

(2001) 12 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : C.Rev No. 22/2001

J & K State Forest Corp.through Its Regional Manager (West),
Divisional Manager J&K State Forest Corp.Ramban Division,
Ramban

APPELLANT

Vs

Mohd.Akhtar Nizami, Attorney Mohd.Akhtar Nizami, Attorney

RESPONDENT

Date of Decision : 24-12-2001

Acts Referred:

Jammu and Kashmir Arbitration and Conciliation Act, 2002 — Section 20

Citation : (2002) KashLJ 437

Hon'ble Judges : S.K.Gupta, J

Bench : Single Bench

Advocate : M.A.Bhat, J.A.Kazmi, Advocates appearing for the Parties

Judgement

1. Heard Mr. M.A.Bhat learned counsel for the petitioners as well as Mr.J.A.Qazmi, learned counsel for the respondent in extenso and propose to dispose of this revision by short order.

2. This revision is directed against the order formulated by Second Addl. District Judge, Srinagar dated 20122000. By this order the respondents

were directed to comply the order dated 1691995 and pay the amount of Rs.64,656/ as balance amount payable to the petitioner with regard to

the work done by him and also to pay 10% of the security for the work done buy him, on or before 29122000.

3. Petitioner is a registered Contractor, who is allocated extraction work in compartment No.12A/Bnl by Managing Director. J&K State Forest

Corporation, respondent No.1 at the lump sum rate of Rs.10.75 for the activists reflected in the sanction. Accordingly a work order was issued

and agreement executed. About 2500 wooden scants were required to be carried

by headload. Since the rates were fixed unilaterally by the Corporation, a request was made by the respondent to fix the normal prevailing rates of Rs 13.10 per Cft, but the respondent on the assurance of the petitioners that rates structure will be revised and he should go on with the work, the respondent started the work in the year 1988.

Respondent however, had made a huge investment but suffered a loss because the work had stopped. However, the respondent was again

allowed to work after a pretty long time, but till then there had been escalation in the rates besides cost of the food items to be provided to the

labour, Respondent however despite the nonrevision of the rates by the petitioners completed the work and submitted the work done report on

1221994. Petitioners neither paid the amount at the old rates nor released the security amount to the respondent. Even the request of the

respondent for referring the matter in dispute to arbitrator for settlement was not acceded to. This led the respondent to approach the Court

seeking appointment of an arbitrator and reference of the dispute for settlement, invoking the provisions of section 20 of the Arbitration Act.

4. Simultaneously, an application also came to be commenced by the respondent for the release of the payment of the final work done and the

security deposited before the IInd Addl. District Judge, Srinagar.

5. Second Addl District Judge, Srinagar after hearing the respondent Mohd Akhtar Nizami passed the following order on 1691995.

Thus, in these circumstances, the application for interim relief is accepted and the respondents are directed to release the payment of the final

work done if so at the old rates fixed between the petitioner and respondents at the time of agreement in compartment 11/Bnl and 12A/BnlS.F.C

(Ext) Range Banihal and also the respondents are directed to pay 10% of the security for the work done, If so by the petitioner. The respondents

are directed to release the money agreed upon between the parties at the time of executing the agreement for the work done in the said

compartments. The respondents are ordered to comply with the direction at an early hour. The application is accordingly disposed of and same be

placed on record.

6. It is meaningful to point out that the matter in dispute that has arisen between the parties pertaining to the agreement was referred to petitioner

No. 1, the designated arbitrator for settlement on 1061998.

7. Another application came to be preferred by the respondent Mohd. Akhtar Nizami under Sec 12. read with Section 20 of the Arbitration Act

for implementation of the order dated 1691995. Though the heading of the order dated 1691995 Indicates that only the counsel for the applicant

was present but in the body it indicates that arguments of both the counsel for the parties were heard. This variance however, is for the Illrd Addl.

District Judge, Srinagar to explain and not for us to speculate as none of the counsel before him has adverted on it during debate.

8. Nonapplicants/petitioners herein were directed to comply with the order dated 1691995 in reiterating the directions contained therein in

disposing of the application by its order dated 20122000.

9. The grievance of the petitioners as spelled out from the recitals of the petition is that the order passed both on 1691995 and 20122000 by the

Ilnd Addl. District Judge, Srinagar are patently illegal and without jurisdiction. It is contended by Mr. M.A.Bhat, petitioners advocate that Section

12 of the Arbitration Act vests the Court with discretion for the removal of the Arbitrator revocation of the authority of the arbitrator or

appointment of an arbitrator on an application of any party to arbitration. Section 20 of the Act contemplates an application to file in the court the

arbitration agreement. It is further contended by Mr Bhat, petitioners' Advocate that in para 10 of the Arbitration Petition, it is clearly recited that

on complete work done, total amount as per the earlier rates is not being released besides a security deposit nor the rates structure has been

revised as per normal rates structure has been revised as per normal rates and has thus given rise to dispute covered by the arbitration clause and

referable to the arbitrator for settlement.

10.The court after hearing the parties and after having been satisfied as to the existence of a dispute between the parties covered by the agreement

would refer the matter in dispute to the named arbitrator in the agreement. According to Mr.Bhat, the court could not assume the powers of an

arbitrator and direct the respondents for the release of the balance amount with regard to the work done and 10% of the security. It was for the

arbitrator to whom the dispute has been referred to have made the award, after hearing the parties and perusing the statements of facts and

documents filed by the parties.

11. Mr.Qazmi, learned counsel for the respondent when carried through the relevant provisions of the Arbitration Act and the order impugned he

also candidly conceded that the orders are palpably illegal and without jurisdiction. He however, made a submission that since the matter pertains

to the year 1995 the petitioners may be directed to pay the balance amount of the work done and 10% of the security deposit. This contention of

the learned counsel for the respondent, however, cannot be accepted as it would amount to perpetuate the wrong, which has been done earlier by

the IInd Addl District Judge twice, firstly by passing an order dated 16/9/1995 and secondly reiterating and implementation of the directions vide

order dated 20/12/2000.

12. In the facts and circumstances of the case I am of the view that 2nd Addl District Judge, Srinagar has acted in the exercise of his jurisdiction

illegally and passed the impugned order which has occasioned failure of justice. The revision petition is accordingly allowed and the order impugned

is set aside.

13. Before parting with this order, I am constrained to remark that the order impugned on the face of it is clear reflection of lack of legal acumen of

the Presiding Officer and the perfunctory manner in which these have been passed.