

(2009) 08 DEL CK 0001

In the Delhi High Court

Case No : CS (OS) 1393-A of 1999 and CS (OS) 1444-A of 1999 and IA 9932 of 1999

National Thermal Power Corporation Ltd.

APPELLANT

Vs

V.U. Seemon and Another
 V.U. Seemon Vs National
Thermal Power Corporation Ltd.

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Arbitration Act, 1940 — Section 14, 20, 30, 33

Citation : (2010) 1 ILR Delhi 493 : (2010) 6 RCR(Civil) 290

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : R.P. Bhatt, Yakesh Anand, Kajal Chandra, in CS OS 1393-A/1999, N.M. Dastane, S. K. Gandhi and Manjula Gandhi, in CS OS 1444-A/1999 and IA 9932/199, for the Appellant; N. M. Dastane, S. K. Gandhi, Manjula Gandhi, in CS (OS) 1393-A/1999, R.P. Bhatt Yakesh Anand and Kajal Chandra, in CS (OS) 1444-A/1999 and IA 9932/1999, for the Respondent

Judgement

Badar Durrez Ahmed, J.—Suit No. 1393-A/1999 has been filed on behalf of the National Thermal Power Corporation (hereinafter referred to as the "NTPC.") u/s 14 of the Arbitration Act, 1940 (hereinafter referred to as the "said Act.") praying that directions be issued for the filing of the original Award made on 30.05.1999 by Mr P.C. Nag, the sole Arbitrator. In the meanwhile, the learned Arbitrator had filed the Award in original along with the connected documents with the request that the same be taken on record so that the Award could be made a rule of the Court. On receipt of the original Award and documents, the same was registered as suit No. 1444-A/1999. After notices had been issued to the parties, NTPC sought the setting aside of the Award u/s 30 and 33 of the said Act through its application being IA 9932/1999. NTPC, apart from praying for the setting aside of the Award, made a prayer that its counter-claims be allowed and costs be awarded. This judgment shall dispose of the said suits and the said IA.

2. By a Letter of Award (LOA) dated 25.05.1987 NTPC confirmed having accepted

the proposal of M/s V.U. Seemon (hereinafter referred to as "the claimant.") dated 20.12.1986, by their Telex of Award dated 07.05.1987, whereby the claimant was awarded the contract for the construction of boundary wall and fencing package for Kawas Gas Power Project on a works contract basis. In the said LOA it was indicated that the claimant was to perform the said work as per the specifications and the terms and conditions contained in the documents issued to the claimant, all of which were said to form an integral part of the contract except for the specific agreed modifications that are brought out in the various clauses of the LOA. The documents, inter alia, included the general conditions of contract for civil works (GCC) and the claimant's letter dated 07.05.1987, regarding confirmation/ agreements.

3. As per paragraph 5.0 of the LOA, the total contract value based on the rates and quantities indicated in the schedule of items was Rs 1,07,31,580/-. It may be pointed out that the length of the fencing was 4960 meters and the length of the boundary wall was 3600 meters.

4. Paragraph 7.0 of the LOA indicated the time schedule. It was provided therein that the parties clearly understood that the time would be of the essence of the contract and that it should be strictly adhered to as the work under the contract was very important and critical. Paragraph 7.0 further provided that all the works covered under the contract were to be completed in all respects within 12 months from the date of the Telex of Award dated 07.05.1987 and that the contract became effective from the date of issue of the said Telex of Award, that is, on 07.05.1987. Paragraph 15.1 of the LOA indicated that the claimant had agreed in its letter dated 07.05.1987 that in the event of delay in handing over of the site by NTPC to the claimant beyond the contractual period of 12 months, NTPC may consider claimant's request for grant of extension of time for an additional six months. It was indicated that in no case, the claimant would have any extra claim on account of "this delay".

5. At this juncture, it would be appropriate to refer to paragraph 1 of the claimant's letter dated 07.05.1987. The same reads as under:

1. We shall adhere to the construction programme submitted by us along with the tender. However, detailed discussion and finalization of the construction schedule shall be done within fifteen days in consultation with NTPC Officers. The chain link fencing work shall be taken up immediately and completed within 3 months from the date of award of the work. M/s NTPC informed that site for boundary wall construction may be handed over in phases as per the progress of the site leveling work. In the event of delay in handing over the site beyond the contractual period of 12 months, we shall be granted extension of time but we shall not have any extra claim on account of this delay. However, the overall contract period shall not exceed 18 months from the date of award of the work.

