preferred under Section 34 of the Act, 1996.

15. Besides, it is to be noted at this juncture that the law with regard to scope and ambit of the jurisdiction of the Courts to interfere with an arbitration award has been settled by the Supreme Court in the matter of ***State of Rajasthan v. Puri Construction Co. Ltd.*** reported in **(1994) 6 SCC 485** wherein it has been observed at para 26 as under:-

“26. The arbitrator is the final arbiter for the dispute between the parties and it is not open to challenge the award on the ground that the arbitrator has drawn his own conclusion or has failed to appreciate the facts. In *Sudarsan Trading Co. v. Govt. of Kerala* (1989) 2 SCC 38, it has been held by this Court that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power of the arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. *Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties.* (emphasis supplied) Whether a particular amount was liable to be paid is a decision within the competency of the arbitrator. By purporting to construe the contract the court cannot take upon itself the burden of saying that this was contrary to the contract and as such beyond jurisdiction. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view though perhaps not the only correct view, the award cannot be examined by the court. Where the reasons have been given by the arbitrator in making the award the court cannot examine the reasonableness of the reasons. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisal of evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a judge on the evidence before the arbitrator.”

16. In the matter of ***Arosan Enterprises Ltd. v. Union of India*** reported in (1999) 9 SCC 449, it was held further by the Supreme Court in this aspect at paragraphs 36 and 37, which read as under:-

“36. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award.

37. The common phraseology 'error apparent on the face of the record' does not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record. The court as a matter of fact, cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the arbitrator is a possible view the award or the reasoning contained therein cannot be examined.....”

17. Yet, in the matter of ***Kwality Mfg. Corpn. v. Central Warehousing Corpn.*** reported in **(2009) 5 SCC 142**, it was observed by the Supreme Court at para 10, which is also relevant for the purpose reads as under:-

“10. At the outset, it should be noted that the scope of interference by courts in regard to arbitral awards is limited. A court considering an application under Section 30 or 33 of the Act, does not sit in appeal over the findings and decision of the arbitrator. Nor can it reassess or reappraise evidence or examine the sufficiency or otherwise of the evidence. The award of the arbitrator is final and the only grounds on which it can be challenged are those mentioned in Sections 30 and 33 of the Act. Therefore,, on the contentions urged, the only question that arose for consideration before the High Court was, whether there was any error apparent on the face of the award and whether the arbitrator misconducted himself or the proceedings.”

18. Likewise, in the matter of ***M.P. Housing Board v. Progressive Writers and Publishers*** reported in **(2009) 5 SCC 678**, it was reiterated at para 28 as under:-

“28. It is fairly well settled and needs no restatement that the award of the arbitrator is ordinarily final and the courts hearing applications under Section 30 of the Act do not exercise any appellate jurisdiction. Reappraisal of evidence by the court is impermissible.”

19 In the light of the aforesaid settled principles of law, I do not find any infirmity in the order impugned passed by the Court below upholding the award as passed by the arbitrator.

20. Consequently, I do not find any substance in this appeal. The appeal is accordingly dismissed. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE

Nikita