
(2016) 04 MP CK 0058

In the Madhya Pradesh High Court

Case No : Arbitration Appeal No. 02 of 2009

M/s. K.T. Construction

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 29-04-2016

Acts Referred:

Citation : (2016) AIR(MP) 179 : (2016) 4 CivilLJ 765 : (2016) 2 JabLJ 294 : (2016) 3 MPLJ 316 : (2017) 2 RAJ 759

Hon'ble Judges : Mr. Alok Aradhe and Mr. Vivek Agarwal, JJ.

Bench : Division Bench

Advocate : Shri K.N. Gupta, learned Senior Counsel with Shri Pravin N. Surange and Shri Harshwardhan Topre, Advocates, for the Appellant; Shri Arvind Dudawat, learned Additional Advocate General, with Shri Amit Bansal, Deputy Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Alok Aradhe, J.—In this appeal under Section 37 of the Arbitration and Conciliation Act 1996 (hereinafter referred to "the Act"), the appellant has assailed the validity of the order dated 15.9.2008 passed by the trial court by which objections preferred by the appellant under Section 34 of the Act, have been rejected. In order to appreciate the appellant's challenge to the impugned order, few facts need mention which are stated infra.

2. The respondent No.2 had issued Notice Inviting Tenders (NIT) in respect of the work "Replacement and construction of culvert, strengthening and maintenance of Shivpuri Circular Road Km. 3/6 to 8/6 complete in all respects including construction of Toll Tax Barrier and booths at tenderer's capital and resources with authorisation to collect Toll under Build-operate Transfer Scheme along with toll plaza and toll barrier and to collect toll tax from vehicles passing through the utility at the rate specified for the agreed period. The bid of the appellant was accepted and an agreement dated 19.5.1999 was executed between the parties. Under the agreement, the appellant was supposed to carry out the work as per

drawings and specifications which were to be provided by the respondent No.2 herein. Admittedly under the contract, the appellant had to construct the road utilising his own capital and resources and in lieu thereof the appellant was authorised to collect the toll tax at the specified rates and conditions from the date thirty days after completion of the whole work or from such date as may be notified for the purpose. Clause 17 of the agreement deals with settlement of the dispute and provides that the provisions of the Act shall apply.

3. The appellant was allowed to collect the toll tax w.e.f. 3.2.2000 as per the authority given by the appellants. The respondent No.1 had raised certain claims vide letter dated 15.6.2001, which were rejected by the Executive Engineer vide letter dated 22.1.2004 except one claim for 43 days as bonus days. The appellant did not directly raise any claim before the Chief Engineer but approached him for appointment of an arbitrator. However, the aforesaid request was turned down by the Chief Engineer vide communication dated 9.2.2004. The appellant filed an application under Section 11(6) of the Act before the District Judge, Shivpuri, which was rejected by order dated 15.3.2004. The appellant thereupon approached this Court by filing an application under Section 11(6) of the Act, which was registered as Misc.Civil Case No. 57/2004 and learned Single Judge by order dated 29.11.2004 appointed Mr. Justice R.B. Dixit, a retired Judge of this Court as an arbitrator. The appellant filed its statement of claims before the arbitrator in which various claims under 13 heads were made. The respondents herein also filed their statement of claims in which specific objection was raised that since the contract in question is a works contract, therefore, the arbitrator has no jurisdiction to deal with the dispute referred to him as the same has to be tried by a Tribunal constituted under the provisions of Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred to as the "1983 Act"). The claims made on behalf of the appellant in various heads were denied.

4. The arbitrator passed an award on 5.11.2005 and inter alia held that the contract in question is not a works contract as the same is not of ascertained money value and, therefore, falls outside the purview of the dispute as contemplated under Section 2(d) of the 1983 Act. The arbitrator out of 13 claims decreed 8 claims of the appellant and held that the appellant is entitled to benefit of collection of toll tax for additional 208 days or in lieu thereof a sum of Rs.79,18,560/-. The arbitrator by placing reliance on Executive Engineer's report with regard to the extra work carried out by the appellant, i.e. claim No.3, has awarded 36 additional days for collection of toll tax. The arbitrator has further held that the rate of toll tax was enhanced by notification dated 27.1.2000 issued by the State Government and it was clearly provided that the aforesaid rate would not apply in respect of the agreements prior to issuance of the notification and since the contract in favour of the appellant was executed on 19.5.1999, therefore, the appellant was not entitled to collect the toll tax at the enhanced rate under the notification dated 27.1.2000 and the amount of excess toll tax recovered by the petitioner has rightly been adjusted from the amount of earnest money. It has further been held that the communication dated 18.3.1999 was

part of the contract and the appellant was bound by it.

