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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-5707-2022(O&M)

Date of Decision: 12.11.2025

UNION OF INDIA

....Petitioner(s)

Versus

M/S NARINDER ENTERPRISES THROUGH LRS OF NARINDER
SOOD, PROPRIETOR

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

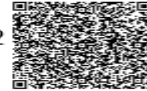
Present: Mr. Shobit Phutela, Advocate and
Ms. Shaurya Mehra, Advocate,
for the petitioner.

Mr. Rohan Mittal, Advocate,
for the respondent.

JASGURPREET SINGH PURI, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India for quashing of order dated 27.09.2022 (Annexure P-8) passed by learned Additional District Judge, Patiala, whereby the appeal filed by the respondent was partly accepted and the award relating to grant of counter claim was set aside and remaining part of the award was made rule of the Court.

2. While giving the brief facts of the present case, learned counsel appearing on behalf of the petitioner-Union of India submitted that a dispute arose between the petitioner-Union of India and the respondent who was the

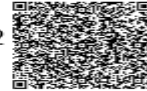


contractor with whom the contract was entered into. He submitted that there was an arbitration clause in the aforesaid contract and the parties were governed by the Arbitration Act, 1940 (hereinafter referred to as 'the Act'). He submitted that since a dispute arose between the parties, the respondent-contractor filed an application under Section 20 of the Act before learned Sub Judge, First Class, Patiala for making a reference to an Arbitrator under Section 20 of the Act. He submitted that thereafter the aforesaid application which was filed by the respondent-contractor under Section 20 of the Act was allowed on 14.01.1994 vide Annexure A-1, by which the matter was referred to the Arbitrator in terms of Clause 70 of General Conditions of Contract. He submitted that thereafter an award was passed by the learned Sole Arbitrator, which has also been annexed with the present petition as Annexure P-3 and thereafter, amendment to the final award was made which has also been annexed with the present petition as Annexure P-4. While referring to the aforesaid award, he submitted that the claim of the respondent-contractor was allowed to the tune of Rs. 3,46,314/-. However, since the petitioner-Union of India had also filed a counter claim before learned Arbitrator on the ground that the work was not completed by the respondent-contractor and Union of India had to resort to the risk and cost tender by which the work was completed by a third party contractor, therefore, they had spent some amount on the aforesaid risk and cost tender for another contractor regarding which they had incurred expenses and therefore, the counter claim of the petitioner was allowed to the extent of Rs. 4,75,000/-. He submitted that in this way, the net award after adjusting the claim and the counter claim came out to be Rs.1,28,686/-



3. He submitted that thereafter objections under Section 30 of the Act were filed by the respondent-contractor, which were dismissed by learned Civil Judge (Senior Division), Patiala vide Annexure P-6 on 13.05.2016 by passing a detailed order and referring to various judgments of the Hon'ble Supreme Court.

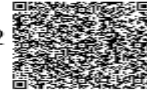
4. However, on an appeal being filed by the respondent-contractor before learned Additional District Judge, Patiala, the same was partly allowed vide Annexure P-8 on 27.09.2022, in which learned Appellate Court decided that so far as the counter claim which was filed by the petitioner-Union of India is concerned, the same could not have been adjudicated upon by the Arbitrator in view of the fact that the same was not a part of the terms of the reference which was made under Section 20 of the Act. He submitted that learned Additional District Judge while exercising the powers of the Appellate Court referred to a judgment of Hon'ble Supreme Court in ***Orissa Mining Corporation Ltd. vs. Prannath Vishwanath Rawlley, 1977(3) SCC 535***, wherein it was held that when a reference is made under Section 20 of the Act, then learned Arbitrator cannot exceed the terms of reference and the claim amount. He submitted that the aforesaid judgment is not applicable to the facts and circumstances of the present case because the aforesaid judgment is not dealing with the proposition of law as to whether a counter claim was maintainable or not but it was only dealing with the facts and circumstances of that case that when the amount had exceeded, the Arbitrator could not have exceeded its jurisdiction by adjudicating upon an amount which was more than the claim amount and therefore, the order passed by the learned Additional District



Judge, whereby the petitioner-Union of India has been non-suited with regard to its counter claim is liable to be set aside.

5. Learned counsel in this regard as to whether a counter claim can also be adjudicated upon by the learned Arbitrator or not especially when the terms of reference are very clear with regard to the claims of both the parties, then the learned Arbitrator is always within its competence to have decided both claim and counter claim and he referred to a judgment of Hon'ble Supreme Court in ***Indian Oil Corporation Ltd. Versus Amritsar Gas Service and others, (1991) SCC 533*** and also referred to another judgment of Chhattisgarh High Court in ***Central Mine Planning & Designing Institute Ltd. and others versus Telekrik Electricals (Nagpur) Pvt. Ltd. and others, MA No.609 of 1998, decided on 28.06.2017.***

