

(2006) 12 MAD CK 0094

In the Madras High Court

Case No : OSA No's. 312 and 313 of 2005 and CMP No's. 19971 and 19972 of 2005

Zonal General Manager, IRCON International Ltd. (A
Government of India Undertaking)

APPELLANT

Vs

Vinay Heavy Equipments and Hon'ble Mr. Justice G.
Ramanujam (Retd.) Sole Arbitrator

RESPONDENT

Date of Decision : 07-12-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 34(2), 34(3)

Citation : (2007) 1 LW 257 : (2007) 2 MLJ 344

Hon'ble Judges : S. Tamilvanan, J;P. Sathasivam, J

Bench : Division Bench

Advocate : V.T. Gopalan, Addl. Solicitor General assisted by V.G. Sureshkumar, for the Appellant; R. Murari, for R.1, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—M/s. Ircon International Limited (a Government of India Undertaking), Chennai, aggrieved by the Common Order, dated 09.09.2005, made in O.P. Nos. 107 & 108 of 2004 and Application Nos. 2651 & 2652 of 2004, filed for setting aside the award of the Arbitrator/second respondent, dated 06.10.2003, made under A.C. Nos. 1 and 2 of 2001, filed the above Original Second Appeals on various grounds.

2. Brief facts are narrated here-under:

The appellant herein - IRCON, being the successful tenderer, entered into a contract with SIPCOT (not a party to the present proceedings) for construction of Internal Road for the Industrial Complex at Irungattukottai, Sriperumpudur Taluk, Kanchipuram District, Tamil Nadu. The contract was entered into between them on 10.07.1997 for a value of Rs. 13,06,60,587/-.

The appellant in turn entered into a contract with the 1st respondent herein (the

claimant) in respect of C1 and C2 packages for laying of Roads including WBM (Water Bound Macadam). Open tenders were invited and on the basis of the said tenders, the said contract was finalised. C1 package was awarded to the 1st respondent on 28.7.1997 (date of agreement being 13.5.1998) for a contract sum of Rs. 3,20,64,752/- and C2 package was on 29.12.1997 for Rs. 1,67,01,821/-. The total value of the said two contracts (C1 and C2 packages) is Rs. 4,87,66,573/-.

The 1st respondent had only done 67% (approx.) of the work and subsequently abandoned both the works. This forced the appellant to cancel the contract under C1 and C2 packages and have the work completed through other agencies. The value of 67% of C1 and C2 packages comes to Rs. 3.23 crores approximately, out of which, the 1st respondent was paid a sum of Rs. 2.62 crores. The balance amount of Rs. 61 lakhs is due to be paid by the appellant. Consequent to the disputes raised by it, the 1st respondent resorted to arbitration. The 2nd respondent herein was appointed as the sole arbitrator. The appellant also raised their claims against SIPCOT in respect of C1 and C2 packages awarded to the 1st respondent by the appellant and the said matter was also referred to arbitration. The same learned Arbitrator was appointed to arbitrate the dispute between the appellant and SIPCOT.

The learned Arbitrator/the 2nd respondent herein passed a common award in respect of C1 and C2 packages awarding a sum of Rs. 7,87,21,820/- for C1 package and a sum of Rs. 1,38,78,139/- for C2 package, and the said amounts carry interest @ 12% per annum from 4.3.2000 till the date of payment. Therefore, the total amount, as per the award, payable by the appellant to the 1st respondent comes to Rs. 9,25,99,959/-, besides interest. The award includes a sum of Rs. 61.50 lakhs being the balance amount admitted to be payable by the appellant in respect of the 67% of the work done by the contractor.

The appellant filed two petitions challenging the common award dated 06.10.2003 in respect of both the sub-contracts viz., C-1 & C-2, u/s 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the Act") passed by the 2nd respondent, in OP Nos. 107 and 108 of 2004. The 1st respondent herein filed two applications in the said original petitions viz., Application Nos. 2651 & 2652 of 2004, contending that while IRCON was objecting to the Award in favour of VHE, it had, in fact, pressed the claims of VHE as their own in their arbitration against SIPCOT. By common order dated 9.9.2005, the learned single Judge, after considering the rival contentions, dismissed O.P. Nos. 107 & 108 of 2004 and allowed Application Nos. 2651 and 2652 of 2004. Questioning the said common order, IRCON has filed the above appeals.

