

IN THE HIGH COURT OF ORISSA AT CUTTACK

ARBA No.58 of 2018

(Through hybrid mode)

Jayaram Panda

....

Appellant

Mr. S.K. Sarangi, Advocate

-versus-

***Project Director, M/s. National
Highway Authority of India and
others***

....

Respondents

Mr. A.K. Sharma, AGA

Mr. U.C. Mohanty, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER

09.05.2022

Order No.

10.

1. Mr. Sarangi, learned advocate appears on behalf of appellant and on 22nd March, 2022 had submitted, impugned judgment dated 5th December, 2018 is liable to and should be set aside in appeal. The Court below erred in not appreciating that his client had mounted good challenge against award by order dated 13th June, 2016 regarding quantum of compensation to be paid to his client on acquisition by National Highways Authority of India (NHAI). There were two technical evaluations of industrial loss suffered and compensation to be paid to his client. The earlier assessment returned finding of compensation payable at Rs.55,69,904/-. There was a

subsequent assessment, which returned figure Rs.92,38,627/-.

He submits, there is no reasoning in the award as to why latter assessment stood rejected.

2. Today, he draws attention to comments made by General Manager DIC-Ganjam-Berhampur-cum- Chairman Technical Committee dated 11th May, 2010. He submits, copy of this document have been circulated to respondents, State and NHAI.

3. He demonstrates from the comments that actual loss of interest of Rs.31,49,513/- had not been considered basing on Rs.24,61,359/- as fixed capital investment. Loss of interest was calculated on Rs.17,90,759/- towards fixed capital investment, determined by the previous committee. Furthermore, specific damages were taken by the previous committee at Rs.19,10,375/- but calculation given in the comments show the figure to be Rs.38,10,538/-. The aggregate difference added to the award amount make up the sum of Rs.92,38,627/-. He submits, this recommendation by the comments was urged by his client before the arbitrator but rejected out of hand.

4. Mr. Mohanty refers to impugned judgment dated 5th December, 2018, paragraph-8. He submits, the learned judge

has given clarification as to why the comments are baseless. In the circumstances, the award could not have been interfered with and the Court below did not do so.

5. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of State and submits, the comments are personal opinion/views of the General Manager, not approved by the State Government. The recommendation of the Technical Committee approved by the State Government is at Rs.55,69,904/- as awarded by the arbitrator. He submits, there should not be interference.

6. Perused impugned award. It appears from finding therein that the assessment report at Rs.55,69,904/- was signed by representative of NHAI with a dissent note. The findings continue to be, inter alia, as appearing in the paragraph reproduced below.

“The learned Advocate appearing for the PD, NHAI, in his counter, has stated that since the technical committee and DIC have assessed the compensation in this case and the Land Acquisition Officer-cum-CA concurs the same, he has no other agency to go into correctness of the assessment and he has no other course except to carry out the orders

of the authority as deems fit and proper and to place fund with the LAO-cum-CA for its payment.

Since the new Technical Committee has assessed the loss at Rs.55,69,904/- and recommended it to the Government in industries Department who have accepted the same and communicated for needful action vide his letter No.6577 dt.29.05.2010, the said assessment with regard to compensation is found justified. But the claim for payment of compensation of Rs.92,38,627/- has not been accepted by the Technical Committee. Taking advantage of the comments of GM, DIC dt.11.5.2010 on the objection of PD, NHAI, the OP No.1 has claimed the aforesaid amount. As the said amount has not been approved by the Technical Committee members formed by the Govt. Industries Department, the prayer for payment of compensation of Rs.92,38,627/- merits no consideration and accordingly it is rejected.”

7. It is clear from impugned award that the Tribunal took into consideration as decisive factor, change of stand of NHAI in accepting recommendation of the Technical Committee made at Rs.55,69,904/-. It may be that the Director, being Chairman of the Committee, had commented on omissions made by the Committee, in his personal capacity. However, appellant had based its case for higher amount of compensation based on the

comments. The dispute before the Tribunal was not controversy regarding acceptance of the Technical Committee recommendation of reassessed amount at Rs.55,69,904/- between the administration and NHAI. The controversy was between appellant on the one hand and the authorities on the other, regarding claim for higher compensation at Rs.92,38,627/-. Perusal of the award does not give illumination of a single reason directed towards the controversy.

8. It is true that by paragraph-8 in impugned judgment several reasons have been given by the Court below but the Court adjudicating a challenge against arbitral award is to be guided by provisions in section 34, Arbitration and Conciliation Act, 1996. The challenge is not akin to a first appeal being continuation of the suit. Challenge against an award is on grounds limited by section 34.

9. Sub-section (3) in section 31 mandates that the arbitral award shall state the reasons, upon which it is based unless, inter alia, it is to be made as per the clauses (a) and (b) in the sub-section. Said clauses do not apply in the facts and circumstances, as parties had not agreed to have the award without reasons or that it was an award based on agreed terms.

Appellant had a contesting claim in the Tribunal, of seeking higher compensation. As aforesaid, the Tribunal directed its attention to settling the dispute between State and NHAI regarding the reassessment made by the Technical Committee at Rs.55,69,904/- and awarded the same.

10. The award being bereft of reason, goes against the mandate of the Act and therefore is against public policy. It is set aside.

11. On query from Court parties submit that a different person is now holding office as Collector, Ganjam. Said office is directed to deal with and dispose of the reference, as expeditiously as possible.

12. The appeal is disposed of.

(Arindam Sinha)
Judge

Sks