

**IN THE HIGH COURT AT CALCUTTA
(ORDINARY ORIGINAL CIVIL JURISDICTION)
ORIGINAL SIDE**

RESERVED ON: 17.12.2025

DELIVERED ON: 09.01.2026

**PRESENT:
HON'BLE JUSTICE GAURANG KANTH**

AP-777 OF 2016

CHAITANYA KUMAR DEY

VERSUS

UNION OF INDIA

**Mr. Sarajit Sen, Adv.
Mr. Tapas Singha, Adv.**

..... for the petitioner

Ms. Aparna Banerjee, Adv.

..... for the respondent

JUDGMENT

Gaurang Kanth, J.:-

- 1.** The petitioner in the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 is challenging the Arbitral Award dated 13.06.2016 passed by the Sole Arbitrator Sri. Arunava Ghosh in the Arbitration Agreement arising out of the agreement No. 4/T/II/03-04 dated 23.04.2003.
- 2.** The facts leading to the present petition are as follows:
- 3.** The respondent, i.e., the Divisional Manager-III, Eastern Railway, Sealdah, by Memo No. 222-S/1/164/WII dated 03.02.2003, awarded to the petitioner the work of T.S.R. (P) from Km 168.002 to Km 177.00 (9.00 km) with PSC sleepers, including ancillary works, under SE/P-Way, Bhagwangola, within the jurisdiction of AEN, Ranaghat. The stipulated period for completion of the work was nine months.

4. During the execution of the work, extensions of time were granted to the petitioner on six occasions under Clause 17 of the General Conditions of Contract. The final extensions were granted with imposition of liquidated damages.
5. At the commencement of the work, a joint inspection was conducted at the site. During such inspection, it was observed that owing to heavy rainfall and flooding, the railway track along with sleepers had become submerged below the earth surface. The Railway authorities initially undertook lifting of the track marginally above the earth surface using their own manpower and machinery to facilitate movement of traffic at a reduced speed.
6. For execution of the awarded work, lifting of the submerged track by approximately 12 inches along the site, in phases, followed by packing and earthwork at each stage, became necessary. The work of lifting was carried out in three phases of 4 inches each, with packing undertaken after each phase. In addition, renewal of sleepers by replacement with PSC sleepers and cess repair work along the stretch were also executed.
7. The additional works executed at site were recorded in the Extra Work Register maintained by the Railway authorities and were authenticated by the concerned Railway Engineers.
8. During the course of execution, the respondent released six on account bills towards the contractual items. By letter dated 01.11.2006, the petitioner sought approval of the additional works executed at site.
9. By letter dated 26.10.2007, the Assistant Engineer informed the petitioner that the final bill along with the variation statement, measurement book, and material statements had been received and requested the petitioner to sign the final variation certificate in the measurement book and variation

statement. The petitioner thereafter signed the said documents. Subsequently, by letter dated 16.01.2008, the petitioner communicated that the final bill and variation statement had been signed under protest and sought release of the outstanding dues.

10. The respondent released payment in terms of the final bill, after deducting a sum of Rs.85,285/- towards liquidated damages.
11. Disputes having arisen between the parties, arbitration was invoked. By order dated 11.01.2013, this Court appointed Sri Arunava Ghosh as the Sole Arbitrator to adjudicate the disputes. The Sole Arbitrator passed the final award, whereby the claims raised by the petitioner were rejected.
12. Aggrieved by the said award, the petitioner has preferred the present petition.

Submission on behalf of the Petitioner

13. Learned Counsel appearing for the petitioner submits that the impugned award was passed without adequate consideration of the pleadings, documents, and material on record. It is submitted that after completion of pleadings, the arbitral proceedings comprised only two sittings, held on 14.01.2016 and 13.06.2016. According to learned Counsel, during the second sitting, the Sole Arbitrator dictated the award in the presence of the parties, without granting the petitioner an effective opportunity of hearing or permitting examination of the concerned Railway Engineers under whose instructions the additional works were stated to have been executed. It is further submitted that the award does not contain a claim wise analysis and proceeds primarily on the ground that the petitioner had signed the final bill and variation statement, which, according to the

petitioner, were signed under protest, as communicated by letter dated 16.01.2016.