6. The LOA contained an arbitration clause as set out in paragraph 19.0 and 19.1 thereof.

7. From the LOA and the other contract documents, it is apparent that the work of fencing and putting the boundary wall was to be completed within 12 months. The starting date of the contract was 07.05.1987, which meant that the 12-month period would expire on 06.05.1988. It is further obvious that in case of delay as mentioned in the letter dated 07.05.1987 and paragraph 15.1 of the LOA, if there was delay on the part of NTPC in handing over the site beyond the period of 12 months, the contract could be extended by an additional six months. The letter dated 07.05.1987 made it clear that the overall contract period shall not exceed 18 months from the date of award of the work. In other words, as per the said documents, the work was to be started on 07.05.1987 and was to be completed by 06.05.1988. If an extension was granted, it was to be completed latest within 18 months, that is, by 06.11.1988.

8. The site, however, was not handed over in time by NTPC and the claimant continued to do the work beyond the 12-month period and in fact, even beyond the initially stipulated 18-month period. By 12.11.1988, that is, after 18 months was over, the claimant completed the fencing work. Insofar as the boundary wall was concerned, the claimant had done 98% of the piling work, 16% of the super structure and 6.35% of the plastering work. On 21.04.1989 NTPC issued a notice to the claimant to complete the work by 15.05.1989 and indicated that if the work was not finished by that date, then some other agency would be appointed to complete the work at the risk and cost of the claimant. According to NTPC, the balance work was not completed and, therefore, NTPC terminated the contract on 19.06.1989. At that point of time, the value of the work done by the claimant was to the extent of Rs 77,39,538/- and it had already been paid a sum of Rs 75,95,918/- by NTPC. Insofar as the balance work was concerned, the same was awarded to a third party by NTPC on 22.01.1990. According to NTPC, the balance work was concluded by the third party for a sum of Rs 42,62,705/-. According to NTPC, since the balance work was done by the third party at the claimant's risk and cost, NTPC was entitled to recover the same from the claimant. Consequently, NTPC called upon the claimant to pay this amount of Rs 42,62,705/- plus other actual recoverables. At this stage, the claimant filed an application u/s 20 of the said Act for making a reference to arbitration. However, in the meanwhile, NTPC had appointed Mr P.C. Nag as the sole Arbitrator on 16.10.1990. The said application was, therefore, disposed of because of the appointment of Mr Nag. There was some discord with regard to appointment of Mr Nag as the sole Arbitrator, but I need not go into this aspect of the matter as that is not material for the present petition.

9. Before the learned Arbitrator, the claimant filed a claim of Rs 2,15,15,264/- which was subsequently revised to Rs 1,86,15,197/-. NTPC also filed its counter-claim which was revised to Rs 38,18,095.10. By virtue of the impugned Award, the learned Arbitrator has awarded to the claimant, a sum of Rs 72,92,449/- plus pendente lite interest at the rate of 18% per annum (simple) with effect from 16.10.1990 till the date of payment or the date of decree, whichever is earlier. He also awarded costs of the arbitration to the extent of Rs 2,000/- in favour of

the claimant. NTPC.s counter-claim was rejected in toto.

10. Being aggrieved by the impugned Award, NTPC has filed objections and has sought the setting aside of the Award both on the ground that the learned Arbitrator has wrongly awarded the amount of Rs 72,92,449/- to the claimant and has wrongly rejected NTPC.s counter-claim. According to Mr R.P. Bhatt, the learned senior counsel who appeared on behalf of NTPC, the Award is liable to be set aside because it is manifestly perverse; it has been arrived at on the basis of wrong application of law, in fact, it is contrary to law; the Arbitrator has misconducted the proceedings both as regards his personal conduct as also in law; the Award is absurd and the view taken by the learned Arbitrator is not plausible in terms of the contract between the parties; the damages, even if construed to be awardable, have yet to be proved and cannot be fixed on the basis of assumptions made of usage in the industry; the Award is contrary to public policy; the view taken by the Arbitrator tends to nullify the provisions of the contract; and there was no question of Award of interest and costs.

11. Mr Bhatt, the learned senior counsel, took me through the entire Award and challenged the same on virtually every aspect thereof. He referred to the preliminary objections which had been raised by NTPC before the learned Arbitrator and submitted that the same were summarily rejected by the learned Arbitrator without assigning any reasons for the same. He also referred to all the points on merits which were decided by the learned Arbitrator and submitted that the findings were contrary to the terms of the contract as also to the law. He submitted that the findings were not based on the records and were thus perverse and for this reason the Award ought to be set aside. Even the quantum of the Award under each of the heads was made the subject matter of challenge.

