

IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

AP 915 of 2011

State of West Bengal

Versus

Rajpath Contractors & Engineers Ltd. & Anr.

Mr. Kishore Datta, Sr. Adv.

Mr. Arindam Mandal

Mr. Paritosh Sinha

Mr. Shourya Samanta

Mr. Varun Kothari

.....for the Petitioner

Mr. Priyankar Saha

Mr. Amritam Mandal

Mr. Hemant Tiwari

.....For the Respondents

Hearing concluded on : 24.03.2023

Judgment on : 04.05.2023

Krishna Rao, J.:

1. This is an application under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the consent award dated 7th August, 2009 wherein the learned sole Arbitrator directed the respondents to pay the sum of Rs. 3,50,71,399/- to the claimant as final settlement of all the claims of the claimant within three months from the date of the award and in default the respondents shall pay interest at the rate of 8% on the award amount from the date of award till payment.

2. The State of West Bengal had preferred the instant application for setting aside the award dated 7th August, 2009 on the following grounds:
 - 2.1. *The work order issued to the respondent dated 11th October, 1999, in clause 5 under the heading Arbitration it is mentioned that no arbitration is admissible.*
 - 2.2. *No formal notice under Section 11 or Section 21 of the Arbitration and Conciliation Act, 1996 was issued by the respondent seeking a reference of the disputes to the arbitration.*
 - 2.3. *As per Clause 25 of the West Bengal Form No. 2911 (ii) required a notice to be issued to the Chief Engineer of the Department requesting to act as sole Arbitrator or to nominate such other person as deem fit and proper.*
 - 2.4. *The principal Secretary or the Joint Secretary of the Department did not authorised to enter into any kind of settlement with the respondent in connection with the transaction of the instant award.*
 - 2.5. *No copy of the award was served by the sole Arbitrator to the petitioners.*

- 2.6. *If one proceeds on the basis that there was a settlement between the parties as contemplated under Section 30 of the Arbitration Act, it would be clear that arbitral award has not been passed on agreed terms by recording the settlement in the form of arbitral award.*
- 2.7. *No notice was issued intimating that the Chief Engineer, Public Works (Roads) had decided to act as arbitrator.*
- 2.8. *The petitioners did not get any reasonable opportunity to present their case before the arbitrator.*
- 2.9. *No copy of the statement of claim have been served upon the petitioner.*
- 2.10. *The officers who have participated in the arbitration proceeding and have given consent were not authorised to represent the petitioner in the absence of any written authorization of the secretary.*
- 2.11. *The Superintending Engineer had no authority to represent the State of West Bengal in the arbitral proceeding without the authorization from the Secretary or the joint Secretary of the concerned department or to instruct his subordinates to represent the State in the said proceedings.*
- 2.12. *There is no record in the file to show how the officers have admitted the sum of Rs. 3,50,71,399/- which was purportedly payable to the respondent.*
- 2.13. *The respondent had issued notice under Section 80 of the Code of Civil Procedure for institution of civil suit for recovery of claims as the respondent had the knowledge that there was no provision of arbitration in the context between the petitioner and the respondent.*
- 2.14. *The petitioners have found the award dated 7th August, 2009 in the files left behind by the respondent no. 2 was neither published nor delivered to the petitioners at any point of time.*

2.15. *The award passed by the sole Arbitrator is not an award within the meaning of section under Section 31 of the Arbitration and Conciliation Act, 1996.*

2.16. *The award is not based on genuine consent and has procured by the respondent by fraud.”*

- 3.** The respondent no.1 submits that the respondent no.1 as well as the authorities have acted in accordance with law by following due process of law which are as follows :

3.1. *The respondent no.1 by a letter dated 8th December, 2012, requested the Executive Engineer for release of the amount claimed by the respondent no.1 within 15 days and the said letter was duly communicated to the Chief Engineer as well as Superintending Engineer.*

3.2. *The petitioners failed to release the amount as claimed by the respondent no.1, the respondent no.1 had sent a letter dated 23rd April, 2009 for nomination of an Arbitrator for adjudication of the claim submitted by the respondent no.1.*