14. Learned Counsel further submits that the petitioner had raised claims towards additional expenditure incurred on account of delay in completion of the work, which delay was stated to be attributable to the respondent. The petitioner had also challenged the levy of liquidated damages. It is contended that these aspects were not examined by the Arbitral Tribunal, and the claims were rejected solely on the basis of the signing of a No Claim Certificate.
15. It is submitted that the Arbitral Tribunal erred in placing reliance upon Clause 43(2) of the General Conditions of Contract, which bars disputes only in respect of works covered under a No Claim Certificate. According to learned Counsel, the claims raised by the petitioner pertained to additional works which did not form part of the No Claim Certificate, and therefore, the said clause was not applicable.
16. Learned Counsel places reliance upon the judgments of the Hon'ble Supreme Court in ***R.L. Kalathia & Company v. State of Gujarat***, reported in ***(2011) 2 SCC 400***, and ***Jayesh Engineering Works v. New India Assurance Company Ltd.***, reported in ***(2000) 10 SCC 178***, to contend that the mere issuance of a "No Dues" or "No Claim" Certificate does not, ipso facto, bar the adjudication of claims. It is submitted that the Arbitrator is duty-bound to examine the surrounding facts and circumstances, including the conditions under which such certificate was issued, whether the contract stood fully performed, whether the payment was made towards full and final settlement, and whether any amount nevertheless remains outstanding and payable.

17. It is further submitted that the additional works were executed pursuant to the instructions of the respondent and were recorded in the Extra Work Register maintained by the Railway authorities and authenticated by the concerned Engineers. Learned Counsel submits that the delay in completion of the work was attributable to the respondent and, therefore, the levy of liquidated damages was not justified. It is contended that the petitioner had raised nine claims, which, according to learned Counsel, were not adjudicated on merits.
18. Learned Counsel for the petitioner accordingly contends that the impugned award suffers from patent illegality and warrants interference by this Court.

Submission on behalf of the Respondent

19. Learned Counsel appearing for the respondent submits that the impugned award has been passed after due consideration of the pleadings, documents, and submissions of the parties and does not call for interference under Section 34 of the Arbitration and Conciliation Act, 1996. It is submitted that the scope of judicial interference with an arbitral award is limited, and the Court does not sit in appeal over the findings of the Arbitral Tribunal.
20. Learned Counsel submits that the petitioner had voluntarily signed the final bill, measurement book, variation statement, and No Claim Certificate, without raising any contemporaneous objection. It is contended that once the petitioner accepted the final settlement and acknowledged that no further claims survived, the Arbitral Tribunal was justified in holding that no claims were maintainable.

21. It is submitted that the petitioner was afforded adequate opportunity during the arbitral proceedings to present its case. According to learned Counsel, the arbitral proceedings were conducted in accordance with law, and there was no denial of opportunity or violation of the principles of natural justice. The mere fact that the award was passed after limited sittings does not, by itself, vitiate the arbitral process.
22. Learned Counsel further submits that the claims raised by the petitioner pertained to items which were either covered under the contract or stood concluded by the execution of the final bill and No Claim Certificate. Reliance placed by the Arbitral Tribunal on Clause 43(2) of the General Conditions of Contract is stated to be proper and in accordance with the contractual framework governing the parties. Learned Counsel further submits that the reliance placed by the petitioner on the decision in ***R.L. Kalathia & Company (supra) and Jayesh Engineering Works (supra)*** are misplaced, as the facts of the present case are distinguishable. It is contended that in the present case, the petitioner failed to establish that the No Claim Certificate was executed under coercion or financial duress.
23. Accordingly, learned Counsel for the respondent submits that the impugned award does not suffer from any patent illegality or perversity and that the present petition is devoid of merit and liable to be dismissed.

