

IN THE HIGH COURT OF ORISSA AT CUTTACK

ARBA No.53 of 2005
(Through hybrid mode)

M/s. Krishna Mohan Construction Co. ***Appellant***

Mr. N.C. Panigrahi, Senior Advocate

-versus-

Union of India ***Respondent***

Mr. Debasis Tripathy, Advocate (CGC)

CORAM: JUSTICE ARINDAM SINHA

ORDER
11.08.2022

Order No.

7.

1. Mr. Panigrahi, learned senior advocate appears on behalf of appellant and had earlier submitted, the appeal has been preferred against order of the Court below, under clause (vi) in subsection (1) of section 39, Arbitration Act, 1940. He draws attention to impugned judgment dated 31st August, 2005, paragraph 7 therein. He submits, the Court below found that condition 70 of the arbitration agreement does not provide for recording reasons for the award. He then points out from paragraph-11, the Court below said, findings in the award are mere conclusions but not on reasons. He submits, in the 1940 Act there was no requirement of the arbitrator to give reasons,

unless there was contract to contrary. The position in law is well settled that Court cannot go beyond such an award.

2. Today he relies on judgments of the Supreme Court.

(i) **State of Orissa v. Dandasi Sahu** reported in **AIR 1988 SC 1791** paragraphs 4 and 10. Paragraph-4 is reproduced below.

“4. In that view of the matter, we think that the pendency of this point before the larger Bench should not postpone the adjudication and disposal of this appeal in the facts of this case. The law as it stands today is that award without reasons are not bad per se. Indeed, an award can be set aside only on the ground of misconduct or on an error of law apparent on the face of the award. This is the state of law as it is today and in that context the contention that the award being an unreasoned one is per se bad, has no place on this aspect as the law is now. This contention is rejected.”

(ii) **Raipur Development Authority v. M/s. Chokhamal Contractors** reported in **AIR 1990 SC 1426** paragraphs 17, 18, 19 and 38. Paragraph 19 is reproduced below.

“19. It is now well-settled that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the

conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. The arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submission he is required to give such reasons and if the arbitrator or umpire chooses to give reasons in support of his decision it is open to the Court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the face of the record on going through such reasons. The arbitrator or umpire shall have to give reasons also where the court has directed in any order such as the one made under section 20 or section 21 or section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so.

3. Mr. Tripathy, learned advocate, Central Government Counsel appears on behalf of respondent. He submits, the arbitrator misconducted himself as will appear from face of the award, found by the Court below on impugned judgment dated 31st August, 2005. He demonstrates therefrom following findings reproduced below.

“xxx xxx xxx So far as the item No.2 is concerned, the contractor agreed and signed to

amend the contract to reduce the rate from Rs.60/- to Rs.45/- per CM beyond 5000 CM. While the award was made by the learned Arbitrator at the previous contractual rate of Rs.60/- per CM beyond 5000 CM is without jurisdiction. It is due to over looking of the amendment of the contract. The contractor's plea that he was compelled to sign the amended contract regarding reduction of rate for this item when the authority threatened to cancel his tender xxx xxx xxx xxx."

"xxx xxx xxx So far as the claim No.3 is concerned, the work was to be completed by 24.12.02 but it was extended upto 12.1.91 on the request of the contractor under condition 11 of the general condition of the contract. It is a prohibitory condition for claiming compensation or extra charge when the work period was extended on the request of the contractor or due to some other reasons beyond the control of the contractor or the Union of India. The condition-11 has been ignored by the Arbitrator while conceding the claim of the contractor for completion of work beyond contractual duration. The reason given by the Arbitrator based on the book of Hudson building and Engineering contract. Nothing has been elaborately mentioned in his reasons if pleaded by the parties. The cause of delay for Court case, accounting of materials, effect of communal roits etc. supply of materials, water problem, telephone line etc are hardly the grounds

to claim compensation from the defendant xxx xxx xxx.”

“xxx xxx xxx So far as the claim No.15 is concerned about granting of interest on the award as per the Interest Act, 1978, it has been decided by the Arbitrator to award interest including past, present and future upto actual payment or date of decree whichever is earlier. Hence he allowed the claim of interest at the rate of 14% per cent and from April, 1991 to date of award for certain claims and 18% percent beyond the 60 days of the award. It is pointed out by the defendant that the Arbitrator has committed error of law giving 18% percent future interest till the date of decree or the date of payment whichever is earlier. For want of any agreement the Arbitrator has no jurisdiction to award future interest instead of the current rate of interest 10% percent per annum xxx xxx xxx.”

4. On query from Court Mr. Tripathy hands up copy of award dated 22nd July, 1994. Item no.2 was dealt with in the award as reproduced below.

“2. For extra cost payable for making good side slopes and shoulders of existing embankments with granular base and of existing embankments partly executed by the previous contractor.

Amount of claim- Rs.10,71,589/-

- (a) Due to forceful reduction in rates quoted for quantity beyond 5000 cums. (Rs.60 reduced to*

Rs.45) including the quantity executed beyond deviation limits – Rs.2,96,589/”

The claim amount was Rs.10,71,569/-. It was made on two counts. One count was on reduction of rate from Rs.60/- to Rs.45/- per cubic meter from quantity beyond 5000 cubic meters. The other count included in the claim was for work done beyond deviation limits. Thus on the aggregate of two counts of claim made at Rs.10,71,569/- the arbitrator awarded of Rs.2,96,589/-. The award not bearing reasons, the Court below could not have gone beyond it and the mind of the arbitrator to find there was misconduct in not dealing with the claim on reduced rate for the quantity within deviation limit.

5. The second contention is regarding grant of interest, for the period in which there was extension of time to complete the work. Again, the award not having provided reasons, it could not have been discerned by the Court below as to whether satisfaction for grant of compensation by way of interest on time overrun was correctly achieved. Third contention of appellant is that the agreement did not provide for payment of future interest and the arbitrator misconducted himself in granting it. Paragraph 24 from the award is reproduced below.

“Claim No.15: The contract does not specifically prevent payment of interest and after Interests Act of 1978, it has been decided by Supreme Court/High Courts that the Arbitrators can award interest as per Courts and including past, pendentelite and future interest upto actual payment or date of decree whichever is earlier. Hence the claim is allowed accordingly.”

The arbitrator relied upon Interest Act, 1978 to grant interest, in absence of specific provision in the contract, on finding the contract does not specifically prevent payment of interest. In the circumstances, application of the law to the situation cannot be said to have been misconduct on part of the arbitrator.

6. In view of aforesaid, the appeal succeeds. Impugned judgment is set aside and quashed.

7. The appeal is disposed of.

(Arindam Sinha)
Judge

Sks