3.3. *On 28th April, 2009, the Chief Engineer had sent a letter to the respondent no.1 as well as to the Superintending Engineer by fixing a meeting in the chamber of Chief Engineer on 8th May, 2009 at 11 AM.*

3.4. *On 12th June, 2009, the Executive Engineer had sent a letter to the Superintending Engineer by forwarding the copy of the same to the Chief Engineer as well as the respondent No.1 by enclosing the statement showing*

calculation of bill amount, interest amount, security deposit with the supporting documents against which payment to be made to the respondent no.1 in terms of the meeting dated 8th May, 2009 and mutually agreed for disposal of the request of the respondent no.1.

3.5. By a letter dated 25th June, 2009, the Superintending Engineer had forwarded the statement in respect of amount to be paid to the agency as per the minutes of the meeting dated 8th May, 2009 and the same was duly forwarded to the Executive Engineer and respondent no.1.

3.6. The respondent no.1 by a writing dated 3rd July, 2009 had informed the Chief Engineer as well as to the Superintending Engineer and Executive Engineer that the respondent no. 1 is agree to accept the amount as full and final settlement.

3.7. In terms of the calculation made by Executive Engineer which was duly accepted by respondent no.1 and accordingly the Arbitrator, the Chief Engineer has passed the award on consent.

3.8. Even after the consent Award passed by the learned sole Arbitrator, no amount was released and accordingly by letter dated 3rd September, 2009 requested the Executive Engineer for release of the award amount. The copy of award was also forwarded to Chief Engineer and Superintending Engineer for their information and compliance.

3.9. The award passed by the Arbitrator has been challenged by the petitioner after the period provided under law.

3.10. *The application filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 is barred by limitation.*

4. Mr. Kishore Datta relied upon the judgment reported in **(2015) 14 SCC 316 (Embassy Hotels Private Limited -vs- Gajaraj and Company and Others)** and submits that if a fraud is alleged and proved, it can be sufficient to get rid of most solemn proceedings including court proceedings. Mr. Dutta submits that in the present case also the respondent no.1 in connivance with the officials of Public Works Department has obtained consent decree by fraud and the same is challenged in the present proceedings.

5. Mr. Datta relied upon the judgement reported in **(2012) 11 SCC 574 (Badami -vs- Bhali)** and submits that in the said case also on the date of presentation of the plaint, the defendant has filed statement admitting the assertion in the plaint to be correct and prayed for decree of the suit and the Learned Sub Judge passed decree. The Hon'ble Supreme Court had set aside the judgment and decree holding that the decree was obtained by fraud. Mr. Datta submits that in the instant case also, the respondent no.1 had made request for appointment of arbitrator but without appointing arbitrator and without any reference, on the basis of the alleged consent, the Arbitrator has passed an award though the consent was obtained by fraud as the authorities have no power to give consent and also not obtained approval from the competent authority.

6. Mr. Datta relied upon the Judgment reported in **(1994) 1 SCC 1 (S.P. Chengalvaraya Naidu (dead) by Lrs. -vs- Jagannath (Dead) by Lrs. and Others)** and submits that the Court of law meant for imparting justice between the parties one who comes to Court, must come with clean hands. The person who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. Mr. Datta submits that in the present case, the purported arbitral award is not based on genuine consent and has been procured by the respondent no. 1 by fraud and thus the award is liable to be declared as null and void.
7. Mr. Datta relied upon the judgment reported in **(2004) 4 SCC 666 (Vijay Shekhar and another -vs- Union of India and Others)** and submits that no public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative. Mr. Datta submits that in the present case also the authorities have acted in bad faith by passing a consent decree without the approval of the competent authority.
8. Mr. Datta relied upon the judgment reported in **(2011) 4 SCC 616 (State of Maharashtra and Others -vs- ARK Builders Private Limited)** and submitted that the period of limitation prescribed under Section 34 (3) of the Act would start running only from the date of signed copy of the award is delivered/received by the party making the application for setting aside under Section 34(1) of the Act. The law

prescribes that a copy of the order/award is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a particular way and in case the law also sets a period of limitation for challenging the order/award in question by aggrieved party, then the period of limitation can only commence from the date on which the order/award was received by the party concerned in the manner prescribed by the law. Mr. Datta submits that in the present case the copy of award was received on 31st May, 2011 and thus the instant application is filed within the prescribed period.