3. Heard Mr. V.T. Gopalan, learned Additional Solicitor General for appellant in both the appeals and Mr. R. Murari, learned Counsel for the first respondent.

4. Arguments advanced by the learned Additional Solicitor General:

a. None of the vital issues except one raised by appellant IRCON in Original

Petition Nos. 107 and 108/2004 filed to set aside the arbitral award dated 06.10.2003 has been decided by the learned judge, which greatly prejudiced the appellant.

b. Though the Original Petitions of IRCON was confined to the four corners of Section 34 of the Act, the learned Judge failed to decide the specific objections raised and erred in allowing Application Nos. 2651 and 2652 of 2004 filed by VHE.

c. The learned Judge committed an error in deciding the matter without clubbing the petition filed by SIPCOT against IRCON, challenging the arbitral award dated 03.09.2004 made by the 2nd respondent/Arbitrator, which is pending consideration in this Court, because, the learned Arbitrator while passing the Award dated 03.09.2004 has heavily relied on his Award dated 06.10.2003 made in the arbitration between VHE and the appellant. The learned Judge failed to consider the position that if those two awards are not clubbed together for consideration, it will lead to a very untenable proposition.

d. The learned Judge also failed to appreciate that once it is upheld that the payment clause is not on back to back basis and the appellant cannot wait for the amounts to be paid by SIPCOT before making payment to sub-contractor VHE, it becomes obvious that the sub-contractor VHE has to prove/establish their claims independent of the contract of the appellant in transmitting the same to SIPCOT.

e. In law, there could be no estoppel against the appellant from taking different stand in their claims in arbitration against SIPCOT and in their defence in arbitration against the claims of VHE.

5. Reply by the learned Counsel for the first respondent:

i. In view of the grounds/recourse available against Arbitral awards u/s 34 of the Act, as explained and interpreted by the Supreme Court in Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., , it is apparent that none of such circumstances arises in the present cases, therefore, the award cannot be set aside. In many decisions, the Supreme Court has repeatedly held that interpretation of the contract by an Arbitrator is final and the same cannot be re-agitated before court in a proceeding to set aside an award.

ii. Inasmuch as both C1 and C2 packages are between VHE and IRCON, there is no need to club the dispute between IRCON and SIPCOT and the learned Judge is perfectly right in rejecting the said request.

iii. In view of admission of liability by IRCON by forwarding all the claims of VHE to SIPCOT, the award of the Arbitrator cannot be faulted with, which was rightly affirmed by the learned Judge.

iv. Inasmuch as the learned Arbitrator, only after considering various clauses in the contract and based on relevant materials/documents passed the award, which has been rightly confirmed by the learned Judge, in the absence of any

acceptable contra material, the same cannot be interfered so lightly by this Court as an appellate court. For each and every claim, VHE placed relevant materials and, only after analysing the same, the Arbitrator rightly passed the award. Thus, there is no ground for interference either in the award of the Arbitrator or the order passed by the learned Judge, confirming the same.

6. In view of the fact that all the issues raised above are interconnected, let us decide the same in a cumulative manner.

7. Before going into the merits of the claim made by both the parties, it is useful to refer to Section 34 of the Act, which is a provision relating to "Recourse against Arbitral Award".

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 sub-section(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 his 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.

...

8. Pausing here, we make the position clear that in a petition filed u/s 34 of the Act, Courts' jurisdiction to set aside the award will be circumscribed by the provisions of the said Section. The scope and interference by Courts u/s 34 have been explained by the Supreme Court in various decisions. We hereunder refer some decisions on this aspect.