5. Being aggrieved, the appellant as well as respondents filed objections under Section 34 of the Act. In the objections preferred by the appellant, the appellant assailed the award in so far as it pertains to rejection of his claims, whereas in the objections filed by the respondents, it was stated that the award passed by the arbitrator is per se without jurisdiction as the contract in question is a works contract. The trial court vide order dated 15.9.2008 rejected the objection preferred by the appellant as well as respondents. The trial court while dealing with the claim of the appellant for additional work has held that the appellant has not placed on record any written permission of the Chief Engineer to carry out the extra work. It has further been held that the amount of toll tax unauthorisedly collected by the appellant at the enhanced rate under the notification dated 27.1.2000 has rightly been adjusted from the security deposit. It has further been held that the appellant is not entitled to interest. Being aggrieved, the respondents have filed Arbitration Appeal No. 5/2009 which was decided by this Court vide judgment dated 27.4.2016 and the award has been modified in so far as it directs that in lieu of 208 days remaining period of toll tax the respondent would be entitled to sum of Rs.79,18,560/-. In the aforesaid background, the appellant has approached this Court.

6. Learned senior counsel for the appellant submitted that the appellant in the statement of claim filed before the arbitrator had made different claims under 13 heads. However, the grievance in this appeal is confined only in respect of Claims No.3,5,6,8,11 and 12, i.e., (i) claim for additional period for collection of toll in lieu of the additional work for 363 days; (ii) claim for leakage of traffic for 72 days; (iii) claim for 604 days for collection of toll in view of the fact that the appellant was not permitted to collect the toll during night between the hours 9 pm to 7 am in the morning; (iv) claim for collection of toll for 440 days in view of the fact that the rate for collection of toll was increased; (v) claim for refund of security deposit of Rs.11.00 Lacs; (vi) claim with regard to costs of the proceeding to the tune of Rs.7.00 lakhs.

7. Learned senior counsel for the appellant in support of claim No.3 has urged that the claim No.3 made by the appellant for recovery of toll tax for a period of 363 days on account of additional work ought to have been computed in terms of clause 25.7 of the agreement executed between the parties. It is further submitted that in paragraph 3 of the statement of claim, the appellant had submitted that it had incurred an amount of Rs.44,43,539/- and the aforesaid fact was not denied by the respondents in their statement of claim and, therefore, there was no reason to restrict the claim of the appellant for a period of 36 days. Learned senior counsel has also invited our attention to the communication dated 22.9.2001, sent by Executive Engineer, Public Works Department, Shivpuri to Chief Engineer, Public Works Department, Gwalior and has pointed out that the Executive Engineer has quantified the additional work done by the appellant at Rs.13,70,429/- without any basis and the claim of the

petitioner to the extent of additional 36 days has been recommended by the Executive Engineer de hors the clause 25.7 of the agreement. Learned senior counsel has also invited the attention of this Court to the award passed by the arbitrator and has stated that the arbitrator has failed to assign any reason for rejecting the claim of the appellant in respect of 363 days, which tantamounts to violation of Section 31(3) of the Act.