Legal Analysis

24. This Court has heard the learned counsel appearing for the parties and has perused the records and the judgments relied upon.
25. The jurisdiction of this Court under Section 34 of the Arbitration and Conciliation Act, 1996 is circumscribed and extends only to examining whether the arbitral award suffers from patent illegality appearing on the

face of the award. While re-appreciation of evidence is impermissible, interference is warranted where the award is unreasoned, where material issues remain unadjudicated, or where vital evidence is ignored, resulting in a failure of adjudication. This position stands authoritatively settled in ***Associate Builders v. DDA***, reported in **(2015) 3 SCC 49** and ***Ssangyong Engineering & Construction Co. Ltd. v. NHAI***, reported in **(2019) 15 SCC 131**.

- 26.** In the present case, the Petitioner raised nine distinct claims in the Statement of Claim. Upon completion of pleadings, the arbitral record reflects that only two sittings were held on 14.01.2016, when the respondent filed its counter statement, and on 13.06.2016, on which date the final award was dictated. A perusal of the impugned award reveals that the Sole Arbitrator rejected all the claims solely on the basis that the petitioner had signed the final bill and recorded a No Claim Certificate, placing reliance on Clause 43(2) of the General Conditions of Contract. The operative portion of the award reads as follows:

“The claimant contractor, Sh. Chaitanya Kumar Deyhas claimed some amount on some items which were included not in the executed contract agreement having No.4/7/II/03-04 dt 23.04.03. The document submitted by the claimant is not sufficient at all for claiming further from the instant contract related with instant arbitration. During releasing of final bill at page 0783675 of relevant measurement book (Book No.12350/SDAH, Contractor has signed final bill stating as follows:

“I shall have no claim outstanding against E Rly for the work done or for materials suppliers or any account and payment this bill shall be in final settlement of all claims to which agreement No.4/T/II/03-04 dt 23.04.03 with Rly relates.”

Guiding rules:- As per General Conditions of Contract, 2001, vide para 43(2); the contractor shall not be entitled to make

any claim whatsoever against the Railway under or by virtue of or arising out of this contract. Nor shall the Railway entertain or consider such claim if made by the Contractor, after he shall have signed a 'No claim' certificate in favour of the Railway, in such form as shall be required by the Railway after the work are finally measured up. The Contractor shall be debarred from disputing the correctness of the item covered by 'No Claim Certificate' or demanding a clearance to arbitration thereof.

Findings: There is no merit in favour of the claimant to claim further amount related with instant contract in terms of General Conditions of contract as Claimant contractor has recorded "No Claim Certificate" in the measurement book.

Conclusion:- The sole arbitrator has decided to close the case with out any payment to the claimant whenever the final bill with 'No claim certificate' has been given by the claimant contractor in the Measurement Book. Therefore, there is no dispute on the contract executed between Union of India and Sri Chaitanya Kumar Dey, Claimant contractor."

27. A plain reading of the impugned award demonstrates that it does not contain any claim wise discussion, nor does it disclose consideration of the pleadings, documents, or submissions advanced by the parties. The award does not engage with the nature of the claims, the factual foundation on which they were raised, or the defence thereto. The reasoning is confined exclusively to the existence of a No Claim Certificate, without any examination as to whether the claims raised were in fact covered by such certificate. The award, therefore, reflects a complete absence of adjudication on the disputes referred to arbitration.
28. The legal position regarding the effect of a No Claim or No Dues Certificate is no longer res integra. In **R.L. Kalathia & Company** (*supra*), the Hon'ble Supreme Court categorically held that issuance of such a certificate is not conclusive and does not, by itself, disentitle a contractor from pursuing

otherwise genuine claims. The Court emphasised that the Arbitrator is required to examine the circumstances in which such a certificate was issued, particularly having regard to the practical realities of contractual payments, where such certificates are often obtained as a pre-condition for release of bills. Even execution of a full and final discharge voucher does not bar a contractor from claiming further amounts, provided entitlement is established on the basis of adequate material. Mechanical reliance on a No Claim Certificate, without such examination, amounts to non-adjudication.

