

IN THE HIGH COURT OF ORISSA AT CUTTACK

**ARBA No.22 Of 2008
(Through hybrid mode)**

Dhiren Kumar Singh

....

Appellant

Mr. J. K. Mohapatra, Advocate

-versus-

***Chief Engineer (Con.II), East
Coast Railway and another***

....

Respondents

Mr. Debasis Tripathy, CGC

CORAM: JUSTICE ARINDAM SINHA

**ORDER
05.04.2022**

**Order No.
20.**

1. Mr. Mohapatra, learned advocate appears on behalf of appellant and submits, impugned is judgment dated 11th July, 2008, by which his client's challenge to award dated 7th December, 2006, was dismissed.

2. He draws attention to the award. It records that seven extensions were granted for completion of the work. Respondent agreed that there was delay in handing over the site but disputed claim for mobilization and idling. Final bill was submitted, settled and paid on appellant having issued 'no claim' certificate. His client had pleaded in the tribunal that the 'no claim' certificate was got signed by

duress and coercion. Though the tribunal did not act upon such plea but still it went wrong in saying that 'no claim' certificate contemplated under clause 43(2) of General Conditions of Contract (GCC) was excepted matter under clause 63. He demonstrates from clause 63 that it does not mention clause 43(2) as a clause providing for an excepted matter. The other claims for idling and price adjustment on a work period of 10 months being extended to 38 months were also not considered by the tribunal. In the circumstance, good grounds to show perversity and patent illegality on face of the award had been made out in the challenge, erroneously not appreciated by the Court below.

3. Mr. Tripathy, learned advocate appears on behalf of respondent and submits, impugned judgment is a good judgment. There should not be interference in appeal. He submits, when appellant had accepted payment on final bill with issuance of 'no claim' certificate, no further claim can survive, as could be made. He relies on paragraph 14 of the counter.

4. Perused impugned judgment. The Court below found that clause 43(2) was not covered as excepted matter under clause 63 in GCC. Said Court however found that nevertheless, thereby clause

43(2) was not rendered redundant. Admitted fact was that appellant had accepted the final bill after furnishing 'no claim' certificate. It found that the wrong interpretation cannot be said to be perverse. Such interpretation cannot go to mean that the arbitral award deals with a dispute not contemplated by or not falling within terms of the submission to arbitration or contains decision on a matter beyond the scope of submission of arbitration.

5. On the other claims, the Court below appreciated reliance by the tribunal on clause 43(1) and found that decision thereon could not be interfered with on the challenge.

6. So far as the rejection of claims on mobilization, idling or price adjustment are concerned, it appears that extensions of time were granted. The running account bills/statements did not carry any claim on account of mobilization or idling or price adjustment as contemporaneously made in a period of work contemplated to be eight months and extended to 38 months. This coupled with appellant having furnished 'no claim' certificate persuaded the tribunal to reject those claims and the Court below declined to interfere. Reasoning in the award and by the lower Court on those claims do not bring out any ground under section 34 in Arbitration and Conciliation Act, 1996, for

interference in appeal. That leaves the main point of challenge regarding the misinterpretation made by the tribunal on clause 43(2) being an expected matter under clause 63.

7. Reasoning of the Court below on perversity arising from the misinterpretation, is to be accepted. This because clause 43(2) by itself puts closure on working of the contract, on the contractor issuing 'no claim' certificate. This clause was there in GCC, to notice of appellant at the time of entering into the contract. The clause says as follows.

*“ 43 (2) **Signing of “No-claim” Certificate.** The Contractor shall not be entitled to make any claim whatsoever against the Railway under or by virtue of or arising out of this contract, nor shall the Railway entertain or consider any such claim, if made by the Contractor, after he shall have signed a “No Claim” certificate in favour of the Railway, in such form as shall be required by the Railway, after the works are finally measured up. The Contractor shall be debarred from disputing the correctness of the items covered by “No Claim certificate” or demanding a reference to arbitration in respect thereof. ”*

8. Above reproduced clause says, the contractor shall not be entitled to make any claim after he shall have signed a 'No Claim' certificate in favour of the railways, in such form as shall be required by the railway for the works finally measured up. This, appellant was aware of at the time he entered into the contract, completion of the working of which was delayed beyond extended period. Appellant issued the certificate and accepted the final bill amount, thereafter, to

allege duress and coercion. This clause 43(2) is a standalone clause, which made appellant aware at the time of tender that the contingency of requirement to sign such a certificate was likely to arise. Knowing that, when appellant issued the 'no claim' certificate even though he may have had a claim outstanding, in law he is seen to have waived it.

9. There is no reason to interfere. Impugned judgment is affirmed in appeal.

10. The appeal is disposed of.

Prasant



(Arindam Sinha)
Judge