8. In respect of claim of the appellant for collection of toll of additional 19 and 72 days respectively on account of diversion of traffic and leakage of traffic, it is argued that under the terms and conditions of the agreement the appellant was entitled to collect the toll in respect of the vehicles using the road. However, on account of communication dated 18.3.1999 sent by Engineer-in- Chief to the Chief Engineer, Public Works Department, Gwalior, which was issued even prior to execution of agreement, the appellant sustained losses. The aforesaid communication is de hors the terms and conditions of the agreement executed between the parties. However, the aforesaid aspect of the matter has not been appreciated by the arbitrator. In respect to claim No.6, it is submitted that under the terms and conditions of the agreement the appellant was entitled to collect the toll for a period of 24 hours. However, vide the aforesaid communication dated 18.3.1999 the right of the appellant to collect toll for a period of 10 hours, i.e., 9 pm in the evening to 7 am in the morning, was curtailed. The aforesaid communication was sent by the Engineer-in-Chief unilaterally prior to execution of the agreement between the parties, does not bind the appellant due to which the appellant has sustained loss and is entitled to extension for a period of 604 days for collection of toll.

9. In respect of appellant's claim for collection of toll for additional 440 days due to increase of rate of toll, it is submitted by learned senior counsel for the appellant that the Executive Engineer by an order dated 26.2.2001, permitted the appellant to collect the toll tax w.e.f. 1.3.2001 and directed the appellant to deposit the difference of the amount of toll tax collected by the appellant at the increased rate. It is urged by the learned senior counsel for the appellant that the aforesaid order passed by Executive Engineer, is de hors the terms and conditions of the agreement and has no sanctity in the eye of law. Therefore, the appellant is entitled to collection of additional toll tax for a period of 440 days and refund of security deposit of Rs.11.00 lacs.

10. It is further submitted by learned senior counsel for the appellant that the appellant was compelled to deposit the amount as demanded by the Executive Engineer on account of excess collection of toll tax, otherwise the same would have been recovered from the appellant along with the interest. Therefore, the appellant deposited the amount under coercion and duress exercised by the authority. Lastly, it is urged that in the absence of any prohibition in the agreement with regard to grant of interest, the appellant is entitled to grant of interest/damages. In support of submissions, learned senior counsel for the appellant has placed reliance on the decisions of the Supreme Court in the cases

of *Shyama Charan Agarwala & Sons v. Union of India* [(2002) 6 SCC 201]; *Som Datt Builders Limited v. State of Kerala* [(2009) 10 SCC 259]; *Bharat Heavy Electricals Limited v. Tata Projects Limited* [(2015) 5 SCC 682]; *Union of India v. M/s. Ambica Construction* (AIR 2016 SC 1441); and a decision of High Court of Bombay in Arbitration Petition No. 1158/2012, decided on 12.2.2015 in the case of *Atlanta Limited and others v. Executive Engineer, Road Development Division and others*.

11. On the other hand, Shri Arvind Dudawat, learned Additional Advocate General has invited our attention to expression "contract" as used in 1.1 of the agreement and has submitted that in view of clause 1.1 of the agreement, the communication dated 18.3.1999 is a part of contract and the same was communicated to the appellant on 8.4.1999 and thereafter without lodging any protest the appellant executed the agreement with the respondents on 19.5.1999. Therefore, the claim of the appellant on account of leakage of traffic and diversion of traffic is misconceived. It is further submitted that in the reply to the statement of claim, the respondents have stated that the appellant has not executed any extra work and has not produced any authority of the Chief Engineer, Public Works Department, Gwalior permitting him to carry out the extra work, therefore, the appellant is not entitled to any amount under the head of extra work. With respect to claims No.8 and 11, it is submitted that the appellant was required to collect the toll at the rate specified by the State Government. The rates of the toll were specified in Schedule-7 by the State Government therefore notification dated 27.1.2000 in which it is clearly specified that the rates specified therein shall not apply to the contract which has already been executed prior to 27.1.2000 will not create any right in favour of the appellant. It is also pointed out that the contract in question was executed with the appellant on 19.5.1999 and, therefore, the appellant was not entitled to collect the rates of toll which were mentioned in the notification dated 27.1.2000. It is also submitted that no relief in terms of money can be granted to the appellant in view of bar contained in clause 17.2 of the agreement, therefore, prayer for refund of earnest money is misconceived and the amount of excess toll recovered by the appellant was rightly adjusted from the earnest money of the appellant. It is also submitted that the scope of interference with the award passed by the arbitrator is extremely limited and concurrent findings have been recorded by the arbitrator as well as trial court do not call for any interference. It is also urged that the appellant did not raise any claim before the Chief Engineer and, therefore, he could not have made the claims before the arbitrator. In support of aforesaid submissions, learned Additional Advocate General for the respondents has placed reliance on decisions in the cases of *Ravi Kant Bansal, Engineers and Contractors v. M.P. Audyogik Kendra Vikas Nigam*, 2006 (2) MPLJ 299; *M/s. Mahalinga Shetty & Company v. M.P. Electricity Board*, 2013 (5) MPHT 323; *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49; *Chebrolu Enterprises rep. by its Proprietor Smt. Ch. Lakshmi Sesha Kumari v. Andhra Pradesh Backward Class Cooperative Finance Corporation Ltd.*, 2015 (12)