A. In *Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd.*, , the position has been explained in a vivid manner.

31. Therefore, in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term "public policy", in *Renusagar* case it is required to held that the award could be set aside if it is patently illegal. The result would be - award could be set aside if it is contrary to:

- (a) fundamental policy of Indian law; or
- (b) the interest of India; or
- (c) justice or morality; or
- (d) in addition, if it is patently illegal.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.

B. In *Pure Helium India Pvt. Ltd. Vs. Oil and Natural Gas Commission*, , the Supreme Court has held that the conduct of the parties would also be relevant factor in the matter of construction of contract. Their Lordships further held that it is well established that in construing a contract it would be legitimate to take into account the surrounding circumstances.

C. In *Sudarsan Trading Co. Vs. Government of Kerala and Another*, . Their Lordships have held as follows:

29. ...The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the Court to take upon itself the task of being a judge on the evidence before the arbitrator....

In the penultimate paragraph, it was held,

36. In the light of the above, the High Court, in our opinion, had no jurisdiction

to examine the different items awarded clause by clause by the arbitrator and to hold that under the contract these were not sustainable in the facts found by the arbitrator.

9. Let us consider whether the circumstances as pointed out by the Honourable Supreme Court are present in the case on hand to set aside the Award.

10. The main contention of the appellant before the learned single Judge as well as this Court is that the contract entered into by the appellant with the 1st respondent and the one entered into with SIPCOT are on a back to back basis. It is the grievance of the appellant that though the said contention was accepted by both the Arbitrator and the learned single Judge, the scope of the condition regarding back-to-back principle had not been considered in a proper perspective. It is their claim that the back to back principle is only with regard to the quality, quantum and specification of the work, which is the subject matter of both the sub-contract and the main contract. It is also their apprehension that if the present award as upheld is implemented, it would result in the appellant being held liable to pay the sum awarded in the Award impugned in the present proceeding, which has been confirmed by the learned Judge. While on the other hand, the award in favour of the appellant against SIPCOT, which has been made placing heavy reliance on the award impugned in the present proceeding, will still be under challenge in the original petition filed by SIPCOT which may result in conflict of decisions in respect of the same works. It is pointed out by the appellant that if SIPCOT refuses to entertain the claims made by the appellant, then the appellant also cannot pay for the claims to the first respondent that were rejected by SIPCOT for the simple reason that in terms of the work done, the contracts are back to back.

11. Though it was argued before us that, at no point of time, the appellant had forwarded the claim of the first respondent to SIPCOT, as rightly pointed out by the counsel for the first respondent, the appellant by letter dated 03.05.2000 (Ex.C.38) have informed the first respondent as follows:

Also we are pursuing the matter with the clients and if approved the same may be considered on back to back basis.

The claim of the appellant that they had no obligation to pay the first respondent until they receive payment from SIPCOT has been considered by the Arbitrator as well as the learned Judge. A perusal of the award clearly shows that the appellant had no objections to an award being passed in favour of the first respondent provided a similar award being passed in their favour in their arbitration against SIPCOT. As rightly pointed out by the first respondent, such an award having been passed, the appellant cannot at all seriously question the present Award in view of the stand taken by them. It is also relevant to note that the appellant amended the statement of claim against SIPCOT to include the amount awarded in favour of the first respondent, vigorously pursued such claims and have since secured an award in their favour. As rightly pointed out by

the first respondent, the appellant not only had no objection to the first respondent's claim being awarded but have actually accepted the validity and tenability of the award by making similar claims against SIPCOT. Learned Counsel appearing for the first respondent contended that the appellant had taken a divergent stand in the petition filed by them u/s 34 of the Act as against the stand taken by them in their arbitration against SIPCOT. In view of the said objection, we verified the copies of appellant's amendment petition and a statement showing the divergent stand. The learned Judge, in his order, adverted to this aspect.

12. It is next contended that both the learned Arbitrator and the learned single Judge had totally failed to consider the claims submitted by the first respondent against the appellant with reference to various relevant clauses in the contract pertaining to such claims. It is the stand of the appellant that the claim made by the first respondent against the appellant should have been considered item-wise with reference to the relevant terms of the contract and the learned Arbitrator should have considered and given a finding as to whether the claims are tenable in terms of the contract or not. It is argued that such exercise, which is mandatory, ought to have been done by the learned Arbitrator and, not having done so, the same constitutes legal misconduct.