9. Mr. Priyankar Saha, Learned Advocate representing the respondent no.1 submits that the arbitral award dated 7th August, 2009 was received by both the parties on the same day and thus the application filed by the petitioner is barred by limitation. Mr. Saha relied upon the judgment reported in **(2001) 8 SCC 470 (Union of India -vs- Popular Construction Co.)** and submits that as far as the language of Section 34 of the 1996 Act is concerned, the crucial words are “but not thereafter” used in the proviso to sub-section(3). This phrase would amount to an express exclusion within the meaning of Section 29 (2) of the Limitation Act, and would therefore bar with Section 5 of that Act. Parliament did not need to go further. To hold that the court entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase “but not thereafter” only otiose. No principle of interpretation would justify such a result.

10. Mr. Priyankar Saha, relied upon the judgment reported in **(2012) 9 SCC 496 (Benarsi Krishna Committee and Others -vs- Karmyogi**

Shelters Private Limited) and submits that the expression “Party” as defined in Section 2(1)(h) of the 1996 Act, clearly indicates a person who is a party to an arbitration agreement. The said definition is not qualified in any way so as to include the agent of the party to such agreement. Any reference, therefore, made in Section 31(5) and 34(2) of the Acts of 1996 can only mean the party himself and not his or her agent, or advocate empowered to act on the basis of Vakalatnama. Mr. Saha submits that in the instant case, the concerned parties to the agreement have participated in the arbitration proceeding and the Award was duly served upon the concerned parties.

11. Mr. Saha relied upon the judgment reported in **(2005) 4 SCC 239 (Union of India -vs- Tecco Trichy Engineers and Contractors)** and submits that huge organisation like the Railways, the copy of the award has to be received by the person who has knowledge of the proceedings and who would be the best person to understand and appreciate the arbitral award and also to take a decision in the matter of moving an application under sub-section (1) or (5) of Section 33 or under sub-Section (1) of Section 34. The service of notice on the Chief Engineer would be the starting point of limitation to challenge the award in the Court. He submits that in the present case, the award was passed by the Chief Engineer himself and in the arbitration proceeding the Superintending Engineer and Executive Engineer have participated in the arbitration proceeding and thus it cannot be said that the competent authority had no knowledge about the award.

12. Mr. Saha relied upon the judgment reported in **1951 SCC 447** (***Bishundeo Narain and Another -vs- Seogeni Rai and Another***) and submits that the question of undue influence and coercion has not been separately pleaded and no particulars have been furnished. In the case of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particular as laid. He submits that in the present case no particulars of fraud have been pleaded in the application but only in ground XXXV the petitioner has pleaded that the purported arbitral award is not based on a genuine consent and has been procured by the respondent no. 1 by fraud. He submits that the said statement cannot be treated that the petitioner has pleaded fraud elaborately.
13. Mr. Saha relied upon the judgment reported in **(1994) 6 SCC 117** (***Bijendera Nath Shrivastava -vs- Mayank Srivastava and Others***) and submits that the fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice.
14. Mr. Saha relied upon the judgment reported in **(2005) 11 SCC 314** (***Sangramsingh P. Gaekwad and Others -vs- Shanta Devi P. Gaekwad***) and submits that the provisions of Code of Civil Procedure do not envisage that pleadings in any other case should be the basis for grant of relief, particularly when, the pleas he is taken in both the petitions are contradictory and inconsistent with each other. In the Arbitration proceeding, the Executive Engineer has submitted report to the Superintending Engineer and the same was accepted by

Superintending Engineer and submitted before the Arbitrator and the same was accepted and now the another Executive Engineer has filed the present application making a new ground which cannot be accepted.