SCALE 207.

12. By way of rejoinder reply, learned senior counsel for the appellant has submitted that the contention of the respondents that the appellant did not approach the Chief Engineer is misconceived. In this connection, learned senior counsel has invited our attention to the letter dated 15.6.2001 which though was addressed to the Executive Engineer but the copy of the same was forwarded to the Chief Engineer as well and pursuant to which the Chief Engineer has initiated the proceeding. It is also submitted that once again the appellant on 26.11.2003 has raised the claim which was forwarded through Executive Engineer to the Chief Engineer. It is further submitted that the appellant had only accepted the common conditions, which is evident from the communication dated 10.7.1998 and the appellant is entitled to cost of the proceeding of Rs.7.00 lacs instead of Rs.2.5 lakhs.

13. We have considered the rival submissions made at the bar. Before proceeding further, it is apposite to notice relevant extract of Section 34 of the Act, which reads as under:-

"Section 34- Application for setting aside arbitral award.-(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub/section (2) and subsection(3).

(2) An arbitral award may be set aside by the Court only if-

(a) the party making the application furnishes proof that-

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India. Explanation-Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81."

14. The scope of Section 34 of the Act is delineated by catena of decisions of the Supreme Court. The Supreme Court in *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181 while taking note of the decision rendered by it in *Renusagar Power Co. Ltd. v. General Electric Co.*, 1994 Supp (1) SCC 644 wherein it was held that an arbitral award can be set aside if it is contrary to fundamental policy of Indian law; the interests of India; or justice or morality, held that public policy is a matter dependent upon the nature of transaction and the nature of statute. However, subsequently, in the case of *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705, the Supreme Court added another ground for exercise of courts' jurisdiction for setting aside the award i.e. if it is patently arbitrary. In *Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd.*, (2006) 11 SCC 245 it was held by the Supreme Court that if an award suffers from patent illegality, which goes to the root of the matter, the court can interfere with the award passed by the arbitrator. In a recent decision, in the case of *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49, the Supreme Court after taking note of various previous judgments rendered by it with regard to scope of interference with the arbitral award held that none of the grounds contained in Section 34 (2) (a) of the Act deals with the merits of the decision rendered by an arbitrator. It is only when the award is in conflict with the public policy of India as prescribed in Section 34 (2) (b) (ii) of the Act that the merits of an arbitral award are to be looked into under certain specified circumstances. It was further held that the Court would interfere with an award passed by an arbitrator if it is in violation of statute, interest of India, justice or morality, patent illegality, contravention of the Act or terms of the contract. It was also held that the court hearing an appeal does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus, an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.

15. In the backdrop of aforesaid well settled legal position, the facts of the case at hand may be seen. Admittedly, the parties have only filed affidavits before the arbitrator and the persons whose affidavits have been filed have not been cross-examined by the parties. We shall deal with the claims raised on behalf of the appellant *adseriatum*.

(i) Claim No.3 with regard to 363 days for additional work performed by the appellant .

