

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**ARBA No.34 Of 2004  
(Through hybrid mode)**

***D.D.Champatiray***

....

***Appellant***

Mr. S.K.Sanganeria, Advocate

*-versus-*

***Union of India***

....

***Respondents***

Mr. S.B.Jena, Advocate

**CORAM: JUSTICE ARINDAM SINHA**

**ORDER  
24.02.2022**

**Order No.  
15.**

1. Mr. Sanganeria, learned advocate, appears on behalf of appellant and submits, impugned judgment dated 29<sup>th</sup> September, 2004 be set aside in appeal. His client had bid in his tender at Rs.9,91,930/- and thereafter offered rebate of 0.15 % on tender amount. There was overwritings to make it look like the rebate offered was at 15 % of tender bid, reducing tender value by Rs.1,48,789/- to Rs.8,43,141/-. The arbitrator found with his client and directed refund of wrongly deducted Rs.1,46,801/- (giving adjustment of Rs.1,488/- being 0.15 % rebate of tender bid value). The tribunal being the fact finding forum went into the evidence and made appreciation of it to find that the overwritings had changed original rebate offered.

2. Respondent had purportedly challenged the award. In the challenge the Court below went into merits of appreciation of evidence, to set it aside. This is not permissible under section 34 in Arbitration and Conciliation Act, 1996. Consequent to setting aside the award for payment, interest thereon was also set aside.

3. Mr. Jena learned advocate appears on behalf of respondent-employer and submits, everything happened in Odisha but appellant wrongfully obtained appointment of arbitrator from High Court at Calcutta. Secondly, pursuant to final bill having been settled and paid, clause 25 in the contract required appellant to raise dispute, if any, within 90 days. No dispute was raised in agreed period but thereafter, the purported claim and reference to arbitrator. He submits, the District Judge, correctly appreciated the evidence to return finding that the award needed to be and was set aside. There should be no interference in appeal.

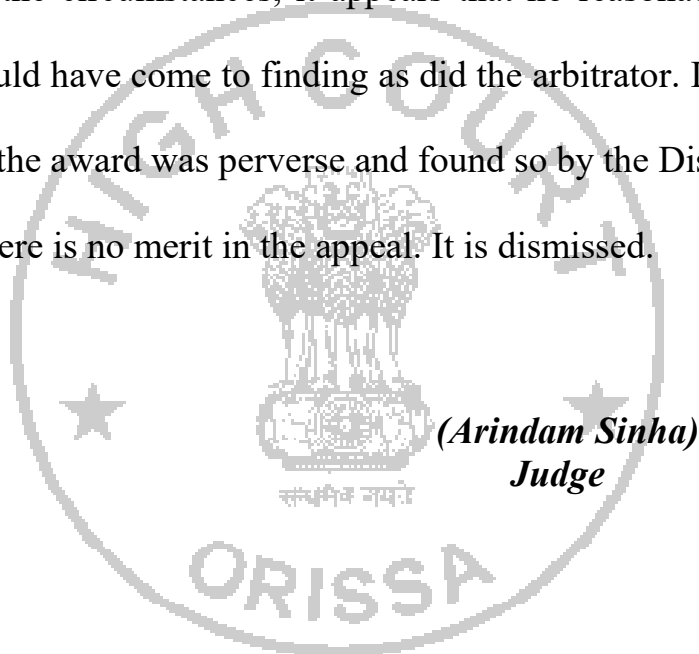
4. It appears from face of impugned judgment that subsequent to the tender being accepted, there was overwritings regarding percentage of rebate offered. However, pursuant to acceptance of the tender, a formal agreement was entered into between the parties. The agreement value was Rs.8,43,141/-, which is 15 % less than tender bid

value. This document appears to be undisputed. It is a primary document and the arbitrator had not relied upon it.

5. Appellant's reliance on paragraph 8 onwards in impugned judgment does not reveal any discussion regarding omission of appellant to have raised dispute in agreed period after having accepted payment on the final bill.

6. In the circumstances, it appears that no reasonable or prudent person could have come to finding as did the arbitrator. It is, therefore, clear that the award was perverse and found so by the District Judge.

7. There is no merit in the appeal. It is dismissed.



*Prasant*