29. In the present case, the Sole Arbitrator has applied Clause 43(2) of the General Conditions of Contract in a purely mechanical manner, without examining whether the claims raised were covered by the No Claim Certificate and without analysing the circumstances under which the certificate was issued. In ***Ambica Construction v. Union of India***, reported in **(2006) 13 SCC 475**, while considering the very same Clause 43(2), the Hon'ble Supreme Court held that such a clause is intended to safeguard the employer against frivolous claims after final measurement, but cannot be construed as an absolute bar to the raising of genuine claims. The approach adopted in the impugned award is directly contrary to this settled legal position.
30. The petitioner had specifically relied upon a communication dated 16.01.2016 asserting that the final bill and the No Claim Certificate were signed under protest. This document goes to the root of the matter, and its complete non-consideration in the impugned award amounts to ignoring vital evidence. The petitioner had also relied upon entries in the Extra Work Register to substantiate its claim that additional works were

executed pursuant to instructions of the respondent's Engineers. Whether such additional works were in fact executed, whether they were outside the scope of the original contract, and whether payment had been made therefore were core issues requiring adjudication. As held by Hon'ble Supreme Court in **Jayesh Engineering Works** (*supra*), the Arbitrator is duty bound to examine the surrounding facts and circumstances, including whether the contract stood fully performed, whether the payment was made towards full and final settlement, and whether any amount nevertheless remains outstanding and payable.

31. The disputes referred comprised nine distinct claims, including claims towards unpaid additional works, losses allegedly suffered on account of delay, refund of liquidated damages, interest, and costs. The causes for delay in completion of the work thus constituted a material and foundational issue. However, the impugned award does not disclose any discussion, analysis, or reasoning in relation to any of these claims. All claims have been rejected solely on the ground that the petitioner had signed a No Claim Certificate, without examining whether the claims were covered by such certificate or the circumstances attending its execution.
32. Section 31(3) of the Arbitration and Conciliation Act, 1996 mandates that an arbitral award shall state the reasons upon which it is based. The requirement of a reasoned award ensures that the Tribunal has applied its mind to the material issues in dispute. The Hon'ble Supreme Court has consistently held that an award which merely records conclusions, without disclosing the mental process of the Arbitrator, or without addressing the principal issues, suffers from patent illegality.

33. In ***Associate Builders (Supra)*** and ***Dyna Technologies (P) Ltd v. Crompton Greaves Ltd.***, reported in **(2019) 20 SCC 1**, the Hon'ble Supreme Court clarified that while reasons need not be elaborate, they must be intelligible and must demonstrate that the Arbitrator has considered the core disputes. Failure to do so constitutes patent illegality under Section 34(2A).
34. More recently, in ***Gayathri Balasubramaniam v. ISG Novasoft Technologies Ltd.***, reported in **2023 SCC OnLine SC 11**, the Hon'ble Supreme Court reiterated that failure to consider material documents and submissions, and passing an award without addressing the core disputes between the parties, renders the award vulnerable under Section 34. The Hon'ble Supreme Court emphasised that an arbitral award must demonstrate conscious application of mind to the pleadings and evidence.
35. Viewed thus, the impugned award suffers from patent illegality appearing on the face of the record, inasmuch as it reflects a wholesale non adjudication of the disputes referred, mechanical reliance on a No Claim Certificate, and a failure to render a reasoned decision as mandated by law. Such non adjudication constitutes a jurisdictional failure on the part of the Arbitral Tribunal, warranting interference under Section 34 of the Act.
36. The cumulative effect of the aforesaid infirmities leaves no manner of doubt that the impugned award cannot be sustained.
37. For the foregoing reasons, this Court is of the considered view that the impugned arbitral award dated 13.06.2016 suffers from patent illegality appearing on the face of the record and is, accordingly, liable to be set aside under Section 34 of the Arbitration and Conciliation Act, 1996. The

arbitral award dated 13.06.2016 is hereby set aside. The parties are at liberty to take appropriate steps, in accordance with law, for the appointment of a fresh Arbitrator, if so advised.

38. With these observations, the present Petition is allowed.

(GAURANG KANTH, J.)

Sakil Amed P.A.