It is the case of the appellant that he has performed additional work to the tune of Rs.46,43,539.66 and, therefore under clause 25.7 of the agreement , is entitled to additional work of 363 days. The appellant has pleaded the claim for extra work in paragraph 3 of the statement of claim before the arbitrator. In paragraph 2.6.1 of the statement of claim filed on behalf of the respondent, we find that the aforesaid claim of the appellant has been emphatically denied by the respondents. In paragraph 3.5.1 of the statement of claim, the respondents have clearly stated that the appellant has only executed the work as provided in the agreement and has not executed any extra work as claimed by him. It is also pertinent to mention here that when a query was put by us to learned senior counsel for the appellant whether the appellant had placed any material on record before the arbitrator to substantiate his claim that he had incurred the expenditure of Rs. 46,43,539.66, learned senior counsel was unable to point out from the record any documentary evidence in this regard but only referred to the Schedule appended to the Statement of Claim. Therefore, the contention made by learned senior counsel for the appellant that the fact that the appellant has incurred expenditure of Rs. 46,43,539.66 on account of extra work has been admitted by the respondents cannot be accepted. It is also pertinent to mention here that under clause 5 of the agreement, the contractor is required to carry out the extra work after obtaining the approval of the Chief Engineer. In the instant case, the appellant has failed to produce any permission from the Chief Engineer which authorised him to carry out the extra work. It is noteworthy that the appellant himself by letter dated 15.6.2001 had claimed additional 122 days whereas in the statement of claim, the claim for 363 days has been made by the appellant for which apparently no explanation has been offered. Therefore, the findings recorded by the arbitrator as well as trial court for negating the claim of the appellant, by any stretch of imagination, can be termed as perverse. Therefore, we do not find any ground to interfere with the impugned award as well as the order of the trial court pertaining to rejection of claim No.3 of the appellant.

(ii) Claims No.5 and 6 for grant of additional days in so far as it pertains to leakage of traffic and on account of diversion of traffic .

Admittedly, in the instant case the NIT was issued on 25.3.1998. The bid of the appellant was accepted by Engineer-in-Chief by communication dated 18.3.1999, subject to terms and conditions mentioned therein. The relevant extract of the letter dated 18.3.1999 is reproduced below for the facility of reference :-

1- izLrkfor ldqZyj jksM ds fd0eh0 4@6 ,oa 8@2 ij Vksy VSDI cSfj;j yxkus dh vuqefr nh tk;sxhA

2- ;k=h clsa ,oa vU; NksVs okgu tks orZeku esa lh/ks jk0jk0 3 ls xqtjrs gSa os ;Fkkor xqtjrs jgsaxsa blds fy;s Bsdsnkj dks dksbZ vkifRr ugha gksxhA

3- Bdsdnkj dks Lo;a ds O;; Is nwljh vksj ds ldqZyj jksM ij Nrjh jksM ekxZ ds iki fQDI cSfj;j LFkkfir djus ,oa bls esUVsu djus dh vuqefr nh tk;sxh ftlls Bdsdnkj dks dksbZ iFkdj olwyh dk vf/kdkj ugha gksxk lkFk gh ;fn fdlh izdkj dh oS/kkfud vFkok vU; vMpu mRiUu gksus ds dkj.k bl fQDI cSfj;j dks yxkuk laHko ugha gksrk gS rks Bdsdnkj dks bls fy;s dksbZ {kfriwfrZ ugha nh tk;sxhA

4- jk=h 9%00 crs Is izkr% 7%00 cts rd lHkh okgu jk0jk03 Is tk;saxs fti ij Bdsdnkj dks dksbZ vkifRr ugha gksxhA

The Executive Engineer by letter dated 8.4.1999 informed the appellant that bid of the appellant has been accepted subject to the conditions mentioned in the letter dated 18.3.1999 issued by Engineer-in- Chief. Thus, the appellant was aware about the terms and conditions mentioned in the letter dated 18.3.1999. However, the appellant did not raise any objection and enter into an agreement on 19.5.1999. Clause 1.1 of the agreement defines the expression "contract", which reads as under:-

"(1.1) The "Contract" means the documents, forming the Notice Inviting the Tenders and the Tender document submitted by the tenderer and the acceptance thereof including the formal agreement executed between the Government of Madhya Pradesh and to the contractor."

Thus, if the communications dated 18.3.1999 and 8.4.1999 are read in conjunction with clause 1.1 of the conditions of the contract, it is evident that the communication dated 18.3.1999 forms part of the contract. In other words, the appellant is bound by the terms and conditions contained in the communication dated 18.3.1999, by which the bid of the appellant was accepted by the Engineer-in-Chief on behalf of the Government. Therefore, the arbitrator as well as the trial court has not committed any illegality in rejecting the claims of the appellant in so far as it pertains to claims No.5 and 6.

