

(2019) 06 UK CK 0014

In the Uttarakhand High Court

Case No : Appeal from Order No. 524 Of 2017

State Of Uttarakhand & Others

APPELLANT

Vs

Hillways Construction Company Private Limited

RESPONDENT

Date of Decision : 11-06-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 34, 37

Citation : (2019) 06 UK CK 0014

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : M.C. Pandey, V.D. Bisen, Siddhartha Sah

Final Decision : Partly Allowed

Judgement

Sudhanshu Dhulia, J

1. This is an appeal from order under Section 37 of the Arbitration and Conciliation Act, 1996 filed by the State against the order dated 15.06.2017 passed by the learned District Judge, Champawat, wherein the application of the State for setting aside the award has been dismissed and the award passed by the learned Arbitrator has been upheld.

2. Brief facts of the case are that a contract was executed between the contractor i.e. M/s Hillways Construction Company Private Limited and the Executive Engineer, Public Works Department, Champawat on 16.11.2011 for the construction of a motor road in District Champawat. Admittedly the motor road has to pass through a forest area, for which it was the duty of the State Authority i.e. Public Works Department to take clearance from the Forest Authorities. Admittedly this has not been done, which is clear from the letters dated 15.10.2013 and 07.12.2013 issued by the Superintending Engineer, Pithoragarh. In view of the fact that the road construction had to be made particularly in a forest area, for which clearance was not taken, the Forest Department rightly objected to the construction of the road and effectively the

construction was stalled on 25.06.2012. In other words, till 25.06.2012, the construction was not made. The total cost of the work was Rs.9,10,39,678.47/- (Rupees Nine Crore Ten Lakh Thirty Nine Thousand Six Hundred Seventy Eight and Forty Seven Paise Only). It was again an admitted fact that by the time the work was stopped, the contractor has already made a part of the construction of the road and payment of Rs.1,41,44,212.82/- (Rupees One Crore Forty One Lakh Forty Four Thousand Two Hundred Twelve and Eighty Two Paise Only) has been paid to him. Since the remaining amount was not paid to the contractor, he continuously made representations to the State Authorities for payment of his bills, when it was not made, the contractor ultimately resorted to arbitration as there was an arbitration clause in the agreement. This Court vide order dated 13.05.2015 had appointed Sri S.K. Jain (Retired), Judge of Allahabad High Court as the sole arbitrator in the matter.

3. Before the learned Arbitrator, the contractor had made the following claims:-

"(i) Rs.15,93,80,480.00/- for contractor's profit on contracted amount.

(ii) Rs.2,25,000.00/- towards profit on the security deposited by the claimant.

(iii) Rs.32,59,077.00/- towards interest on the above two claims.

(iv) Rs.2,00,000.00/- expenses incurred in getting the Arbitrator appointed &

(v) Rs.3,50,000.00/- expenses incurred in arbitral proceedings."

4. The main claim of the contractor was that the entire work was of Rs.9,10,39,678.47/- (Rupees Nine Crore Ten Lakh Thirty Nine Thousand Six Hundred Seventy Eight and Forty Seven Paise Only) and only part of work was done and it was not that he was not ready or willing to do the remaining construction work. He was always ready to do the construction work but was stopped by the State Authorities and had he been allowed to do the work, he would have got the remaining amount of Rs. 7,68,95,465.65/- (Rupees Seven Crore Sixty Eight Lakh Ninety Five Thousand Four Hundred Sixty Five and Sixty Five Paise Only). He has suffered loss due to the inaction on part of the State authorities, he would submit.

5. Learned Arbitrator came to the conclusion that the work was stalled not due to the fault of the contractor but because of the admitted fact that permission of clearance was not taken from the Forest Authority by the Public Works Department. In view of this, if the work was not completed by the contractor, no liability can be fixed upon the contractor. It is again an admitted fact that this work was given to another contractor and by now the work has been completed.

