

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

ARBITRATION APPEAL NO. 07 OF 2021

Project Director and another

vs.

The Arbitrator (Additional Commissioner) and others

WITH

ARBITRATION APPEAL NO. 21 OF 2021

Sarang Prakash Upananlawar and others

vs.

Government of India through its Secretary and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Arbitration Appeal No. 07 of 2021 :-

Mr. A. A. Kathane, Advocate for appellants.

Mr. K.L.Dhamadhikari, AGP for respondent Nos.1 and 2.

Mr. N. F. Gurnani, Advocate for respondent Nos.3, 4A,
4B, 5A and 5B.

Arbitration Appeal No. 21 of 2021 :-

Mr. N. F. Gurnani, Advocate for appellant Nos.2A, 2B, 3A
and 3B.

Mr. A. A. Kathane, Advocate for respondent No.3

CORAM : MANISH PITALE J.

DATE : 08/07/2022

By these appeals, the National Highway
Authority of India(NHAI) i.e. acquiring body, as well
as the claimants are before this Court.

2. Shorn off unnecessary details, the grievance of the NHAI is that during pendency of application filed under Section 34 of the Arbitration and Conciliation Act, 1996, where under the NHAI has challenged Award passed by the Arbitrator, upon deposit of the entire enhanced amount, the claimants moved application for withdrawal of amount. The said application was opposed by the NHAI and yet, the same was granted on the condition that the claimants furnish bank guarantee for the 20% amount permitted to be withdrawn. The NHAI then contends that applications were moved for relaxation of conditions on behalf of the claimants and for appropriate orders.

3. The application seeking relaxation of conditions was granted in favour of the claimants and instead of furnishing bank guarantee, the withdrawal of amount by the claimants was permitted on furnishing solvency certificate and undertaking that in case decision in the application under Section 34 of the said Act goes against the claimants, they would deposit the amount withdrawn.

4. According to the NHAI, such relaxation of condition was not warranted in the facts and circumstances of the present case, because the

interest of the NHAI was not properly secured. Some apprehensions were raised even about the nature of solvency certificate furnished and the nature of undertaking given on behalf of the claimants. It was submitted that in such circumstances furnishing of bank guarantee was a proper way of securing the interests of the NHAI, which the Court below failed to appreciate.

5. In the appeal filed by the claimants, it is contended that permitting withdrawal of only 20% of the amount was not justified, for the reason that material was placed on record before the Court below to indicate that in other cases the Land Acquisition Officer himself had granted higher rates and taking into account such orders, the claimants were entitled to at least a further sum of Rs.6 Crores from the amount deposited by the NHAI. It is brought to the notice of this Court in terms of the permission already granted by the Court below on the relaxed conditions, 20% of the amount has come to about Rs.10,23,09,802/- [Rupees Ten Crores Twenty Three Lakhs Nine Thousand Eight Hundred and Two only]. The claimants submits that further amount to the extent indicated herein above ought to have been permitted to be withdrawn in the facts and

circumstance brought to the notice of the Court below.

6. Arguments were advanced by the learned counsel appearing for the rival parties by inviting attention of this Court to the provisions of the National Highways Act, 1956 and the National Highways (manner of depositing the amount by the Central Government; making requisite funds available to the competent authority for acquisition of land) Rules, 2019, to contend on behalf of the NHAI that the very permission to withdraw the amount of even 20% was not justified.

7. Reliance was sought to be placed on judgments of Allahabad High Court and the Madhya Pradesh High Court in order to support the aforesaid contentions.

8. Having considered the rival contentions, this Court is of the opinion that in the face of the admitted position on facts that in the absence of any interim order granted by this Court, the claimants have already withdrawn the aforesaid 20% of the amount on furnishing solvency certificate and undertaking, it would be in the interest of justice that the application filed under Section 34 of the said Act

is itself directed to be disposed of at the earliest. If the NHAI succeeds, it would be entitled to refund of the amount already withdrawn by the claimants in terms of the undertaking already on record or to proceed on the basis of the solvency certificate on record. If the NHAI is unable to convince the Court below that interference is warranted in the Award of the Arbitrator, the claimants would certainly be entitled to the enhanced amount.

9. Keeping these appeals pending before this Court in these facts and circumstances would be futile and instead a direction to the Court below to dispose of the application under Section 34 of the aforesaid Act would meet the ends of justice.

10. It is made clear that this Court has not commented on the rival contentions raised before this Court on the manner in which deposits are to be made and withdrawals are to be permitted or even the quantum of amount that ought to have been permitted to be withdrawn.

11. In view of the above, the appeals are disposed of by directing the concerned learned District Judge at Nagpur to take up the Civil Miscellaneous Application No.859 of 2019 i.e.

application filed by the NHAI under Section 34 of the said Act for consideration. The said Court shall dispose of the said application on merits, as expeditiously as possible and in any case, within a period of three months from today.

12. It is further made clear that this Court has not commented on the merits of the Award.

JUDGE