13. In Hindustan Zinc Ltd. Vs. Friends Coal Carbonisation, , the Hon''ble Supreme court pointed out the principles in Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., and held that it is open to the court to consider whether the award is against the specific terms of contract and, if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India. It is clear that if the Award is contrary to the terms of the agreement or opposed to public policy, the Court is competent to go into the same and interfere therewith. We have already referred to the fact that the appellant forwarded all the claims of the first respondent to SIPCOT with a request to settle the same at an early date. It is also not in dispute that, in view of the stand taken by SIPCOT rejecting the request, the claim was referred to the very same Arbitrator and, in fact, an Award was passed. In this regard, as rightly pointed out by the learned Counsel for the first respondent, before the Arbitrator, the appellant had no objection to an award being passed in favour of the first respondent provided a similar award being passed in their favour in their arbitration against SIPCOT. Inasmuch as such an award having been passed, the appellant is bound to honour the award passed in favour of the first respondent and it is not fair on their part to challenge the same particularly in view of the stand taken by them. We have already pointed out that, pursuant to the Award in favour of the first respondent, the appellant amended the statement of claim against SIPCOT to include the amount awarded in favour of the first respondent, vigorously pursued such claims and have since secured an award in their favour. Though Mr. V.T. Gopalan, learned Additional Solicitor General, heavily contended that there is no estoppel against the appellant taking a different stand before the learned single Judge and this Court, as rightly pointed out, after amending their claim petition against

SIPCOT and getting an Award, the appellant cannot be permitted to ignore such material circumstances. No doubt, learned Additional Solicitor General raised a plea that SIPCOT has filed a petition before this Court challenging the Award of the Arbitrator passed in favour of the appellant. Similar contention was raised before the learned Judge, who, after finding that there is no specific assertion as to the filing of application by the SIPCOT for setting aside the Award except a statement across the bar, rejected the said contention. It is not in dispute that the Award in favour of the appellant against SIPCOT has been passed by the Arbitrator on 03.09.2004. Even before us, though such a stand was taken by the appellant, the fact remains that even after 2 years and 2 months absolutely there is no information about the petition said to have been filed against the Award against SIPCOT. In such circumstances, we have no other option except to hold that the appellant has not placed any material as to the steps taken by SIPCOT. Even otherwise, as rightly pointed out by the first respondent, they executed the work as a sub contractor under the appellant and, based on the terms of the contract, they laid a claim before the Arbitrator and adduced relevant materials to substantiate their stand. Further, it is not in dispute that the entire work awarded to the appellant by SIPCOT has not been awarded and transferred to the first respondent. The first respondent is only a sub contractor under the appellant, hence, it could not be said that all the terms of the entire contract with SIPCOT would apply to C1 and C2 contracts. It is relevant to point out that the rates and payment clauses under C1 and C2 packages are different and independent of the agreement entered into by the appellant with SIPCOT. In those circumstances, the stand of the appellant that it would meet the claims of the first respondent only if SIPCOT accepts their claims is unreasonable and untenable. As rightly pointed out by the learned Judge, the appellant, having extracted the work relating to both scheduled and non-scheduled items, as discussed by the Arbitrator, cannot evade/shirk the liability to pay the sum on the ground that C1 and C2 contracts are on back to back basis. The above objection taken before the Arbitrator was considered at length and rightly rejected.