15. Section 2(1)(h) of the Arbitration and Conciliation Act, 1996 reads as follows:

“Party” means a party to an arbitration agreement.

Section 31(5) reads as follows:

“After the arbitral award is made, a signed copy shall be delivered to each party.”

Section 34(3) reads as follows:

“An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which the request has been disposed of by the tribunal:

provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of 30 days, but not thereafter.”

At the time of filing of an application under Section 34 of the Arbitration and Conciliation, Act, 1996, by challenging the award, the petitioner has filed an application for condoning the delay and by an order dated 9th November, 2011, this Court had passed the following order:

“Sufficient cause has been shown as to why the award could not be assailed within three months of the date of receipt thereof. The marginal delay in instituting the

proceeding under Section 34 of the Arbitration and Conciliation Act, 1996, beyond the period of three months but within the period of additional 30 days, is condoned.”

Subsequent to the order dated 9th November, 2011, the respondent no.1 has filed an application being GA No. 3292 of 2011 for recalling the order dated 9th November, 2011, but this Court has disposed of the said application by an order dated 18th November, 2011 by passing the following order:

“No ground has been made for entertaining this application. It is submitted that because of inconvenience of the Counsel representing the applicant appropriate submissions could not be made at the time that the delay in filing this Section 34 of the Arbitration and Conciliation Act, 1996 proceedings was condoned.

G.A. No. 3292 of 2011 is disposed of with the observation that it will be open to the applicant herein to urge the grounds canvassed in the application at the time of hearing of the Section 34 proceeding.”

- 16.** By a letter dated 8th December, 2008, the respondent no.1 had sent a request to the Executive Engineer, Howrah Highway Division, P.W. (Roads) requesting for release of the dues within 15 days but in spite of receipt of the said letter no action was taken by the Executive Engineer and accordingly again on 30th March, 2009, the respondent no.1 had sent a notice under Section 80 of the Code of Civil Procedure calling upon the Secretary of the Public Works Department for payment of the dues within 60 days failing which the respondent no.1 will take appropriate steps for filing of suit. In the meantime on 30th March, 2009, the respondent no.1 had again sent a notice to the Chief Engineer, PW

(Roads) requesting to nominate an arbitrator for adjudication of the claim of the respondent no.1.

Clause 5 and Clause 6 of the offer letter reads as follows:

“5. Arbitration: *No arbitration is admissible.*

6. *Regarding other matter are not covered on the above. Provisions of the terms and condition as stipulated in the tender document along with provisions of the West Bengal form No. 2911(ii) and the terms and conditions as settled through memo under reference will be binding on both the parties.”*

Clause 25 of West Bengal Form No. 2911(ii) reads as follows:

“Except where otherwise provided in the contract or questions, disputes relating to the meaning of specifications, designs, drawing and instructions hereinbefore mentioned and as to quality of the workmanship or thing whatsoever in any way arising out of relating to the contracts designs, specifications, isteammates, instructions, orders or these conditions or otherwise concerning the works or the executions or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment thereof shall be referred to the arbitration of the Chief engineer of the Department should the Chief engineer be for any reasons and willing are unable to acted as such arbitrator, such questions and disputes shall be referred to an arbitrator to be appointed by the Chief engineer. The award of the arbitrator shall be final and conclusive and binding on all parties to this contract. The award shall be speaking one, that is, the arbitrator shall recite facts and reasons assigning in support of the award after discussing fully the claims and conditions of the parties.”

