

(2021) 12 OHC CK 0142
In the Orissa High Court
Case No : ARBA No. 6 Of 2021

M/s Jindal Steel and Power Ltd APPELLANT @Hash M/s. Modern Builders

Date of Decision : 22-12-2021

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2021) 12 OHC CK 0142

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Sudarshan Nanda, Sarthak Pradhan

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Mr. Nanda, learned advocate appears on behalf of appellant and submits, impugned in the appeal is judgment dated 22nd September, 2021 rejecting his client's challenge to award dated 16th May, 2018. He submits, the proceeding was conducted in a manner that raised apprehension of bias against the Tribunal. He refers to paragraph 4 in the petition under section 34, Arbitration and Conciliation Act, 1996. Therein allegations were made regarding grant of adjournments to respondent claimant. There are other allegations regarding procedure adopted in the reference, to be biased in favour of respondent, its witness. He refers to paragraph 10 in impugned judgment and submits, the allegations were not at all considered but simply the Court said that the Tribunal nowhere resorted to any unfair means or relied on unexhibited documents. He submits, letter dated 15th July, 2013 (page 44) was considered in the award, not being an exhibit.

2. The second ground is, the finding of respondent entitled to compensation by reason of termination of contract is perverse. This has been summarily dealt with at paragraph 9 of the judgment, reproduced below.

"9. In this case, the work order was terminated by JSPL on 27.9.2011 during the extension of time period in favour of MBC to complete the work vide Ext-C/11

and R/4. The letter dtd.27.9.2011 of JSPL Ext-R/7 expressing termination without prior notice to MBC, within the extension time period till 31.10.2011, cannot be construed as a legally-sound decision. So, the clause-10.8 of the work order cannot come its rescue, as JSPL had extended the time to MBC for completion of work. Hence, the decision of learned Arbitrator in treating such premature termination of work order as illegal cannot be interfered with."

3. His third contention is that his client's counter claim was rejected by the Tribunal as barred by limitation. This finding in the award was also perverse but confirmed by impugned judgment. The Tribunal held against his client saying that counter claim was not raised soon after issuance of termination of contract. It was raised before the Tribunal by pleading. It was barred by limitation. He draws attention to letter of termination dated 27th September, 2011 and points out that there was direction upon respondent to raise full and final bill after reconciliation of free issue material/equipment/damages for final settlement/adjustment. It was only after reconciliation, counter claim arose and thereby cannot be said to be barred by limitation.

4. On query from Court, Mr. Nanda refers to clause 10.8 in the contract, reproduced below.

"10.8 JSPL reserves the right to disengage the Contractor and engage another Contractor in case it is found that the Contractor is unable to maintain desired work progress in terms of quality/quantity & Project schedule & time."

5. Issues to be answered in this appeal, therefore, relate to the three grounds urged. On query from Court it has been ascertained that the letter extending time for completion of work is not there in the record. It needs to be produced for adjudication of the appeal. Appellant will do so on adjourned date, when Mr. Pradhan, learned advocate appearing on behalf of respondent will be heard.

6. By consent, list on 19th January, 2022.

I.A. No.32 of 2021

1. This is an application for stay of award. It appears from the award dated 16th May, 2018 that Rs.63,92,091/- was awarded along with 8% interest to be calculated on the several heads of the award according to the directions regarding commencement of respective periods. Mr. Nanda submits, Rs.10 lakhs stands deposited in the executing Court. Mr. Pradhan submits, as on date, the sum awarded and interest stand Rs.1.37 Crores. He submits, there be direction for security to be put in for said amount.

2. Petitioner will put in cash security of Rs.54 lakhs with Registrar (Judicial) of this Court. The security must be put in by 17th January, 2022. There shall be unconditional stay of the award till 17th January, 2022. On the condition fulfilled, the stay will continue till disposal of the appeal. Otherwise, the stay shall stand vacated. The Registrar will invest the money in short term deposit and keep same renewed.

3. The I.A. is disposed of.