12. Mr N. M. Dastane, the learned Counsel who appeared on behalf of the claimant, fully supported the Award. He submitted that the learned Arbitrator had meticulously taken note of each of the claims and counter-claims of the parties. He submitted that the learned Arbitrator has examined each and every submission made by the parties and has thereafter come to conclusions of fact and based upon his interpretation of the provisions of the contract, the learned Arbitrator has made the Award in favour of the claimant. He submitted that it is not as if all the claims of the claimant had been allowed by the learned Arbitrator. This is apparent from the fact that the initial claim of the claimant was to the extent of Rs 2,15,15,264/- which was subsequently revised to Rs 1,86,15,197/- and, out of this, only an amount of Rs 72,92,449/- has been awarded in favour of the claimant. He also submitted that although, initially, time may have been the essence of the contract, the same stood abandoned inasmuch as NTPC permitted the claimant to continue working even after the earlier stipulated 18-month period. NTPC had also cleared the RA bills after the said period. Thus, according to Mr Dastane, the plea of time being of the essence of the contract cannot be raised by NTPC any longer. He submitted that, in any event, the delays that were caused in the performance of the contract were all attributable to

NTPC. Apart from the factor of delays, he submitted that there was the question of wrongful termination of the contract and the damages which flowed therefrom. Even apart from the question of delay and wrongful termination, there was also the question of claims which, in any event, arose out of the working of the contract such as the claim for head carriage of materials, dewatering, sludge / mud removal, sand filling and backfilling in collapsed trenches; provision of PVC coated chain link instead of galvanized iron chain link as per item 24 of the BOQ; provision of heavier barbed wire; work done under item 27 of the BOQ; loss suffered for work done but not paid due to wrongful alignment of fencing and extra items. Mr Dastane also submitted that the Award of interest and costs was fully justified in the facts and circumstances of the case.

13. The learned Arbitrator has classified the claims raised by the claimant as under:

Broad & rough classification of claim

According to the claimant

Claim Nos.

According to the respondent Claim Nos.

A. Claims arising out of breaches of
contract

A.1 Claims in the nature of delay

damages & claims arising from delay & termination

1,3,6,8,9,13

1,3,6,8,9,13

A.2 Claims arising out of illegal
termination of contract

12,15

12,15

B. Claims arising out of contract
provisions interpretation

2,4,5,7,10,11,14

2,4,5,7,10,11,14

Claims for interest & cost of arbitration

16,17

16,17

The claims under each of the said headings and sub-headings as awarded by the learned Arbitrator are as under:

S. No. as per S.O.C

Brief Description

Amount

claimed

(Rs)

Amount

Awarded

(Rs)

(1)

(2)

(3)

(4)

(A)

CLAIMS ARISING OUT OF
BREACHES OF CONTRACT

(A-1)

DELAY DAMAGES

3

For the increase in the cost of materials and labour for completion of Fencing Work due to breaches committed by NTPC. (REVISED 1154000 + 200000 i.e. 13,54,000)

13,54,000

14,91,127.00

6

For rise in the cost of labour & materials for Boundary Wall. (REVISED 755989 + 134280 i.e 8,80,269)

36,89,906.00

8

Reimbursement of expenses on account of extension of bank guarantee

62,900.00

13

Loss on account of Delays in issue of Cement- Idling of Labour.

75,034.00

NIL

(Rejected &
withdrawn by the claimant).

(A-2)

DAMAGES DUE TO DELAY &

WRONGFUL TERMINATION

OF CONTRACT

9

Loss of profit due to breaches by NTPC.

(REVISED 1073158 + 193168 i.e. 12,66,326)

12,66,326.00

1,45,489.00

(A-3)

DAMAGES DUE TO

WRONGFUL TERMINATION

OF CONTRACT

1

For recovery of Bank Guarantee
amount which was illegally
enchased by the Respondent
alongwith interest.