17. In the present case though, the respondent no.1 had initially issued the notice under Section 80 of the Code of Civil Procedure but subsequently the respondent no.1 had sent a request for appointment of arbitrator in terms of Clause 25. As per clause 5 of the work order, no

arbitration is admissible but in the same work order in clause 6, it is mentioned that regarding other matters which are not covered on the above, provisions of terms and conditions as stipulated in the tender document along with the provision of West Bengal Form No. 2911 (ii) and the terms and conditions as settled through memo under reference will be binding upon both the parties. The petitioner has taken recourse of clause 25 and accordingly the Chief Engineer in terms of said clause had acted as an arbitrator. On receipt of the request from the respondent no.1, the Chief Engineer, had called a meeting on 8th May 2009 by requesting the Superintending Engineer and the respondent no.1 to attend the said meeting. The minutes of the meeting dated 8th May 2009 reads as follows:

“Minutes of meeting held on 08.05.09 in the matter of dispute between Rajpath Contractors & Engineers Ltd. and the State of West Bengal regarding “construction of road from Bakshi to Kuliaghat including bridge across Gaighata Canal” vide Tender No. 77 of 1999-2000 of Superintending Engineer, State Highway Circle I, Public Works (Roads) Directorate.

Officials present in the meeting:

1	Sri S. Basu Rai Chaudury Chief Engineer Public Works (Roads) Directorate	- As Arbitrator
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- | | | |
|---|--|------------------------------------|
| 2 | Sri B. Chatterjee
On behalf of
Rajpath Contractors
& Engineers Ltd. | - Claimant |
| 3 | Sri B. Raha
Superintending
Engineer
State Highway
Circle I | - Respondent |
| 4 | Sri B. Bera
Executive Engineer
Howrah Highway
Division | - Respondent |
| 5 | Sri S.
Mukhopadhyay | - Law Officer |
| 6 | Sri M. Basu | - Assistant
Chief
Engineer I |

This tribunal is constituted upon an agreement by the parties to resolve the disputes, arises so far in connection with the contract dated 29th October, 1999 (vide Tender No. 77 of 1999-2000 of Superintending Engineer, State Highway Circle I, Public Works (Roads) Directorate) by way of arbitration and in particular upon the prayer of the claimant dated 23.04.09 in this regard. Accordingly, the parties have submitted to the jurisdiction of this tribunal by consensus.

Today is fixed for determining the procedure and other matters connected therewith or incidental thereto of the Arbitral tribunal to resolve the dispute between the parties, arisen out of the contract as stated above between the parties, present here.

The claimant had already submitted its list of claim and contentions, which according to him are due and payable to him.

The Ld. Arbitrator, at the outset requested the State Respondent, present to express their response/ observation to the list of claims preferred by the claimant herein.

In course of discussion, it appears to the Ld. Tribunal that there remains element of settlement through mediation and conciliation across the table. Accordingly, keeping in mind the principles of law as laid down in Section 30 of the Arbitration and Conciliation Act, 1996, the Ld. Tribunal encouraged the parties to reach into a possible settlement. If any, in order to curtail the scope of lengthy procedure.

Consequent upon such, the parties have expressed their agreement to certain claims of the claimant, or in other words certain parts of the claims are found to be admitted by the State Respondent, relying on undisputed records.

In the list of claims, there is a part dealing with escalation payment, and the claimant in effect had prayed for waiving the 10% ceiling on escalation in view of the abnormal prolongation due to LA problem and severe flood for which claimant is not responsible. From the record it further transpires that such abnormal prolongation is also an admitted fact. Therefore, it puts certain credence to such claim of waiver of that ceiling limit, pertaining to escalation.

However, for proper agreed quantification of the amount in this regard, Ld. Tribunal has instructed the parties to once again settle the matter, if possible, and if desired they can take advice from the Assistant Chief Engineer I, Sri M. Basu accordingly, in this regard.

The claimant submits that if the State is agreeable to release the amount settled in terms of the agreement to be recorded formally and admitted and agreed so far, then it can relinquish all other claims preferred in the list of claims, and accordingly pray before this tribunal to pass an award in terms of the settlement/agreement.

*(S. Basu Rai Chaudhury)
Chief
Engineer
Public Works (Roads) Directorate
&
Sole Arbitrator.*

Date : 29.05.09."

