
(2011) 12 JH CK 0038
In the Jharkhand High Court
Case No : Arbitration Appeal No. 5 of 2010

Dinesh Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 34(2)

Citation : AIR 2012 Jhar 57 : (2012) 1 JLJR 69

Hon'ble Judges : Prakash Tatia, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Tatia, CJ.

1. Heard counsel for the parties.

2. This appeal is directed against the order dated 8th September, 2009, passed in Misc. Case No. 7/2008, by which the Court of Subordinate Judge-I, Ranchi, has partly allowed an application u/s 34 of the Arbitration and Conciliation Act, 1996, and set aside the part of the award awarding an amount of Rs. 1,50,000/- on account of the appellant's doing extra work alleged to have been done under the contract.

3. Learned counsel for the appellant submitted that the scope u/s 34 of the Act, 1996 is very limited and the court below could have interfered with the award only on satisfying itself about the validity of the ground under sub-section (2) of Section 34. It is submitted that the learned Arbitrator gave full opportunity to the respondent-State to produce documents, particularly the measurement book and work order book but in spite of grant of several opportunities, the respondent-State did not produce the measurement book and work order book and therefore, the learned Arbitrator drew adverse inference against the State. It is also submitted that as per clause 11 of the agreement, the extra work could be done even during the execution of the work by the Engineer-in-Charge and

therefore, doing extra work was within the scope of the agreement between the parties.

4. Learned counsel for the respondent-State vehemently submitted that the court below legally and validly separated that part of the award, which could not have been awarded to the appellant, relying upon a decision of the Hon''ble Supreme Court delivered in the case of M.D., Army Welfare Housing Organisation Vs. Sumangal Services Pvt. Ltd., .

5. I considered the submissions of the learned counsel for the parties, perused the facts of the case and the reasons given by the learned Arbitrator and the court below.

6. It is the case of the appellant himself that under clause 11 of the agreement, he was entitled to payment for the extra work. Clause 11 is very clear and it empowers the Engineer-in-Charge to make any alteration in for additions to the original specifications, drawings, design and instructions that may appear to him to be necessary or advisable during the progress of the work and on his satisfaction, the Contractor is bound to carry out the work in accordance with any instructions which may be given to the Contractor by the Engineer-in-Charge in writing and signed by him.

7. Admittedly the appellant neither pleaded, nor produced any document evidencing that the Engineer-in-Charge gave any order in writing signed by him to the Contractor for doing the extra work; contrary to it, in the claim petition itself in paragraph no. 6, the appellant-contractor only submitted that he did the extra work of uprooting and putting new asbestos with wooden beat, the whole roof of quarter of block. But according the appellant, the extra work was done at the instruction of the Junior Engineer and other Officers of the respondents. It is not the case of the appellant that the Engineer-in-Charge was the Junior Engineer and admittedly he was not the Engineer-in-Charge and the Engineer-in-Charge was the Executive Engineer. Thereafter the appellant never pleaded that he was given order to do the extra work in writing signed by the Engineer-in-Charge. It is also not the case of the appellant in the claim petition that any written order was given in the measurement book and work order book by the Engineer-in-Charge. Therefore, the learned court below was right in setting aside that part of the award u/s 34(2)(iv) of the Act, 1996 because the Arbitrator's award dealt with a dispute not contemplated and it was contrary to the terms of the agreement as the appellant failed to plead and produce any document about his right to claim payment for the extra work. There is, thus, no merit in this appeal, which is dismissed.