(iii) Claims No.8 and 11, i.e., the claim of 440 days on account of increase in toll tax and for refund of the earnest money of Rs.11.00 lakhs .

It is pertinent to mention here that the rate of toll tax was increased by State Government by a notification dated 27.1.2000. The aforesaid notification clearly provides that the rates of toll mentioned in the notification shall not apply to the contract executed prior to the issuance of the date of notification. The contract with the appellant was executed on 19.5.1999, i.e., prior to the issuance of the notification. Despite non-applicability of the notification dated 27.1.2000, the appellant without any authority continued to collect the toll tax at the enhanced rate under the notification dated 27.1.2000. Therefore, the appellant was asked to refund the extra amount of toll collection vide letters dated 22.2.2002, 15.4.2002, 9.5.2002, 10.6.2002, 14.6.2002, 19.9.2002, 29.8.2002, 1.10.2002, 12.12.2002, 6.3.2002, 17.4.2005 and 5.4.2002. However, the appellant despite the receipt of aforesaid notices only deposited a sum of Rs. 38,29,623/-. Therefore, the remaining amount was adjusted by the respondents from the earnest money. Hence, the arbitrator as well as the trial court have rightly found

that the appellant is not entitled to any amount under the claims No.8 and 11. Even otherwise, the claim No.11 with regard to refund of earnest money cannot be granted in view of express bar contained in clause 17.2 of the agreement, which reads as under:-

"17.2 Since there is no money transaction between the parties and the money has only notional value for the purpose of this agreement the effect of the arbitration award shall be translated into either extension of the agreement period or its reduction as the case may be."

(iv) Claim No.12 with regard to cost of the proceeding.

It is stated on behalf of the appellant that though the appellant has incurred an amount of Rs.7.00 lakhs towards the cost of the arbitration proceeding, yet the arbitrator has awarded a sum of Rs.2.5 lakhs by way of cost of the proceeding of the arbitration to the appellant. The trial court has upheld the same. We do not find any infirmity in the same warranting interference.

16. At this stage, we may advert to the submissions made by learned senior counsel on behalf of the appellant. At the cost of repetition, we may state that the claim for extra work performed by the appellant has not been admitted by the respondents in their statement of claim and, therefore, the contention that since the claim for extra work performed by the appellant has been admitted by the respondent therefore the same ought to have been decreed, cannot be accepted. Similarly the contention that communication dated 18.3.1999 sent by Engineer-in-Chief to the Chief Engineer is de hors the terms and conditions of the agreement, also cannot be accepted as the same forms part of the contract for the reasons already assigned by us while dealing with the claims No.5 and 6 of the appellant. The contention that the order dated 26.2.2001 passed by the Executive Engineer is de hors the terms and conditions of the contract cannot be accepted as the appellant was not entitled to collect the toll tax at the enhanced rate in view of the specific stipulation contained in the notification dated 27.1.2000 that the same would not apply to the agreement executed prior to the date of issuance of the notification. The claim for grant of interest also cannot be entertained in view of specific prohibition contained in clause 17.2 of the agreement.

17. The arbitrator on the basis of meticulous appreciation of the material evidence on record has assigned reasons and has rejected the claims of the appellant. Therefore, it cannot be said that the award has been passed in contravention of Section 31 of the Act inasmuch as it contains detailed reasons for the findings recorded by the arbitrator. The trial court has rightly rejected the objections preferred by the appellant to the award passed by the arbitrator.

18. In view of the preceding analysis, the award passed by the arbitrator cannot be said to be contrary to the fundamental policy of Indian Law Justice or Morality, contrary to statute, or patent illegality, warranting interference of the trial court in exercise of power under Section 34 of the Act, therefore, the trial court has

rightly rejected the objections preferred by the appellant under section 34 of the Act. Therefore, we do not find any merit in the appeal.

19. In the result, the appeal fails and is hereby dismissed. The parties shall bear their own costs.