6. On the other hand, learned counsel appearing on behalf of the respondent-contractor submitted that the impugned order passed by learned Additional District Judge as an Appellate Court was in accordance with law in view of the fact that when the respondent-contractor had filed an application under Section 20 of the Act, the petitioner-Union of India never raised any issue with regard to the counter claim and as per the reference order, only dispute pertaining to the amount which was claimed by the respondent-contractor could have been adjudicated upon by the Arbitrator and therefore, the Arbitrator could not have adjudicated upon the counter claim put forth by the petitioner-Union of India as the same was not permissible and therefore, the learned Arbitrator had exceeded its jurisdiction by deciding the counter claim. In this regard, he referred to a judgment of the Hon'ble Supreme Court in ***Orissa Mining Corporation***



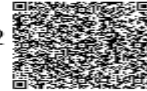
Ltd.'s case (Supra) and a judgment of Delhi High Court in *Natwarlal Shamaldas and Company, Bombay-1 versus The Minerals and Metals Trading Corporation of India Ltd, New Delhi, Suit No.814-A of 1978, decided on 01.04.1981*. He submitted that had it been a case that the petitioner-Union of India had put up its counter claim before learned Sub Judge at the time of adjudication of application under Section 20 of the Act, the position would have been different but in the absence of the same, the same could not have been done and therefore, the learned Arbitrator could not have exceeded his jurisdiction by deciding the counter claim.

7. I have heard the learned counsels for the parties.

8. The issue involved in the present case is as to whether the Arbitrator could have adjudicated upon the counter claim put forth by the petitioner-Union of India or not. The order dated 14.01.1994 was passed while deciding an application filed by the respondent-contractor under Section 20 of the Act vide Annexure A-1. The relevant portion of the aforesaid order is reproduced as under:-

“70. Arbitration All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole Arbitration of an Engineer Officer to be appointed by the authority mentioned in the tender documents.

Unless both parties agree in writing such refers once shall not take place until after the completion or alleged completion of the works or termination of determination of the Contract under Conditions Nos. 55, 56 and 57 hereof.



Provided that in the event of abandonment of the works or cancellation of Contract under Conditions Nos. 52, 53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalized by the Government to get the works completed by or through any other Contractor or Contractors or Agency or Agencies.

If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleadings in defence.

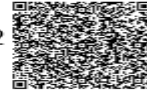
The Arbitrator may, from time to time with the consent of the parties, enlarge the in upto but not exceeding one year from the date of his entering on the reference, for making and publishing the award.

The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matter referred to him and shall in indicate his findings, alongwith sums awarded, separately on each individual items of dispute.

The venue of Arbitration shall be such place or places as may be fixed by as the Arbitrator in his sole discretion.

The Award of the Arbitrator shall be final and binding on both parties to the Contract."

12. The perusal of above clause show that all dispute between the parties are to be referred to the Arbitration under this clause except those for which decision of C.W.E or any person is continue expressed to be final and binding. The reference can be made only after completion or alleged completion of work, termination or determination of contract as per the



provision of above clause. The applicant is alleging completion of work, while the respondents is alleging that the work is not completed so far. The matter is to be referred to the arbitrator who will decide this point as well while giving the award taking into consideration the terms of tender and agreement the terms of tender and agreement. The Ld. GP could not point out as to how the dispute in question is covered under the exception clause given in bracket.

13. This clause can be invoked not only after completion and even often alleged completion of work by other party. This application is maintainable and the matter in dispute is liable to be referred to the Arbitrator. Both these issues are decided in favour of applicant and against the respondents.

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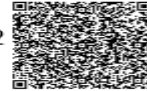
17. Relief

In view of my findings on the above issues, the petition is allowed and the matter in dispute is ordered to be referred to the arbitrator under Clause 70 of General Conditions of Contract. The arbitrator shall also be competent to decide all matters in dispute alongwith facts as to whether the work has been completed or not as per the tender.

If it is held that the work has not been completed the respondents shall be at liberty to take any action for the purpose of arbitration as per clause 70 ibid and thereafter the arbitrator shall proceed further afresh. In view of the facts and circumstances of the case, parties are left to bear their own costs. The arbitrator shall published his award as per terms of clause 70 ibid. File to be completed and consigned to record room.

*Announced in open court,
14th January 1994,*

*Sub Judge First Class
Patiala 14.1.94”*



9. The counter claim which has been decided by the Arbitrator in favour of the petitioner-Union of India in the form of an award is at para No.30(b)(v) & (c) at page No.39 is also reproduced as under:-

“30(b)(vi) The UOI argued that risk and cost tender was finalized by following the laid down procedure Risk and cost tender was not issued to the contractor as he had not applied for the same, However, the tenders were issued to 14 contractors and lowest quoted tender was found reasonable. Reasonability of rates was ascertained by calling independent quotations from the market. Thus, accepted tender was competitive and reasonable.

(c) Award

(i) On going through the documents, submissions and arguments by both the parties, I am of the opinion that action of the UOI to-complete the left out work through a risk and cost contract was justified and claim arising out of that is maintainable. I also find that the risk and cost contract was concluded by the UOI, by following laid down procedure and there are no facts to prove that risk contract was accepted at higher rates. However, submission made by UOI to include additional items in the risk and cost contract, when execution of these items was never ordered on the contractor during execution of his work, does not appear convincing. Similarly action of UOI to charge compensation on full contract amount when work completed by the contractor was taken over and put to use does not appear justified.

