
(2003) 02 JH CK 0006

Jharkhand High Court

Case No: Appeal From Original Order No. 90 of 1995

Central Coal Field Ltd.

APPELLANT

Vs

K. Nandi

RESPONDENT

Date of Decision: Feb. 14, 2003

Acts Referred:

- Arbitration Act, 1940 - Section 30, 39

Citation: (2003) 2 JCR 414

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: Devi Prasad and Suresh Prasad, for the Appellant; M.M. Banerjee, S. Choudhary and C.S. Singh, for the Respondent

Final Decision: Allowed

Judgement

M.Y. Eqbal, J.

This appeal u/s 39(1)(vi) of the Arbitration Act, 1940 (hereinafter referred to as the said Act) has been filed against the judgment and decree dated 25.2.1995 passed by Sub-Judge, Vth, Ranchi, in Misc. Case No. 33/1992 whereby he has rejected the application filed u/s 30 of the said Act and made the award rule of the Court.

2. It appears that an agreement was executed on 10th October, 1984 between the appellant, Central Coal Fields Ltd. and respondent, M/s. K. Nandi for construction of 10 numbers of RCC Overhead Tanks in different collieries of Hazaribagh Area. The respondent agreed to execute the work subject to the conditions set-forth in the agreement. The appellant's case is that the sites of construction of 10 Nos. of RCC Overhead Tanks having 90,000 Ltrs. capacity were handed over to the respondent and the construction work was to be completed within a period of 12 months. It is alleged that the respondent failed to take the work of construction simultaneously and only 7 Nos. of RCC Overhead Tanks could be constructed. The respondent was given extension of time provisionally but he left the work of construction of 3 Nos. of

RCC Overhead Tanks. Ultimately the contract was terminated and the respondent laid claim for payment of money for the work done by him which gave rise to dispute and differences. The matter was ultimately referred to the arbitrator who gave the award in favour of the respondent.

The appellant challenged the award by filing an application u/s 30 of the said Act. The learned Sub-Judge, after hearing the parties, came to the finding that the arbitrator has given a reasoned award and there is nothing to show that the arbitrator has mis-conducted himself or committed any error of law or any error of fact. The Court below came to the following conclusion :--

"A perusal of the award dated 9.6.1992 rendered by the arbitrator goes to indicate that the arbitrator after having given his anxious thought and deep consideration to the statement, counter statements, depositions and the arguments advanced on behalf of the parties and also keeping in view all the matters related to the reference submitted to be during the arbitration proceedings passed the award giving his cogent reasoning. There is nothing on the record showing misconduct on the part of the arbitrator. There is also no error having been committed on the face of the record. Therefore I concur with the reasoning of the arbitrator in his award."

3. Mr. Devi Prasad, learned counsel appearing on behalf of the appellant assailed the impugned award mainly on the ground that the arbitrator has committed serious legal misconduct inasmuch as he failed to take into consideration that as per the agreement the construction work of 10 Nos. of RCC Overhead Tanks was allotted to the respondent on total estimated cost of Rs. 14,29,839-56 P. and although the appellant paid more than Rs. 10 lacs as against the construction of 7 Overhead Tanks but the arbitrator awarded further amount of Rs. 3 lacs. Learned counsel submitted that in no case the contractor can be paid more than the amount fixed in the contract. Learned counsel further submitted that there was no clause in the agreement for grant of interest but the arbitrator has awarded 18% interest on the awarded amount from March, 1987.

4. From perusal of the award passed by the arbitrator it appears that the arbitrator has come to the conclusion after considering the material evidence that although the respondent had given a lumpsum offer but after negotiation it was agreed that the cost of construction shall be on the basis of item-wise percentage below or above. Consequently the arbitrator has come to the conclusion that some more amount is payable to the contractor. The Court below rightly held that when the arbitrator has considered entire documents and gave his award, there is no scope of interference unless misconduct on the part of the arbitrator is proved.

5. It is well settled that appraisal of evidence by the arbitrator is never a matter which the Court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisal of the evidence. 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 this connection, reference may be made to a decision of the Supreme Court in the case of [Sudarsan Trading Co. Vs. Government of Kerala and Another,](#) .

6. So far the award of interest at the rate of 18% on the awarded amount from March, 1987 is concerned, from the award it appears that the arbitrator has given disproportionately high amount of interest. It is well settled that even if the agreement is silent with regard to payment of interest, the arbitrator has power to grant interest pendente lite but the rate of interest must be reasonable and proportionate. In the instant case, the arbitrator ought not to have awarded exorbitant interest at the rate of 18%. This part of the award is, therefore, liable to be modified. In my opinion, 9% interest would be reasonable.

7. For the aforesaid reasons, this appeal is allowed in part and the impugned award of interest is modified by reducing the rate of interest from 18% to 9%.