

IN THE HIGH COURT OF ORISSA AT CUTTACK

**ARBA No.06 of 2003
(Through Hybrid mode)**

State of Orissa

...

Appellant

Mr. S. N. Das, Advocate
(Addl. Standing Counsel)

-versus-

Shri R. K. Goyal

...

Respondents

Mr. A. Sangneria, Advocate

CORAM: JUSTICE ARINDAM SINHA

**ORDER
28.07.2022**

Order No.

- 25.**
1. State is appellant. It is aggrieved by judgment dated 7th September, 2001. The Court below said that award dated 15th April, 1998 had been received from the Tribunal to be made rule of Court. As against such award, State initiated misc. case under sections 30 and 33 of Arbitration Act, 1940, to set it aside.
 2. Mr. Das, learned advocate, Addl. Standing Counsel appears on behalf of appellant and submits, the award is on majority view taken by two out of three members in the Tribunal. By the view, the Tribunal misconducted itself and the proceeding, in awarding claim for escalation. Challenge in the appeal is confined to that claim. He draws

attention to majority view taken on claim item no.30 in the reference. It is reproduced below.

“The claimant claims Rs.14,18,041.75/- towards the statutory rise in prices by 30% due to change of Schedule of Rates in 1972 and 1975. The Respondent denies that the claimant quoted his rates for this work on 15.04.72 at the 1964 Schedule of rate and as he has signed the agreement in July, 1972 and the 1972 Schedule of Rates came into force with effect from 1.1.1972. In our considered opinion, in view of existence of Fair Wage clause in the Agreement and time was not the essence of the contract and the delay in execution of the work was due to the fault of the Respondent and the agreement having been signed on 29.8.1972 and the 1972 Schedule of Rate having come into force on 10.11.1972 (not on 1.1.1972) and the 1975 Schedule of Rate having come into force on 20.1.1975, the claim of statutory rise 20% excess appears to be reasonable in view of the compulsive rise in prices as has been held in the case of State of Orissa Vs. Birat Chandra Dagara reported in AIR 1977 Orissa 142, on the value of work executed on or after 10.11.72 from the 2nd R/A bill dt. 22.11.72 upto the final bill dt.23.7.76 i.e. on Rs.24,82,022/- which comes to Rs.4,96,404/-.”

3. According to Mr. Das, the minority view is the view that ought to have been view of the Tribunal. Said view is a well reasoned one, which does not reveal misconduct. He places the view on said claim. He submits, the contractor had upon earlier quoting higher rates, agreed to the 1964 schedule of rates. The view says that claim of price escalation is of reimbursement in nature and claimant had to furnish documents of actually incurring expenditure co-relating to the agreement rate, so as to claim extra payment. Material was supplied by the department and cost recovered at agreed scheduled rates. No documents like purchase voucher, cash memo or other similar types of receipts were produced by claimant towards price rise on materials. So also, similar omission in case of transportation higher charges bill. There is observation in the view that there had been no statutory rise in wage rates under provisions of Minimum Wages Act. So also there had not been statutory rise in rates of materials or transportation charges during the period of execution. He submits, this view is the correct view and reiterates, the majority view prevailing was misconduct on part of the Tribunal.

4. Mr. Sanganerla, learned advocate appears on behalf of the contractor and relies on two judgments of the Supreme Court. They are

firstly, **Tarapore & Co. v. State of M.P.**, reported in **1994 (1) Arbitration Law Reporter 341 (SC)**, paragraphs 26 and 27. Secondly, on **K. N. Sathyapalan (Dead) by Lrs. vs. State of Kerala**, reported in **2006 (4) Arbitration Law Reporter 275 (SC)**, paragraphs 36 and 37.

5. The award is based on reasons given both by majority as well as minority views. By impugned judgment the majority view was upheld. It is to be seen whether, State's contention on the majority view versus the minority view can lead to conclusion of misconduct on former view being effective view of the Tribunal.

6. It will appear from above extract of majority view that basis of awarding the escalation was coming into effect of 1972 scheduled rates. By the view, value of work executed on or after 10th November, 1972, from 2nd R/A bill dated 22nd November, 1972 up to final bill dated 23rd July, 1976, was awarded at Rs.4,96,404/-. The basis of the award was that the claim of statutory rise of 20% excess appeared, to the two members, to be reasonable in view of the compulsive rising prices and as had been held in **State of Orissa vs. Birat Chandra Dagara**, reported in **AIR 1977 Orissa 142**.

7. The minority view expressed, inter alia, that escalation is essentially a claim for reimbursement on price rise. In **Tarapore and Company** (supra) the Supreme Court said by relied upon paragraphs 26 and 27, that it has to be seen whether there was an implied contract to reimburse the increased wages as per the rates fixed under the Minimum Wages Act, being statutory obligation and the terms of contract being silent about payment of minimum wages. Facts in that case were that wages were being increased from time to time, as would appear from the decisions of the Wage Committee referred therein and if appellant (before the Supreme Court) was being required to pay wages as per those decisions, the Court read meeting of minds in so far as claim of escalated payment on account of increase of fair wages is concerned. The Court said, it has to be assumed that when appellant was required to pay fair wages at increased rates, the authorities did visualize that appellant would not do so by cutting down his profit. Thus, the minority view on escalation being reimbursement and necessity of proof of having incurred higher expenditure, finds support from said judgment.

8. In **K. N. Sathyapalan** (supra) the Supreme Court found, it was quite apparent appellant (before the Supreme Court) was prevented by

unforeseen circumstances from completing work within stipulated period of eleven months and that such delay could have been prevented had the State Government sought to maintain law and order to not allow the problem created at work site. It was further clear that rubble and metal, which should have been available at the departmental quarry had to be obtained from quarries situated at double the distance and even more, resulting in doubling of transportation charges. Even space for dumping excess earth was not provide by the employer, which compelled dumping at a place far away from work site entailing extra cost for the same. Those facts were there in that case and the Supreme Court held, in the circumstances, the arbitrator appeared to have acted within his jurisdiction in allowing some of the claims on account of escalation of costs, which were referable to the execution of the work during the extended period.

9. On pain of repetition, majority view in the impugned award does not refer to substantiation of any fact requiring reimbursement on account of escalation. Court finds, the Tribunal misconducted itself in awarding escalation without obtaining satisfaction for basis of the award, the law being settled that escalation is a claim for reimbursement on higher costs incurred. There does not appear to be

any dispute that materials were supplied by the department at agreed scheduled rates and there was no evidence, documentary or otherwise regarding incurring of higher costs on account of wages or transportation.

10. Award on claim no.30 is set aside in appeal. The decree be drawn-up accordingly.

11. The appeal is disposed of.

(Arindam Sinha)
Judge

Prasant