- 18.** As per the meeting dt. 8th May 2009 the Executive Engineer had submitted detailed statement showing calculation of bill amount,

interest amount, security deposit with the supporting document against which the payment is to be made to the respondent no.1 to the Superintending Engineer. The Superintending Engineer had forwarded the detailed statement to the Arbitrator, the Chief Engineer as well as to the respondent no.1. On receipt of the proposal of the Executive Engineer, the respondent no.1 by a letter dated 3rd July 2009 had informed the arbitrator that the respondent no.1 is agreeable to the settlement. On receipt of the consent from the respondent no.1, the arbitrator conducted the meeting on 28 July 2009 and recorded the following:

***“Minutes of meeting held on 28.07.2009 in the matter of dispute between Rajpath Contractors & Engineers Ltd. and the State of West Bengal regarding ‘Construction of road from Bakshi to Kuliaghat including bridge across Gaighata Canal’ vide Tender No.77 of 1999-2000 of Superintending Engineer, State Highway Circle I, Public works (Roads) Directorate.*”**

Officials present in the meeting:

- | | | | |
|----|---|---|------------------|
| 1. | Sri S. Basu Rai
Chaudury
Chief Engineer
Public Works
(Roads)
Directorate | - | As
Arbitrator |
| 2. | Sri B. Chatterjee
On behalf of
Rajpath
Contractors &
Engineers Ltd. | - | Claimant |
| 3. | Sri B. Raha
Superintending
Engineer
State Highway
Circle I | - | Respondent |
| 4. | Sri B. Bera
Executive
Engineer
Howrah | - | Respondent |

Highway Circle
I

- | | | | |
|----|------------------------|---|----------------------------------|
| 5. | Sri S.
Mukhopadhyay | - | Law Officer |
| 6. | Sri M. Basu | - | Assistant
Chief
Engineer I |

Sri B. Chatterjee, representing the Claimant, i.e. Rajpath Contractors and Engineers Ltd. has submitted that by his letter dated 03.07.09, he has already expressed his consent to accept a sum of Rs.3,50,71,399/- as full and final settlement of all claims.

The Sum mentioned herein above is not subject matter of dispute as the Respondents have admitted that the said sum is due and payable to the Claimant on account of balance payment of bills, escalation amount, refund of Security Deposit, wrongly deducted mobilization advance and escalation.

The Claimant reiterates that he shall withdraw/surrender all other claims as articulated in details in the statement of claims submitted earlier if such admitted amount is paid at the earliest.

The parties have prayed before this tribunal to pass an award in terms of the agreed and admitted sum of money and dispose or the proceeding accordingly. However, Sri Chatterjee submits that the Ld. Tribunal may think for granting interest over the admitted sum as a way of discretion.

And he has drawn attention of the para 4 and 5 of the said letter dated 03.07.09 in this regard.

Let the submission and the letter dated 03.07.09 be kept into record.

However, at this stage I do not express and opinion regarding this matter.

This tribunal by taking note of the settlement hereby reached by the parties, and keeping in mind the request of the parties in this regard would pass the award accordingly.

Let 7th August 2009 be fixed for day of the passing the award.

Chief Engineer

Public Works (Roads) Directorate

Date : 31.07.09.”

- 19.** Subsequent to the meeting dated 28th July, 2009, the respondent No.1 being the claimant and the Executive Engineer have entered into a settlement on 6th August, 2009, which reads as follows:

“Ref: Order of the Ld. Tribunal as minuted on 31.07.09

Settlement Agreement in the matter of

Rajpath Contractors and Engineers Ltd.

-Vs-

State of West Bengal & Other

And

In the matter of arbitration between Rajpath Contractors and Engineers Ltd. and the State of West Bengal represented by the Executive Engineer, Howrah Highway Division, Public Works (Roads) Directorate, regarding construction of road for Bakshi to Kuliaghat including construction of the bridge and viaduct across Gaighat Canal at Bakshi in P.S. Amta in the district of Howrah under Tender no. 77 of 1999-2000 of Superintending Engineer, State Highway Circle I of Public Works (Roads) Directorate, Government of West Bengal;

And whereas, the Rajpath Contractors and Engineers Ltd. (herein after to be referred as the Claimant) and the State of West Bengal represented through the Executive Engineer, Howrah Highway Division, Public Works (Roads) Directorate (herein after to be referred as the Respondents) have agreed to resolve the claims and disputes, arisen so far, in connection with the contract agreement more fully described in the subject noted above, by way of deliberation and in consonance with the observation of the Ld. Tribunal in seissin of the matter.