(REVISED 8,29,000+ 2,58,700

i.e. 10,87,700)

10,87,700.00

8,27,000.00

12

Termination of contract ? loss of machines and materials taken over by NTPC

10,00,000.00

6,00,000.00

15

Losses suffered due to termination of contract over terminal benefits and advances, offices and quarters

5,00,000.00

NIL (REJECTED)

(B)

OTHER CLAIMS ARISING OUT OF CONTRACT

2

For head carriage of materials dewatering, sludge/mud removal, sand filling and backfilling in collapsed tranches

18,13,118.00

3,16,306.00

4

Provision of PVC coated chain link instead of G.I. chain link as per item 24 of Bill of Quantities. (REVISED 2,88,900+52,002 i.e. 3,40,902)

3,40,902.00

2,88,900.00

5

Provision for heavier barbed wire than that is given in the contract as per instructions of NTPC (REVISED 26,743+4,813 i.e.

31,556)

46,949.00

20,057.00

7

Work done under item 27 of Bill of Quantities

(REVISED 35,83,600+6,68,404

i.e. 42,52,004)

42,52,004.00

35,72,148.80

10

Loss suffered for work done but not paid due to wrongful alignment of fencing

(REVISED 22,932+6,191 i.e.

29,123)

29,123.00

22,931.00

11

Extra items done but not paid (REVISED 4,67,833+1,26,315 i.e. 5,94,148)

5,94,150.00

8,490.00

14

For delaying payment of RA Bills

2,50,000.00

NIL (REJECTED)

(C)

16(a)

Interest at 18% per annum from end of September 1989 till commencement of arbitration ?Past interest

51,53,152.00

NIL (REJECTED)

TOTAL : (A+B+C)

(REVISED)

2,15,15,264.00

(1,86,15,197.00)

72,92,448.80 SAY

72,92,449.00

16(b)

Pendente lite Interest from commencement of arbitration to the date of award

and from date of award to date of payment / decree whichever is earlier

2,15,15,264.00 At 18% tax per annum

At 18% per annum simple from 6.10.90 to the date of payment or date of decree whichever is earlier

17

Cost of Arbitration

2,00,000.00

14. From the above, it is apparent that on account of delay, referable to claim Nos. 3, 6 and 8 of the claims raised by the claimant, a sum of Rs 14,91,127/- has been awarded to the claimant. This is on account of increase in cost of materials and labour for the fencing work and boundary wall. It also includes the reimbursement of expenses on account of extension of bank guarantee. The amounts awarded on account of wrongful termination are covered under the heads loss of profit due to breach on the part of NTPC; recovery of bank guarantee amount which was illegally encashed by the respondent; and loss of machines and materials which were taken over by NTPC upon termination of the contract. The amounts awarded under these sub- heads were Rs 1,45,489/-, Rs 8,27,000/- and Rs 6,00,000/- respectively.

15. It is also pertinent to note that apart from the Award on account of delay and wrongful termination of the contract, as already pointed out above, the learned Arbitrator has also allowed the claims which otherwise arose out of the contract. The substantial claim under this category was in respect of the work done under item No. 27 of the bill of quantities. The amount awarded was Rs 35,72,148.80. The other two major sub-heads under this category of claims was for head carriage of materials, dewatering, sludge/mud removal, sand filling and backfilling in collapsed trenches (Rs 3,16,306/-) and provision of PVC coated chain link instead of galvanized iron chain link as per item 24 of the bill of quantities (Rs 2,88,900/-).

16. It is apparent that for determining these claims raised by the claimant, various questions needed to be answered. The questions being:

(i) Who caused the delay?

(ii) If the delay was caused by NTPC, was the claimant entitled to be compensated for the same?

(iii) Was time of the essence of the contract?

(iv) If so, was this condition not waived or done away with by the conduct of the parties?

(v) Whether the termination of the contract on 19.06.1989 by NTPC was illegal?

(vi) Was the claimant entitled for the extra work and other claims arising out of the contract resulting from the tidal effects, black cotton soil, dewatering etc. and work done under item No. 27 of the BOQ?

17. I find that in the impugned Award these aspects have been considered in paragraph 5.0.0 and further sub-paragraphs. As an instance, the claimant had submitted that the work site was susceptible to tidal flooding and that the position was further aggravated due to the black cotton soil strata. According to the claimant, the same synopsis of the project, which formed part of special conditions of contract, had not revealed these facts. As per the claimant, during visits to the site, the claimant was informed that the entire project site was being raised by site filling and would be graded and leveled. It was contended that the site for the boundary wall was handed over to the claimant in a piecemeal fashion and continued to be handed over in bits and pieces right up to 26.05.1988 whereas the entire work was to be completed within 12 months by 06.05.1988 or latest within 18 months, that is, by 06.11.1988. It was the case of the claimant that due to the black cotton soil and tidal effects and rains in the monsoon, the area used to become inaccessible by vehicles and manual transshipments and trudging on foot etc. had to be resorted to. The trenches used to get flooded and collapsed and this necessitated extensive dewatering and slush removal. The claimant executed the work as and when areas were released to them.

