

(2012) 07 JH CK 0045

Jharkhand High Court

Case No: Arbitration Appeal No"s. 19 and 18 of 2007

The Indian Builders, Jamshedpur

APPELLANT

Vs

The State of Jharkhand
 The
State of Jharkhand Vs The Indian
Builders, Jamshedpur

RESPONDENT

Date of Decision: July 20, 2012

Hon'ble Judges: R.K. Merathia, J

Bench: Single Bench

Advocate: M.S. Mittal, for the Appellant; V.K. Prasad, Advocate for the State, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.K. Merathia

1. Arbitration Appeal No. 19 of 2007 has been filed on behalf of the Indian Builders (herein-after to be referred as "contractor") against the judgment dated 14.06.2007 passed by the learned Sub-Judge-1, Jamshedpur in Misc. Arbitration Case No. 11 of 2004 whereby sub-claims so far as the claim no. 3 on account of under utilized overheads, claim no. 4 on account of loss due to under utilized tools, plants and machineries has been disallowed.

Arbitration Appeal No. 18 of 2007 has been filed by the State of Jharkhand against the self same judgment contending inter-alia that the contractor was not entitled to the awarded amounts and the counter-claim has not been considered.

As both the appeals arise out of the same judgment and Award, they were heard together and are being disposed of by this common judgment.

It may be noted that in both these appeals only the aforesaid judgment passed by the learned Sub-Judge has been challenged by the parties and not the Award.

2. Mr. Mittal, learned senior counsel appearing for the contractor in both the appeals, submitted that the learned Sub-Judge has wrongly disallowed the claims under the said heads on the ground that they were exorbitant. He further submitted that the judgment relied by the learned court below has been set aside by the Supreme Court in the case reported in [(2009) 16 SCC 705 (Bharat Drilling and Foundation Treatment Private Limited vs. State of Jharkhand & others)] in which the Supreme Court accepted that similar clauses were only bar for department and not for the Arbitrator. In other words, he submitted that such claims could at best be rejected by the department but when all the disputes were referred to the Arbitrator, the Arbitrator was justified to consider and pass Award on such claims. He further submitted that the Arbitrator has passed a detailed and reasoned Award after considering and dealing with each and every claim and counter-claim of the parties. Mr. Mittal further submitted that the said claims were not objected by the State before the Arbitrator and therefore, the court could not consider such issues not raised before the Arbitrator. In support of this submission, he relied on paragraph-23 of [MSK Projects \(I\) \(JV\) Ltd. Vs. State of Rajasthan and Another](#), in which it was inter-alia observed that the court fell in error considering the issue which was not taken by the State before the Tribunal during the arbitration proceeding. He lastly submitted that the scope of interference by the court in such matters is very limited. In support of this submission, he relied on [M/s. Ispat Engineering and Foundry Works, B.S. City, Bokaro Vs. M/s. steel Authority of India Ltd., B.S. City, Bokaro](#),

3. On the other hand, Mr. V.K. Prasad, learned counsel appearing for the State in both these appeals, submitted that the Arbitrator misconducted himself inasmuch as in spite of the order passed by this court in Civil Revision No. 298 of 2003, he did not refund the amount received by him towards arbitration fees to the parties. He further submitted that only because the Supreme Court has set aside the judgment of the High Court, the claims of the contractor cannot be automatically allowed. He further submitted that the counterclaim has not been properly considered by the learned Sub-Judge. He further submitted that the claim of the petitioner is time barred.

4. It appears that against the claim no. 3 on account of under utilized overheads to the tune of Rs. 1,97,55,000/=, the Arbitrator awarded a sum of Rs. 49,24,000/=-; against the claim no. 4 on account of loss due to under utilized tools, plants and machineries to the tune of Rs. 1,21,27,000/=, the Arbitrator allowed the claim of Rs. 37,50,000/-. The Arbitrator has given good reasons for allowing the said claims to the extent indicated above. Learned Sub-Judge disallowed these claims on the ground that they were exorbitant.

5. Learned Sub Judge also relied on the judgment in the case of Bharat Drilling & Foundation Treatment (P) Ltd, which has been set aside by the Supreme Court in [(2009) 16 SCC 705 (Bharat Drilling and Foundation Treatment Private Limited vs.

State of Jharkhand & others)].

6. Thus, there is no difficulty in holding that the impugned judgment, so far as the rejection of the said claims is concerned, has to be set aside.

So far as the conduct of the Arbitrator is concerned, Mr. Mittal appearing for the contractor, on instruction from his client who is said to be present in the court, submitted that after the order was passed by this court in Civil Revision No. 298 of 2008, the part of the fees paid by the contractor, was returned to him by the Arbitrator through bank transaction.

So far as counter-claim of the State is concerned, it appears that the learned Arbitrator considered each and every claim in detail and with a reasoned order, allowed the counter-claim to the extent of Rs. 42,75,373. Learned Sub-Judge after considering the submission made by the parties with regard to the counter-claim, did not disturb the said amount awarded by the Arbitrator and directed the State to adjust the said amount from the amount awarded to the contractor.

In the result, the impugned judgment is modified to the extent that the amount awarded by the Arbitrator against claim nos. 3 and 4 stands allowed in favour of the contractor-Indian Builders.

With these findings, the Arbitration Appeal No. 19 of 2007 is allowed and Arbitration Appeal No. 18 of 2007 is dismissed.