6. The contractor's claim was that the entire work was of Rs.9,10,39,678.47/- (Rupees Nine Crore Ten Lakh Thirty Nine Thousand Six Hundred Seventy Eight and Forty Seven Paise Only), out of which, he has been paid Rs.1,41,44,212.82/- (One Crore Forty One Lakh Forty Four Thousand Two Hundred Twelve and Eighty Two Paise Only) for the work done by him and he could not do the remaining

work amounting to Rs. 7,68,95,465.65/- (Rupees Seven Crore Sixty Eight Lakh Ninety Five Thousand Four Hundred Sixty Five and Sixty Five Paise Only).

7. The learned Arbitrator held that the cost of the remaining work which the contractor could not do comes to Rs.6,29,14,472/- (Rupees Six Crore Twenty Nine Lakh Fourteen Thousand Four Hundred Seventy Two Only), on which as per the provisions of the Standard Data Book for Analysis of Rates, Ministry of Transport & Highways, the contractor was held entitled for 10% overhead charges, which comes to Rs.62,91,447/- (Rupees Sixty Two Lakh Ninety One Thousand Four Hundred Forty Seven Only). Apart from this, the contractor was also held entitled for 10% contractor's profit of Rs.69,20,592/- (Sixty Nine Lakh Twenty Thousand Five Hundred Ninety Two Only). Thus, the total amount of Rs.1,32,12,039/- (Rupees One Crore Thirty Two Lakh Twelve Thousand Thirty Nine Only) was made by the learned Arbitrator. So far as interest is concerned, the learned Arbitrator awarded 15% pendente lite interest on the amount of Rs.1,32,12,039/- (Rupees One Crore Thirty Two Lakh Twelve Thousand Thirty Nine Only) from 07.07.2014 and thereafter 18% interest from 23.02.2015. The claimant was also awarded 15% interest per annum from 07.12.2014 to 22.02.2015 and thereafter from 23.02.2015 to 04.08.2015 at the rate of 18% interest per annum on the security deposit since the security amount was released on 04.08.2015.

8. Apart from the above, the learned Arbitrator has also awarded an amount of Rs.80,000/- (Rupees Eighty Thousand Only) to the claimant towards the expenses in getting the Arbitrator appointed and further an amount of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) towards the expenses incurred in arbitration proceedings. The total awarded amount is Rs.1,32,12,039/- (Rupees One Crore Thirty Two Lakh Twelve Thousand Thirty Nine Only).

9. The application under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the arbitration award has been dismissed by the court below. Under Section 34 of the Act, the court can set aside the arbitration award only on very limited ground, such as, where a party was under incapacity, or the arbitration agreement is not valid under the law to which the parties have subjected it, or 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 the arbitral award deals with a dispute not contemplated or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to the arbitration, or the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties. None of these grounds are available to the appellants. The only argument raised before this Court is that the amount awarded is on higher side. Although the learned Arbitrator was the best judge in this matter, but a bare perusal of the award shows that there has been an application of mind by the learned Arbitrator while calculating the

amount to be awarded. On this amount, 10% of the overhead charges as well as 10% of the contractor's profit seem to be improper. However, as far as the interest part of 15% from 07.12.2014 to 22.02.2015 and thereafter from 23.02.2015 at the rate of 18% is concerned, the same is very high. To that extent, an interference is called for in the award passed by the learned Arbitrator and the award is modified to the extent that on the amount of Rs.1,32,12,039/- (Rupees One Crore Thirty Two Lakh Twelve Thousand Thirty Nine Only) an interest of 7% from 07.07.2014 shall be paid within a period of three months from today. However, in case the amount is not paid within a period of three months from today, the rate of interest will be charged thereafter (i.e. after three months from today) at the rate of 11%.

10. It is made clear that the earnest money of Rupees Twenty Two Lakh which was deposited in a fixed deposit has already been returned to the contractor along with interest. The interest earned on the fixed deposit shall be deducted from the final amount. Apart from this, no amount shall be given to the contractor. The expenses of Rupees One Lakh Fifty Thousand towards the arbitration proceedings are not liable to be given as Rupees Eighty Thousand Only has already been fixed as an amount towards expenses in getting arbitrator appointed.

11. In view of the above, the appeal is partly allowed.