And whereas Sri S. Basu Rai Chaudhury, the Chief Engineer, Public Works (Roads) Directorate had taken up the jurisdiction of the arbitral tribunal constituted to resolve the dispute interse by way of arbitration on 08.05.09 as minuted in details vide order dated 29.05.09.

And whereas both the parties had submitted to the jurisdiction of the said arbitral tribunal and whereas, the Ld. Tribunal with the express consent of the parties and having regard to the provisions of settlement as laid down in Section 30 of the Arbitration and Conciliation Act, 1996 encourages settlement of the said dispute by way of discussion.

And whereas the Respondents have admitted a sum of Rs. 3,50,71,399.00 as payable to the said claimant in terms of their undisputed record with regard to balance payment of bills, escalation amount, refund of security deposit and refund of wrongly deducted mobilization advance etc. vide letter dated 25.06.2009.

And whereas the Claimant has acknowledged and agreed to accept the said sum of Rs. 3,50,71,399.00 as full and final settlement of all claims preferred through the list of statement of claims submitted before the Ld. Tribunal earlier and has further contended to surrender/ relinquish all other claims out of the said contract in lieu of such payment.

Now this agreement witness sets the following :

1. That the Respondents shall pay a sum of Rs. 3,50,71,399.00 (Rupees three crore fifty lac seventy one thousand three hundred ninety nine) to the Claimant as final settlement of all claims whatsoever of the Claimant in connection with the said tender agreement or incidental thereto.

2. That Claimant shall have no further claim whatsoever in addition to the said sum of money and shall relinquish all other claims whatsoever in connection with the said contract.

3. That both the parties shall abide by such settlement and close the matter accordingly.

4. That both the parties herein jointly prays before the Ld. Tribunal to record the settlement herein before mentioned and pass an award on such agreed terms as noted above.

In witness whereof the parties here to have set respective hands and seals on these presents on the day of August 2009.

Signature with seal of the Respondent

Signature with seal of the Claimant

Executive Engineer

**Howrah Highway Division
P.W. (R) Dept.”**

20. In terms of the settlement between the parties, the Arbitrator has passed an award on 7th August, 2009. As per Clause 25, the Chief Engineer had acted as an Arbitrator. The Superintending Engineer had issued the work order to the respondent/claimant. In the meeting held by the Arbitrator, the Superintending Engineer, Executive Engineer, Law Officer and the Assistant Chief Engineer have participated. The proposal made by the Executive Engineer was duly approved by the Superintending Engineer and was placed before the arbitrator who was also the Chief Engineer of the same department.

In the case of ***Bishundeo Narain and Another (supra)***, the Hon’ble Supreme Court held that “if there is one rule which is better established than only other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set faithful particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice, however, strong the language in which they are couched may be, and the same applies to undue influence and coercion”.

In the case of ***Bijendra Nath Srivastava (Supra)***, the Hon’ble Supreme Court has held that:

“13. *In view of the finding recorded by the High Court that Respondent 1 would have been precluded from filing a new objection petition on 24-3-1975 due to the bar of limitation we*

find it difficult to agree with the view of the High Court that the trial court did not act on any wrong principle while allowing the amendments. Since the grievance of the appellants relates to paragraphs 52 and 53 which have been added by way of amendment we have examined the averments contained therein with reference to the original objections and we are of the opinion that the High Court was in error in treating the said amendments as merely better particulars of what had already been pleaded in the original objections. The High Court appears to have lost sight of the well recognised distinction between statement of material facts which is required under Order 6 Rule 2 CPC and particulars which are required to be stated under Order 6 Rule 4 CPC.”