18. On the other hand, NTPC contended that although the site consisted of black cotton soil and was susceptible to tidal effects, Clauses 6 and 7 of the GCC required the claimant to obtain all necessary information as to risk, contingencies and other circumstances and it was for this reason that the claimant had also visited the site before tendering in December, 1986. NTPC denied that any promise was made to the claimant that the work site would be earth filled and leveled, so as to remain unaffected by tidal overflow of river Tapti and remained accessible for motorized transport.

19. On the basis of the submissions and the material on record, the learned Arbitrator came to the conclusion that the synopsis of the project did not show and caution the claimant as regards the tidal effects and black cotton soil which were hindrances peculiar to the Kawas site. He also concluded that Clauses 6 and 7 of the GCC were in general terms and did not require the claimant to undertake a parallel and detailed investigation but to only visit and inspect the site so far as practicable in order to satisfy itself. According to the learned Arbitrator, this was not an effective disclaimer and it did not inform the tenderer not to rely on the data furnished through the tender document and particularly on the synopsis of the tender document.

20. After considering the submissions made by the parties, the learned Arbitrator also concluded in paragraph 5.1.2(f) that NTPC had not specifically advised the tenderers of tidal effects and black cotton soil strata through the synopsis and tender documents and that the claimant was not required to conduct a detailed

investigation. He also concluded that the claimant was not required to provide for dewatering or frequent tidal overflows and work in quagmire conditions. The delay in submitting the chain link sample was also entirely because NTPC wanted the non-ISI PVC coated variety but at the same time conforming to ISI specifications. The learned Arbitrator also concluded that the delay on account of taking decision on unvisualized sand filling and in doing it was attributable to NTPC. He was of the view that NTPC had been investigating the project and the basic technical requirement of sand filling in black cotton soil strata which was susceptible to tidal action should have been foreseen and provided for. NTPC did not do so and, therefore, the loss of time, which could have been avoided, was definitely attributable to NTPC.

21. After considering the submissions made by the parties on the alleged breach of contract by causing delays in handing over the work area in a piecemeal fashion, the learned Arbitrator came to the conclusion that the areas for fencing/ boundary wall were not released well in advance by NTPC, as required for the stipulated completion of work by 06.05.1988 or at least by 06.11.1988. According to the learned Arbitrator, this was the major cause of delay or time overrun in the performance the contract. According to the learned Arbitrator, the award of work just before the monsoon and programming the execution in heavy monsoon at Kawas with black cotton soil strata and tidal overflows at work site also demonstrated the bad planning on the part of NTPC.

22. Furthermore, the learned Arbitrator arrived at the conclusion that NTPC did not release the piling areas in time and in continuous stretches so as to provide sustained economic workload for piling. He was of the view that at least some areas should have been released earlier so that continuity in substructure over piling could have been maintained during monsoon.

23. One of the objections raised by NTPC was in connection of the letter dated 07.05.1987 which had been written by the claimant. According to NTPC, by virtue of the said letter, the claimant had agreed that in case of delay in handing over of the site, the claimant would be granted extension of time but he could not make any extra claim on account of the delay. Consequently, it was submitted on the part of NTPC that by virtue of the said letter dated 07.05.1987, the claims stood demolished. In response, the claimant contended that the letter dated 07.05.1987 was being read entirely out of context. It was contended that the claimant had only agreed that in the event of delay in handing over of the site beyond the contractual period of 12 months, the claimant would be granted extension of time and that the claimant would have no extra claim on account of "this delay". The permissible delay had been further clarified by the fact that overall contract period would not exceed 18 months from the date of the Award. In other words, the overall contract period would not go beyond 06.11.1988. Thus, according to the claimant, the pre-conditions for the "no extra claim" stipulation to operate were:

(i) overall contract period not to exceed 18 months; and

(ii) extension be granted.