14. As pointed out in (2006) 4 SCC 445 (cited supra), though this Court can go into the question as to whether the Award is against the specific terms of contract or not, in view of the fact that in respect of the claim made against SIPCOT, the appellant secured an Award, we are of the view that there is no need to go into other aspects, viz., the materials placed by both the parties before the Arbitrator, analysis and the ultimate conclusion by the Arbitrator. That is the reason the learned Judge has not gone into each and every aspect, the merits of the claim and the ultimate conclusion of the Arbitrator. However, in view of the elaborate argument by the learned Additional Solicitor General for the appellant as well the learned Counsel for the first respondent, we have verified each claim of the first respondent, documents produced in support of the same, analysis and discussion of the Arbitrator and his final conclusion. It is not the case of the appellant that the first respondent VHE has not placed any material, on the other hand, we find that the first respondent has placed all the relevant materials in

support of their claim and, after satisfaction, the Arbitrator has accepted their claims.

15. In order to substantiate the above conclusion, we intend to refer few instances to show that no valid ground/circumstance as pointed out by the Supreme Court in Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., is present here for interference.

16. The first respondent, VHE has made 25 claims in C1 package and 15 claims in C2 package. In support of their claims, they produced and marked 146 documents, whereas IRCON produced 87 documents in support of their defence. Though the appellant very much emphasised the "back to back" basis contract, admittedly, the same is not defined in the contract agreements. A close reading of various clauses/conditions in the contract between IRCON and SIPCOT as well as IRCON and VHE indicates that "conditions" imposed on IRCON by SIPCOT in the contract between them alone will be applicable to the agreements C1 and C2 entered into between the VHE and IRCON and not the rates and payment clauses referred to therein. It is not in dispute that the entire work awarded to IRCON by SIPCOT has not been awarded or transferred to VHE. The VHE, being a sub-contractor under IRCON, cannot say that all the terms of contract with SIPCOT will apply to the contracts C1 and C2. In other words, "Back to back" basis will apply to conditions regarding technical specifications, the quality and quantum of work and the manner and method of work to be done by IRCON under its contract with SIPCOT. As rightly observed by the Arbitrator, if the term "Back to back" is understood, to mean the entire terms of contract with SIPCOT including payment conditions, it will lead to the absurd result of the entire contract amount being paid to VHE instead of IRCON, the contracting party with SIPCOT. As rightly concluded by the Arbitrator and accepted by the learned single Judge, in the context of IRCON taking up the entire work from SIPCOT and sub-contracting some portions of the work alone to VHE, "back to back" basis can only mean that the VHE is bound by the various conditions such as technical specifications stipulated by SIPCOT to IRCON, while the rates of payment clauses under C1 and C2 packages are different and independent of the agreement entered by SIPCOT with IRCON. In such circumstances, the contention of the learned Counsel for the appellant that IRCON will meet the claims of VHE only if their claims are accepted by SIPCOT is unreasonable and untenable. We are satisfied that the term "Back to back" basis cannot be understood in the manner as suggested by IRCON.

17. The materials, viz., various communications prior to the arbitration proceedings and before the Arbitrator, show that IRCON have no objection for an award of reasonable amount subject to the same amount being awarded against SIPCOT with further direction to make payment to VHE only after realisation of the amount from SIPCOT by deducting marginal profit of 10% as mentioned in the letter by VHE dated 02.03.1998 (Ex.R.3). As rightly pointed out by the learned Counsel for the first respondent, having taken such stand, IRCON is not

permitted to deny their liability to pay the contractual amount to VHE.

18. As said earlier, IRCON entered into two contracts, i.e., C1 and C2 with VHE and extracted work from them. As rightly observed by the Arbitrator, IRCON is an employer under the said contracts and it is the primary liability of IRCON to pay for the work done under the contracts. As per the terms of contract IRCON is primarily liable to pay VHE for the various items of work both scheduled and non-scheduled and it has to work out its rights as against SIPCOT as per the terms of its contract with SIPCOT.

