

IN THE HIGH COURT OF ORISSA AT CUTTACK

ARBA No.37 of 2018
(Through Hybrid mode)

Madhavi Mangaraj and others ***Appellants***

-versus-

Project Director, Project ***Respondents***
Implementation Unit and others

Advocates appeared in this case:

For Appellants: Mr. S.K. Sarangi, Sr. Advocate

For Respondents: Mr. U. C. Mohanty, Advocate

CORAM: JUSTICE ARINDAM SINHA

JUDGMENT

12.10.2022

1. Mr. Sarangi, learned senior advocate appears on behalf of appellants. He submits, part of his clients' house was acquired for expansion of National Highway 5. In his clients' writ petition WP(C) no.2246 of 2004, there was order dated 15th October, 2004, directing fresh measurement to be made by the Assistant Engineer. He submits, the measurement directed was of the entire house, as would be affected by demolition of part thereof. On basis of the fresh measurement, there was assessment. His client being aggrieved by the assessment had claimed enhancement. In the reference,

argument was concluded on 25th May, 2007. The award was purportedly published on 26th February, 2010 but delivered to his clients on 5th August, 2010. He submits, the award passed after such long delay is by itself illegal. Without prejudice he submits, the assessed amount at Rs.2,58,648/- was paid but there ought to have been pendente lite interest granted by the arbitrator, under section 31(7)(a) in Arbitration and Conciliation Act, 1996. Furthermore, there was enhancement by approximately Rs.27,000/-. This was not paid. In the award there ought to also have been direction for payment of interest thereon under both clauses (a) and (b) in sub-section (7) of section 31.

2. On delay in making and publishing the award Mr. Sarangi relies on judgment of the Supreme Court in **Anil Rai v. State of Bihar** reported in **(2001) 7 SCC 318**. He submits, anguish of the Supreme Court was directed at High Courts in India. Guidelines were framed. He submits, they are applicable to the Court below in having kept the matter pending as reserved for passing of award for almost three years assuming, though not admitting the award was published on 26th February, 2010. Guideline no.(v) given in

paragraph-10 of the judgment is extracted and reproduced below.

“(v) If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said lis shall be entitled to move an application before the chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other Bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances.”

3. Mr. Mohanty, learned advocate appears on behalf of respondent. He submits, the reference was kept pending on order of stay obtained by petitioner. He refers to paragraph-3 in order dated 26th February, 2010 made in the reference.

4. On query from Court Mr. Mohanty submits, his client's instruction is to dispute that argument was concluded on 25th May, 2007. Mr. Sarangi refers to extract of orders passed in the arbitration case bearing orders dated 25th May, 2007 and 10th August, 2007. The orders are reproduced below.

“25.5.2007 – Advocate for both parties present. Heard. Both parties are directed to file written note of argument.

Put up for orders on 10.8.2007.

Dictated.

Sd/-

COLLECTOR, KHURDA

10.8.2007 - One Braja Kishore Mangaraj authorized representative of the petitioner Smt. Janaki-Mangaraj has filed hazira. Heard. Orders not ready.

Put up on 24.8.2007 for orders.

Dictated,

Sd/- /-

COLLECTOR, KHURDA.”

5. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of respondent no.3.

6. In paragraph-9 of **Anil Rai** (supra) the Supreme Court said that it is true, for the High Courts, no period for pronouncement of judgment is contemplated either under the Civil Procedure Code or the Criminal Procedure Code, but as pronouncement of the judgment is a part of the justice dispensation system, it has to be without delay. Hence, guidelines were provided for High Court Judges. This Bench accepts those guidelines and makes it applicable to the case at hand since, the reference was by operation of provisions in

National Highways Act, 1956 and though conducted under provisions in Arbitration and Conciliation Act, 1996, the provisions regarding termination of mandate, as having undergone amendment, make it all the more necessary for application of the guidelines. Court is convinced that delay in making and publishing the award was more than three years, Considering petitioner's assertion that the award was received on 5th August, 2010.

7. Rule 33 in order 41, Code of Civil Procedure provides for power of Court of appeal. In exercise of such power in the facts and circumstances, impugned award is set aside. The reference is restored. The Court below will expeditiously deal with the reference and factor in petitioner's contention on re-measurement and interest to be awarded under section 31(7) in the 1996 Act. Respondents will be entitled to urge their contention for mitigation on award of interest.

8. The appeal is disposed of.

(Arindam Sinha)
Judge