

(2002) 07 JH CK 0012

Jharkhand High Court

Case No: Arbitration Appeal No. 4 of 2001

R.S. Enterprises

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: July 30, 2002

Acts Referred:

- Arbitration Act, 1940 - Section 39

Hon'ble Judges: Gurusharan Sharma, J

Bench: Single Bench

Advocate: G.N. Chandra, for the Appellant; P. Modi, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Gurusharan Sharma, J.

In respect of Work Contract No. ACE/Survey/1172 dated 16.8.1985 the contractor raised certain disputes which was adjudicated by Board of Arbitrators and ultimately Umpire gave an award dated 28.12.1990 that the quantities executed by the contractor were recorded in the Measurement Book. Final bills were prepared based on documents and payment was made to the contractor accordingly. So contractor's claim on account of actual work done was not acceptable. Contractor's claim of loss due to maintenance of establishment for twenty one months was also not tenable in view of Clause 17(iii) of general conditions of contract which was applicable in the contract in question. In the event of any failure or delay by railways to hand over possession of land for execution of work, the contractor was not entitled to damage or compensation if the railways granted such extension of completion date as was considered reasonable.

2. In the present case, railways had given reasonable extension of date for completion of work as per instruction to tenderers contained in paragraph 14 attached with final contract agreement. Railway Administration shall not be

responsible for any loss or damage to the contractor's materials, equipments, tools and plants due to fire, floods or any other causes whatsoever. So the contractor's claim on account of goods taken away by trouble makers as well as on account of Shuttering Boards were not tenable. Claim of loss due to advance purchase of material and advance payment to labourers were not covered by general conditions of contract or the contract agreement and hence contractor's claim in this regard was rejected.

3. It was also found that the contractor had completed the work worth Rs. 50,000/- only, when the contract value was approximately Rs. 13.7 lakhs and as such its claim for approximately Rs. 10,00,000/- was imaginary and unreasonable.

4. Contractor filed objection under Sections 30 and 33 of the Arbitration Act, 1940 to the aforesaid award which was registered as Misc. Case No. 9 of 1993 at Tenughat. By order dated 12.12.1996 the objection was rejected and award was made Rule of Court. Contractor's review petition vide Misc. (Review) Case No. 1 of 1997 under Order XLVII. Rule 1 of CPC was also dismissed. Contractor thereafter filed an appeal No. 25 of 2001 purporting to be u/s 39 of the said Act, which was converted into C.R. No. 214 of 2001 and on 2.8.2001 it was dismissed on merit. Thereby order dated 12.12.1996 making the award in question rule of Court was approved by this Court.

5. Now the contractor has again filed the present Arbitration Appeal, purporting to be u/s 39 of the said Act which according to the Stamp Report is barred by time. Limitation expired on 12.3.1997 and the appeal was filed on 15.10.2001. A separate petition (flag "A") u/s 5 of Limitation Act has been filed to condone the delay. In my opinion, there is no occasion to interfere with the award dated 28.12.1990 and under dated 12.12.1996 passed in Misc. Case No. 9 of 1993 making the award rule of Court in this appeal. It is not only hopelessly barred by time for about 4-1/2 years, but also barred by res judicata in view of the fact that earlier this Court on 2.8.2001 had already dismissed contractor's application against order dated 12.12.1996 on merit.

6. This appeal is accordingly dismissed.