

(2010) 11 GUJ CK 0022

In the Gujarat High Court

Case No : Civil Revision Application No. 37 of 2003

State of Gujarat and Another

APPELLANT

Vs

Rajnikant A. Patel (Since Decd.) through His Heirs Patel
Ramilaben Rajnikantbhai and Others

RESPONDENT

Date of Decision : 30-11-2010

Acts Referred:

Arbitration Act, 1940 — Section 20, 8

Civil Procedure Code, 1908 (CPC) — Section 115

Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 — Section 12

Citation : (2011) 52 GLR 667

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : J.K. Shah, A.G.P. Nos. 1 and 2, for the Appellant; K.G. Sukhwani, for Opponent Nos. 1.2.1, 1.2.2, 1.2.3, 1.2.4 and 1.2.5, for the Respondent

Judgement

K.M. Thaker, J.—Present revision application is directed against the final award dated 30-6-1999 passed by the Gujarat Public Works Contracts Disputes Arbitral Tribunal (hereinafter referred to as "the Tribunal") in Arbitration Reference No. 19 of 1996 whereby the learned Tribunal has passed award in favour of the Respondent-claimant in the sum of Rs. 35,220/- with interest @ 12% from 1-1-1991 till realization. Aggrieved by the said award, the original opponent in the arbitration reference has preferred present revision application.

This revision application is preferred u/s 12 of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 (hereinafter referred to as "the Act").

2. The facts involved in and relevant for the purpose of present revision application, can be summarized thus:

2.1. The Respondent herein is in the business of executing contracts. One such contract was awarded to the Respondent herein by present applicant-Petitioner No. 2. It appears that during the execution of the contract, certain disputes arose between the contractor and the Principal i.e. present Petitioner and the

Respondents. In view of the differences and disputes between the parties, the Respondent herein (hereinafter referred to as "the contractor") raised diverse claims, in all 10 claims, and claimed Rs. 7,61,974/- along with interest at the rate of 20%. The formal demand, was however, not entertained. Hence, the contract or requested for appointment of Arbitrator in view of the arbitration clause under the contract. The said request was partly accepted and claim Nos. 3, 5, 6, 9, and 10 were referred to Sole Arbitrator, Mr. Nayak.

2.2. So far as present revision application is concerned, the said claims are not within the purview of the disputes in present revision application.

2.3. So far as the claims Nos. 1, 2, 4, 7 and 9A are concerned, the request for arbitration was not accepted by the Principal. Therefore, the contractor filed the Suit/Application No. 114 of 1991 under the provisions of Section 8 read with Section 20 of the Arbitration Act, 1940.

While the said Suit/Application was pending, the Act came into force, and that therefore, the matter came to be referred/transferred to the learned Tribunal.

Thereafter, the learned Tribunal considered the claims made by the contractor and also considered the defence by the opponents.

Having examined the material on record, the learned Tribunal found it reasonable and justified to allow, the claim Nos. 1 and 2. Accordingly, the learned Tribunal has partly allowed the said two claims and awarded total sum of Rs. 35,220/- against the said claims whereas the other claims have not been allowed.

The learned Tribunal has also partly allowed the claim for interest over the claim amount and awarded 12% interest per annum with effect from 1-1-1991 over the amount of Rs. 35,220/-. The said award dated 30-6-1999 is challenged by the original Defendants in present application.

3. I have heard Mr. J.K. Shah, learned A.G.P. for the Petitioner-applicant and Mr. Sukhwani, learned Counsel for the Respondent.

4. Mr. Shah, learned A.G.P. for the applicant has submitted that the learned Tribunal committed error in partly allowing the claim Nos. 1 and 2. He submitted that there is no justification in allowing any amount towards overheads and/or towards loss of profit.

5. As against the said contention, Mr. Sukhwani learned Counsel for the Respondent has relied upon Paragraph 6.7H and 6.7I of judgment in case of Chief Secretary Vs. Kothari and Associates, and judgment in the case of Dwaraka Das Vs. State of Madhya Pradesh and Another, so far as the claim with regard to the loss of profit is concerned.

I have considered the submissions of learned Counsel for the contesting parties with regard to the said two claims.

6. It deserves to be noted that present application is preferred u/s 12 of the Act

which reads thus:

12. Revision: (1) The High Court may, suo motu at any time or on an application made to it within three months from the date on which the award or interim award is made or reviewed under this Act, by any party aggrieved by the award or interim award so made or reviewed, call for the record of any case in which an award or interim award has been made or, as the case may be, reviewed and if the Tribunal appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.

(2) For the purpose of exercising its powers of revision under this Section, the High Court shall have the same powers as it has, and as far as may be, follow the same procedure as it follows, under the Code of Civil Procedure, 1908 while exercising its powers of revision u/s 115 of the Code, and for that purpose the Tribunal shall be deemed to be a Court subordinate to it.

7. It can be seen that the scope of entertaining a revision application u/s 12 of the Act is very limited. Mr. Shah, learned A.G.P. has not been able to make out any case and establish that the challenge against the award in respect of the said two claims would fall within any of the 3 categories mentioned u/s 12 of the Act. Besides this, on consideration of the material on record, I do not find any error in the decision of the learned Tribunal in partly allowing the said two claims to the tune of Rs. 35,220/-. Therefore, the objection and contention of the applicant-Petitioner against the said two claims fail and the same are not accepted.

8. Actually, Mr. Shah, learned A.G.P. has laid stress on the challenge so far as it relates to the award of interest @ 12%. He has, without prejudice to the contention that the award in respect of the two claims is not justified, submitted that even if the said part of the award is approved, the award allowing interest @ 12% is not justified and the awarded rate of interest is excessive.

9. Per contra, Mr. Sukhwani, learned Counsel has submitted that the keeping in focus the commercial rate of interest, the learned Tribunal has granted interest at reasonable rate.

10. I have considered the submissions by the contesting parties with regard to the award of interest. The contractor claimed interest @ 20% and learned Tribunal has, without discussing any reason in justification of awarding 12% of interest, awarded interest @ 12%. Ordinarily, when the claim for overhead and/or loss of profit is formulated, it usually contains the element of interest as well, and that therefore, in the facts of the present case award of interest @ 12% per annum appears on high side. Having regard to the nature of the claims and the award in my view if the award as regards the rate of interest is modified so as to

reduce it to the rate of 8%, it would serve interest of justice and will also balance the equity.

11. Hence, in the facts and circumstances of the case, the impugned award is partly modified and the rate of interest is fixed @ 8% per annum (instead of 12% per annum as awarded by the learned Tribunal) which shall be payable on the awarded amount with effect from 1-1-1991. However, if the amount is not paid within 3 months, from receipt of this order, then from 1-3-2011 total amount will carry interest @ 18% per annum.

12. With the aforesaid clarification and observation, the application is partly allowed. Rule is made absolute to the aforesaid extent. No cost.