

IN THE HIGH COURT OF ORISSA AT CUTTACK

ARBA Nos.31 of 2008 and 06 of 2009

(Through Hybrid mode)

In ARBA no.31 of 2008

Ranjit Kumar Das *Appellant*

-versus-

Sr. Divisional Engineer (North), *Respondents*
East-Coast Railway, Khurda Road
and others

Advocates appeared in this case :

For Appellant : Mr. S. S. Satapathy, Advocate
For Respondents : Mr. G. Mohanty, Advocate (CGC)

In ARBA no.06 of 2009

Union of India and others *Appellants*

-versus-

Ranjit Kumar Das *Respondent*

Advocates appeared in this case :

For Appellants : Mr. G. Mohanty, Advocate (CGC)
For Respondent : Mr. S. S. Satapathy, Advocate

CORAM: JUSTICE ARINDAM SINHA

JUDGMENT

13.10.2022

1. Mr. Satapathy, learned advocate appears on behalf of appellant in ARBA no.31 of 2008. Mr. Mohanty, learned advocate, Central Government Counsel appears on behalf of appellants in ARBA no.06 of 2009. Both the appeals have been preferred from order dated 22nd November, 2008 passed

by the Court below in challenge to award dated 10th April, 2007. It appears, Railways was employer and the other party, contractor.

2. Perused impugned order. The controversy between parties appears to be setting aside costs awarded to the contractor.

3. Mr. Mohanty points out from impugned order paragraph 3 that specific point was taken in the challenge that the arbitration costs should have been equally borne by the parties and the arbitrator in awarding costs had thereby caused patent illegality. On query from Court nothing could be shown from the arbitration clause that there was agreement to that effect.

4. Mr. Satapathy demonstrates from the award, paragraph 23 that under clause (b) the arbitrator found arbitration costs to have been Rs.4,84,000/- and had thereupon awarded Rs.2,80,000/-. Clause (b) is extracted and reproduced below.

“(b) The claimant in compliance of Section 31(8) of the Arbitration & Conciliation Act, 1996, has filed a certificate showing Rs.4,84,000/- towards total expenses in this proceeding. In my opinion, the claimant is entitled to the costs of Arbitration to the tune of Rs.2,80,000/- which would be just and proper.”

5. Sub-section (8) in section 31, Arbitration and Conciliation Act, 1996 provides that costs of an arbitration

shall be fixed by the arbitral tribunal in accordance with section 31-A. Section 31-A provides, regime for costs. Sub-section (2) says, inter alia, general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party. Sub-section (3) says, inter alia, in determining the costs, the tribunal shall have regard to circumstances including whether a party has succeeded partly in the case. Sub-section (4) says, the tribunal may make any order under this section including the order that a party shall pay a proportion of another party's costs. Sub-section (5) says, agreement between parties regarding costs shall only be valid if it is made after the dispute in question arose.

6. As aforesaid, there is no agreement between the parties regarding costs. A little more than half the certified cost was awarded to the contractor, who was claimant and partly successful in the reference. In the circumstances, there is not apparent any patent illegality in the award for costs.

7. ARBA no.31 of 2008 is allowed by setting aside impugned order to the extent appealed against therein. ARBA no.06 of 2009 is dismissed.

8. Both the appeals are thus disposed of.

(Arindam Sinha)
Judge

RKS