19. VHE has placed relevant materials to show that all non-scheduled items have been done on the specific instructions of IRCON/SIPCOT/RITES. Hence, the liability to pay for non-scheduled items cannot be avoided by IRCON. Regarding large sizes of boulders, in the alignment portion of all the roads and stacked at the edge of the road, it is pointed out that the terms of contract enables only to inspect the site and not the investigation even prior to the execution. Before the Arbitrator, it was demonstrated from the site orders of the IRCON that the large sizes of boulders were excavated and stacked at the edge of the road first and restacked next as instructed. VHE has placed materials to show that large size and giant size of boulders ranging the size from 0.90 meter to 1.80 meter in all directions were removed by mechanical means by utilising poclain and bull dozer, since they could not be removed manually. It was explained by VHE that they inspected the site before tendering and quoting their rates and during the inspection of site, it was a plain terrain. Moreover during excavation of earth, the large sizes of boulders were encountered. It is their claim that RITES which prepared the estimate had obviously not properly investigated and conducted field tests while preparing the estimate, and therefore the learned Arbitrator rightly analysed this aspect and fixed proper amounts for the same. Therefore, the ultimate conclusion of the Arbitrator is not arbitrary, and cannot be faulted with considering the materials placed before him. The rate for removal of large size boulders claimed and awarded by the Arbitrator at Rs. 184.00 per cum is quite reasonable and maintainable. We are also satisfied that the Arbitrator has rightly analysed and awarded a rate of Rs. 217.30 per cum for loading utilising poclains, transportation through tippers and unloading and stacking through bulldozers. Hence the rate awarded is reasonable and acceptable. It is relevant to point out that the Arbitrator has not awarded any amount for C2 package, for which according to VHE, a substantial amount has been expended, but the said decision has not been challenged by VHE.

20. Regarding idle charges, the perusal of the award and the stand of the IRCON shows that it has accepted that such idle charges would be payable, since the entire equipment which had been mobilised was not attributable to VHE and that the appellant/IRCON would subsequently make a claim on SIPCOT for idle charges. In those circumstances, as rightly pointed out by the respondent, the appellant cannot contend that such idle charges are not payable. Therefore, the award passed by the Arbitrator in this regard cannot be questioned.

21. The loss of profit and over heads, which has been claimed for the prolongation of contract period beyond six months is based on "Hudson's formula" which has been accepted by the Courts as representing a logical method of calculating loss of profit. The respondent has brought to our notice that the loss of profit and over heads has not been claimed for the contract period of six months. Considering the fact that the contract was prolonged for no fault of VHE and on the other hand, VHE was compelled to retain its infrastructure at the site during the prolonged period, the Arbitrator allowed the loss of profit for C1 and C2 packages. The respondent has also placed relevant materials in the form of letters to show that the prolongation of contract was due to the fault of the appellant/IRCON. In those circumstances, granting amount towards loss of profit and over heads by the Arbitrator cannot be faulted with.

22. Apart from these factual details, it is brought to our notice and also not disputed that the Arbitrator visited the place of site and took note of all the relevant aspects. Though the learned single Judge has not adverted to all the factual details, our analysis amply shows that the Arbitrator has, after thorough examination of the claims in C1 and C2 packages and the stand taken by the appellant/IRCON in the arbitration proceedings against SIPCOT, passed the award, which is quite reasonable and acceptable. We are also satisfied that VHE had carried out work and also substantial portion of additional work as pointed out earlier and expended huge amount in carrying out such works. As said earlier, the appellant/IRCON accepted the same and made a claim against SIPCOT for such amount. The appellant, therefore, cannot contend that VHE's claim or in fact the award is unconscionable. If that be so, as rightly pointed out, the claim of IRCON against SIPCOT would also be unconscionable. On the contrary, the appellant/IRCON made such claim against SIPCOT, because it genuinely believed that the claim of VHE was payable. In the light of all these factual details, reasonings and ultimate conclusion of the Arbitrator as well as the learned single Judge, we are of the view that the appellant cannot contend that the award is unconscionable. The circumstances under which an award can be set aside, as rightly pointed out by the Supreme court in the case of Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., do not arise in the present case and therefore the award cannot be set aside. Further, in view of the fact that the contract in question has been properly interpreted, it cannot be reagitated before this Court in any proceedings to set aside the award.

Under these circumstances, we are satisfied that both the appeals of IRCON are liable to be dismissed; accordingly, dismissed. No costs. Consequently, connected miscellaneous petitions are closed.