According to the claimant none of these pre-conditions were satisfied inasmuch as the areas continued to be released by NTPC to the claimant even after the stipulated period of completion of 12 months. Work continued beyond 18 months. On this aspect of the matter, the learned Arbitrator, after considering the submissions made on behalf of the parties and considering the letter dated 07.05.1987, came to the conclusion that there was no bar to the claims made by the claimant. The learned Arbitrator felt that the said letter only restricted compensation in respect of delay up to six months and that too only on account of delay in the release of work areas. It was unrelated to other delays. Furthermore, according to the learned Arbitrator, this limited bar was subject to pre-conditions referred to by the claimant which, in this case, had not been fulfilled. Thus, the learned Arbitrator concluded that there was no bar to the claimant raising the claims.

24. The learned Arbitrator had arrived at the conclusion that the work was delayed for the reasons attributable to NTPC. In the context of time being of the essence, he was of the view that in any case it was for NTPC to communicate its decision with regard to extension of time. The non-communication and acceptance of performance beyond the initially specified time limits, set the time at large. He also observed that if extension was to be granted, NTPC could have also reserved its rights towards liquidated damages and / or compensation for other losses. NTPC did not formally extend the time for completing the contract but continued to release areas to the claimant and permitted the claimant to continue with the work and also accepted such performance by making regular payments for the same. Clearly, according to the learned Arbitrator, the question of time being of the essence, in view of the aforesaid conduct, took a back-seat.

25. With regard to the legality of the termination of the contract, the learned Arbitrator concluded that the same had not been legally or validly terminated. He was of the view that it was NTPC which was responsible for the delays. Since time was no longer of the essence, the contract could not have been suddenly terminated without first granting reasonable time, then making it of the essence and asking the claimant to complete the work by that date. This was not done. Therefore, the termination of the contract on 19.06.1989 was not legal or valid.

26. In view of the foregoing, it is apparent that the learned Arbitrator has examined each and every submission by the parties and has gone through the record meticulously. After doing so, the learned Arbitrator found that it was NTPC which was responsible for the delay. There was no bar on the claimant to claim compensation for losses / damages occasioned by such delay on the part of NTPC. The learned Arbitrator also concluded that time was not of the essence and the conduct of the parties clearly indicated otherwise. The termination of the contract was illegal and that all extra work or other claims arising out of the contract had to be paid for by NTPC. Based on these conclusions, the learned Arbitrator quantified the same and made the Award in favour of the claimant, as

indicated above.

27. The learned Arbitrator rejected all the counter-claims of NTPC. This was the natural corollary of the findings of the learned Arbitrator in respect of the claims made by the claimant. It had already been held that the delays were attributable to NTPC and that the termination was illegal. In fact, after abrupt termination of the contract, the claimant was not allowed to take away its materials. Therefore, the counter-claims were rejected inasmuch as the learned Arbitrator was of the view that nobody could take benefit of the wrongs committed by him.

28. I have purposely set out the contentions of the parties before the learned Arbitrator and his conclusions in some detail. This is to indicate that the learned Arbitrator has examined each and every submission made by the parties and the material placed on record. He has meticulously set down the arguments and counter-arguments and has given his own decision on each point. I have examined the Award in detail and have also considered the arguments advanced by the counsel before me. I do not find any perversity in the findings returned by the learned Arbitrator. The question of interpretation of clauses of a contract, it is well settled, is within the domain of the Arbitrator. Unless the Arbitrator takes a view which is so absurd or perverse, the same is not liable to be interfered with by the Court. I have already indicated that I find no perversity in the impugned Award. The views taken by the learned Arbitrator on various aspects are plausible views. The court may or may not agree with those views but inasmuch they are plausible and within the four corners of the contractual terms which bind the parties, the same cannot be disturbed by this Court in exercise of its powers under the said Act.

29. While considering objections u/s 30 and 33 of the said Act, it is not the function of this Court to re-appreciate the evidence or interfere with an Award merely on the basis that this Court could have come to a different conclusion on the material available before the Arbitrator. For this proposition, a reference may be made to Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another, ; and Food Corporation of India Vs. Joginderpal Mohinderpal, also do not find the Award to be contrary to law. I am unable to agree with the submission made by the learned Counsel for NTPC that there has been any misconduct on the part of the Arbitrator either with respect to his personal conduct or his conduct in law.

30. For all these reasons, the objections to the Award raised on behalf of NTPC are dismissed. The Award dated 03.05.1999 made by the sole Arbitrator Mr P.C. Nag is made a Rule of the Court. The decree sheet be drawn up accordingly. The said suits and said application stand disposed of.