In the case of **Sangramsinh P. Gaekwad (Supra)**, the Hon’ble Supreme Court has categorically held that :

“135. *Despite such categorical admissions in the pleadings, a statement was made across the Bar that at the time of filing of the company petition Respondent 1 herein did not have all the information which came to light at a much later stage. It was urged that only with a view to obtain complete reliefs, prayers made in the company petition were amended and reliefs had been granted by the High Court keeping in view the pleadings and affidavits filed by the parties in all the three matters. We have our own doubts how far the procedure adopted was correct when in a case of oppression the court must strictly go by the pleadings made in the application. The provisions of the Civil Procedure Code do not envisage that pleadings in any other case should be the basis for grant of relief, particularly when the pleas taken in both the petitions are contradictory and inconsistent with each other. Before us affidavits from different proceedings made by the same person or by the other supporting or opposing the application have been placed. They have not been cross-examined. Their attention had not been drawn to their earlier statements which could be done only in terms of Section 145 of the Evidence Act. With a view to elicit the truth the court must have before it a clear picture. In this case, unfortunately, the parties herein have not made any efforts to examine themselves in court so as to enable the other side to cross-examine them. Had the parties to the proceedings been examined and cross-examined,*

they could have been confronted with the earlier statements made by them in another affidavit.”

In the present case, no particular of any kind of fraud is pleaded. The petitioner in the application under Section 34 of Arbitration and Conciliation Act, 1996 only in one ground stated that the award is not based on genuine consent and has been procured by the respondent no. 1 by fraud. The minutes of meeting held on 28.07.2009 proved that not only the Superintending Engineer and Executive Engineer have attended but in the said meeting, Law Officer as well as Assistant Chief Engineer were also present, thus it cannot be said that the respondent no. 1 obtained award by fraud.

21. The petitioner in the application filed under Section 34 of the Act of 1996, admitted that photo copy of the award dated 7th August, 2009 was found in the file and thereafter the petitioner had sent a letter to the Chief Engineer on 23rd May, 2011 directing him to provide the necessary information:

- a. Whether you had published any award on the aforesaid arbitration proceeding? If so, when? (i.e. the date of publication of the award)*
- b. If published, whether you had delivered a signed copy of the said award to the Secretary of this department?*

In reply to the said queries, the Arbitrator (Retired Chief Engineer) had sent reply which are as follows:

- a. Nothing should be asked from an Arbitrator. An Arbitrator is as good as a judge in a Court. An award published by an*

Arbitrator can only be accepted or challenged in Court for setting aside. An officer may be his superiors, but, he incapacity is an arbitrator is obliged to none.

- b. Clause 25 of the contract agreement is specifically express that the Chief Engineer is the sole arbitrator or he can appoint another person to as an arbitrator.*

The Secretary, P. W. (Roads) Department had also made some queries from the Executive Engineer by letter dated 22nd July, 2011 and in reply to the said letter, the Executive Engineer had submitted his reply on 17th August, 2011, wherein he has categorically stated that he had attended the arbitration proceeding along with Superintending Engineer who is the tender inviting and accepting authority and has signed the agreement document. From the reply of the Executive Engineer, it is established that the Superintending Engineer is a party to the agreement. On the proposal of the Superintending Engineer and the Executive Engineer the terms of settlement was arrived between the parties and in terms of the said settlement, the Arbitrator has passed the award and thus at the later stage, the petitioner cannot say that the petitioner had no knowledge about the award passed by the learned Arbitrator and the respondent no. 1 had obtained award by fraud. The petitioner failed to prove the case that only in the month of May, 2011, the petitioner came to know about the award and the respondent no. 1 had obtained award by fraud, thus the application filed by the petitioner under Section 34 of the Act of 1996 is barred by limitation.

22. In view of the above, this Court finds that there is no ground to interfere with the award passed by the Arbitrator dated 7th August, 2009. Accordingly, **A.P No. 915 of 2011** is thus **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)