

(1995) 03 BOM CK 0009
In the Bombay High Court
Case No : Appeal No. 1 of 1991

State of Goa

APPELLANT

Vs

M/s. Jyoti Limited

RESPONDENT

Date of Decision : 28-03-1995

Acts Referred:

Arbitration Act, 1940 — Section 30, 33

Citation : (1996) 5 BomCR 27

Hon'ble Judges : T.K. Chandrashekhara Das, J;A.C. Agarwal, J

Bench : Division Bench

Advocate : Shri V.B. Nadkarni and Mr. A.C. Navelcar, for the Appellant; Shri M.S. Usgaoncar and Shri S.S. Usgaoncar, for the Respondent

Judgement

Chandrashekhara Das, J.—State of Goa, the appellant herein, has come up with this appeal aggrieved by the judgment passed by the Civil Judge S.D. Quepem dated 6-12-1990 in Special Civil Suit No. 35/90 whereby that court has dismissed the application filed by the State of Goa to set aside the award passed by the Arbitrator appointed for resolving the dispute between the State of Goa and the respondent herein.

2. The dispute arose between the appellant and the respondent in respect of a contract awarded by the appellant in favour of the respondent. The Work Order was issued on 7.6.1982. The total amount of contract was for Rs. 1,40,24,076.50. The work was for construction of a Wet-Well-Pump House. The period of contract as specified by the contract was for two years. The date of commencement of the work in terms of the Work Order was 22-6-1982. So under the contract the work had to be completed on 21-6-1984, but actually the work was completed much later than the stipulated date i.e. on 28-5-1988. A retired Chief Engineer of Madhya Pradesh was appointed as Arbitrator in terms of the arbitration clause contained in the contract between the appellant and the respondent. The dispute was referred to the Arbitrator on 17-1-1989. The Award was made on 14-6-1990. Before the Arbitrator a claim of for Rs. 1,43,55,927/-

was made by the contractor. The State also filed a counter claim totalling Rs. 1,30,680.26. The Arbitrator has made an award for the amount of Rs. 49,26,200.00 to be paid to the respondent plus future interest at the rate of 12% p.a. This Award was challenged before the court below under Sections 30 and 33 of the Arbitration Act by the appellant. The court below after considering all the evidence and material on record, has found that the Arbitrator has not committed any misconduct and also did not exceed his jurisdiction in passing the Award. On that score the application filed by the appellant was dismissed.

3. The learned Advocate General appearing for the State took us to the various portions of the Award, particularly issue No. 19 relating to Claim 6(a) amounting to Rs. 18,19,909.00 and issues No. 27 and 28 relating to Claim No. 12 amounting to Rs. 10,06,390.70. Issue No. 29 relates to claim No. 13 amounting to Rs. 13,22,565.50 and submitted that by awarding this amount the Arbitrator has exceeding his jurisdiction. Issue No. 19 relates to the amount awarded by the Arbitrator towards the expenditure of excavation of soil. The learned Advocate General has attacked this item of award on the ground that this payment is not contemplated under the contract. This amount had been claimed by the respondent for re-excavating the soil which was already excavated, which due to heavy rain, the soil had collapsed from the side slopes in the pit. This collapsed earth had fallen due to the caving in of side slopes from the various depths of 18M to 30M from the ground level. This claim according to the Advocate General is not permissible under the contract. However, he was not able to substantiate his argument as to how the Arbitrator has exceeding his jurisdiction in awarding the amount particularly when this work had to be done due to no fault of the contractor. The rate agreed under the contract alone has been granted by the Arbitrator.

4. The next claim related to Issues No. 27 and 28 with regard to the escalation awarded beyond the contractual period. The learned Advocate General contested this claim on the ground that there is no power for the Arbitrator to award this escalation. However, he admits that there was a clause in the contract that during the period of the contract the Arbitrator can award the escalation. In other words, he submits that though the contract provides for escalation during the contractual period in the absence of any express provision, the award of escalation in respect of the period beyond contract is illegal. We cannot agree with this submission. Once the contractual terms pertaining to escalation in the contract had to be extended in the circumstances beyond the control of the contractor, we fail to appreciate how this contention is sustainable. In the absence of an express prohibition of granting escalation it cannot be said that the award on that account is in exercise of excessive jurisdiction. On the other hand in this case admittedly there is a clause for escalation and therefore we find no reasons to set aside the award on this ground. We further find that the contractor is entitled to this amount by way of damages because the delay in completing the contract is mostly attributable to the acts and omissions on the part of the appellant. Therefore we find no reason to interfere.

5. The next item is Issue No. 29 with regard to extra expenditure, incurred during the course of the work. Admittedly there is a provisions in the contract for awarding extra payments for the work done in extra in the contract and we cannot interfere with the finding because it is solely of finding of fact.

6. Lastly, the learned Advocate General has contended that the interest awarded during the pre-reference period by the arbitration is illegal. We find no illegality in awarding such interest during the pre-reference period, particularly in view of the decision in State of Orissa Vs. Lal Chand Kapani, . Of course the awarding of interest during the pre-reference period has been continuing as a controversy, till recently when the Supreme Court, by its judgment in Jugal Kishore Prabhatilal Sharma and others Vs. Vijayendra Prabhatilal Sharma and another, , and in another decision in Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, , settled it forever. In the case of State of Orissa v. Lal Chand, (supra) the point has been made more clear by holding that if a demand is made for Interest before the reference, then in view of the provisions of the interest Act the contractor is entitled to interest. However, there is no interest awarded pendente lite in this case. The future interest which was awarded in this case has not been challenged before us also. All the challenge made against the award in this case were found to be unsustainable by the court below in detail and in that view we find no reason to interfere with the judgment of the court below.

7. The appeal is dismissed. In the circumstances of the case there will be no order as to costs.

8. By an interim order of this court, the amount awarded under the Award, excluding interest portion, has been deposited in this court which is lying in fixed deposit in the Bank of Baroda. Since we are dismissing the appeal of the State, the respondent is entitled to get the amount released with interest. The appellant is also directed to deposit the balance amount covered by interest portion within three months from the date of this judgment.

9. Appeal dismissed.