(ii) In consideration of the above and keeping in view my findings in respect of Contractor's claim No 1 & 3 and interest on claim No 1 adjudicated here in before, I award Rs. 4,75,000.00 in favour of UOI.”

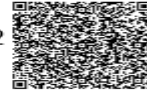


10. A perusal of the impugned award reveals that upon non-completion of the work by the respondent-contractor, the petitioner, Union of India, invited a fresh tender for the completion of the said work. The amount expended pursuant to the fresh tender was claimed by the petitioner-Union of India as a counterclaim before the learned Arbitrator. Further, an examination of the order passed by the learned Sub Judge on an application filed under Section 20 of the Arbitration and Conciliation Act indicates that the respondent-contractor contended that the work had been completed, whereas the petitioner stated that the work remained incomplete. The learned Sub Judge observed that this dispute was to be referred to the learned Arbitrator, who would determine the issue in the course of adjudicating the matter, taking into account the terms and conditions of the tender and agreement. In paragraph 13 of the said order, it was recorded that the referenced clause is invocable not only upon completion of the work but also when completion is alleged by a party, thereby affirming the maintainability of the application under Section 20 of the Act. Consequently, the matter in dispute was held to be referable to arbitration. Ultimately, in the operative portion of the order vide paragraph 17, the learned Sub Judge allowed the petition and referred the matter in dispute to arbitration under Clause 70 of the General Conditions of Contract. The learned Judge further held that the Arbitrator shall possess the jurisdiction to decide all matters in dispute, including the factual determination as to whether the work had been completed in accordance with the tender specifications. The aforesaid observations made by the learned Court while exercising its powers under Section 20 of the Act would clearly show that the issue as to whether the



work was completed or not was left open to be decided by the Arbitrator. It was also observed that this also has to be seen as to whether the work was completed by the other party or not. Learned Arbitrator allowed the counter claim on the ground that the work was not completed by the respondent-contractor and it was completed by some other contractor and therefore, the determination fell within the jurisdiction of the learned Arbitrator in this regard. From a perusal of the operative part of the order passed by the learned Court under Section 20 of the Act, it becomes clear that considering the factual position, the entire dispute was referred for arbitration to the learned Arbitrator under Clause 70 of General Conditions of Contract and it was specifically observed that the arbitrator shall be competent to decide all the matters in dispute alongwith the fact as to whether the work has been completed or not as per the tender. A further perusal of the award would show that so far as the counter claim is concerned, it was decided that it was on the basis of the fact that the respondent-contractor had not completed the work and therefore, the petitioner-Union of India had completed the contract on the basis of risk and cost tender and that is why counter claim was allowed in favour of the petitioner-Union of India.

11. So far as the judgment relied upon by the learned counsel for the respondent-contractor in ***Orissa Mining Corporation Ltd.'s case (Supra)*** is concerned, a perusal of the same would show that the same is distinguishable on facts. In the aforesaid case, in the reference order a specific amount was mentioned, which was claimed by the claimant but the Arbitrator had exceeded the amount and therefore, in that context the Hon'ble Supreme Court held that the learned Arbitrator could not have exceeded its jurisdiction by adjudicating upon a claim, which was not a part



of the reference. Similarly another judgment relied upon by the learned counsel for the respondent-corector in *Natwarlal Shamaldas and Company's case (Supra)* is also distinguishable on facts. Whether the learned Arbitrator has exceeded its jurisdiction or not has to be seen in the facts and circumstances of each and every case and there can be no straightjacket formula with regard to the same.

12. However, on the other hand, learned counsel for the petitioner-Union of India has rather relied upon a judgment of Hon'ble Supreme Court in *Indian Oil Corporation Ltd.'s (supra)* and in para No.14 of the judgment, it was observed that the counter claim in such cases is certainly maintainable. However, in the facts and circumstances of that case, the counter claim was not pressed, therefore, there is no prohibition for the Arbitrator to have considered the counter claim.

13. A perusal of the operative part of the order passed by the learned Sub Judge under Section 20 of the Act would show that the dispute in its entirety pertaining to both the petitioner and the respondent was referred for arbitration. Had it been a case that only a particular claim was made by the claimant in filing the application under Section 20 of the Act and the Arbitrator had exceeded the claim, the situation would have been different but from a perusal of the aforesaid order passed by the reference court, it is clear that there was a dispute regarding completion of work and the learned Arbitrator had allowed the counter claim on the basis of non-completion of work and this aspect has also been discussed by learned Arbitrator.

14. In view of the aforesaid facts and circumstances, the present

petition is allowed. The impugned order dated 27.09.2022 (Annexure P-8) passed by the learned Additional District Judge, Patiala is hereby set aside.

12.11.2025

(JASGURPREET SINGH PURI)

rakesh

JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No