

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Arbitration Appeal No. 6 of 2021

Union of India, acting through General Manager, South Eastern Railway, Kolkata- 700043 represented by the authorized representative Rajesh Roashan aged about 39 years son of Nand Gopal Roy, presently working to the post of Sr. Divisional Electrical Engineer (OP), South Eastern Railway, Chakradharpur, P.O. & P.S. Chakradharpur, District West Singhbhum, Jharkhand
.... Appellant

Versus

Sai Inspection Agency, represented by its proprietor, Sri B.P. Singh, having its office at Road No.9, Plot No.106A, Aditya Garden Industrial Area, P.O. & P.S. Adityapur, District Seraikela Kharswan
.... Respondent

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellant : Mr. Anil Kumar, ASGI
Mr. Shiv Kumar Sharma, Sr. Panel Advocate
For the Respondent : Mr. Amit Kumar Das, Advocate

Order No.11 / Dated : 16.01.2025

This appeal is preferred against the order dated 17.12.2020 passed in Civil Misc. Case No.01/2017 passed by learned Civil Judge (Sr. Div.)- I, East Singhbhum, Jamshedpur whereby and whereunder the learned Court below set aside the award passed by the learned Arbitrator in which the claim for compensation was denied.

2. Undisputed facts of the case are as follows:

- I.Applicant-respondent is a proprietor firm which was awarded contract for loading, unloading and stacking of Electric and Diesel Loco Pilots and Guard Line Boxes at Tata Nagar (Tata) and Dangoaposi (DPS) station for two years.
- II.In pursuant to the award of the aforesaid work, acceptance work vide Sr. DEE (O.P.)- CKP'S, acceptance letter bearing no.1250/CKP/BOX loading and unloading/LOA/1377 dated 15.06.2012 for a total value of Rs.26,69,968/- valid for two years from the date of commencement of work.
- III.The applicant commenced the work from 21.06.2012 at Tata and 16.06.2012 at DPS respectively.
- IV.The applicant deposited the performance guarantee in cash vide deposit slips/memo issued by the office of Sr. DEE (O.P.)-CKP on 14.08.2012

amounting to Rs.1,34,000/- to the Divisional Cashier, South Eastern Railway, Chakradharpur on 14.08.2012.

V.The agreement was executed on 21.08.2012 between the applicant and Senior DEE (O.P.), CKP.

VI.The termination of contract was issued on 14.11.2012 on the ground that performance guarantee was not deposited within stipulated time.

VII.The matter was referred to the learned Arbitrator, Deputy Chief Engineer (TM), South Eastern Railway, Kolkata under Section 11 of Arbitration and Conciliation Act, 1996.

VIII.The Arbitrator vide award dated 11th November, 2016 dismissed the claim of the applicant/respondent on the ground that performance security could not be deposited within sixty days.

IX.The learned Court below set aside the award on the ground that Letter Of Acceptance issued on 15.06.2012 and the performance guarantee was furnished on 14.08.2012, therefore, it was within sixty days from the date of commencement.

3. It is argued by the learned counsel on behalf of the appellant that there was a fundamental breach of the express terms of clause 16 and 17 for the letter of acceptance dated 15.06.2012, as register was not maintained to record the number of line boxes loaded and unloaded shiftwise under the signature of the Crew Controller TATA and the counter signature of the Chief Crew Controller TATA and DPS as the payment for work done was made as per the said register.

4. Having considered the submissions advanced on behalf of the appellant, I do not find merit in this appeal. The Arbitrator had dismissed the claim on an erroneous finding of fact that letter of acceptance was not on the ground that performance security could not be deposited within 60 days. A letter of acceptance was issued on 15.06.2012 and performance guarantee was furnished on 14.08.2012, which was within the stipulated period of 60 days. The order rejecting the claim by the Arbitrator, therefore, was prima facie factually incorrect. Learned Court below has after considering all aspect of the matter has rightly set aside the award.

5. The order of the Court below is affirmed. The respondent is permitted

to move the Court for appointment of Arbitrator as per the arbitral clause.

Accordingly, this arbitration appeal stands dismissed.

Pawan/Sandeep

(Gautam Kumar Choudhary, J.)