(2001) 08 JH CK 0019

Jharkhand High Court

Case No: Appeal from Original Order No. 190 of 1995 (R)

State of Bihar and Others		APPELLANT
	Vs	
Ranjit Kumar Mitra		RESPONDENT

Date of Decision: Aug. 8, 2001

Acts Referred:

- Arbitration Act, 1940 - Section 30

Hon'ble Judges: Gurusharan Sharma, J

Bench: Single Bench

Advocate: B.B. Sinha, G.A, for the Appellant; D.K. Chakraverty, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Gurusharan Sharma, J.
On 10.2.1984 Agreement No. F 2-11 of 1984-85 was executed between the State of Bihar and Ranjit Kumar Mitra, for a work contract relating to construction of cement godown and chowkidar shed R.E.O. site at Chaibasa.

2. The contractor had to carry out many more works, related to the main work and allied works and in connection with those additional works he raised a claim of Rs. 90,487.86 paise. To settle the disputes and claims aforesaid an Arbitrator was appointed u/s 20 of the Arbitration Act, 1940 (hereinafter referred to as "the Act"), who submitted an un-reasoned award on 12.8.1994, allowing claims of the contractor to the tune of Rs. 72,575/- with interest 9 9% per annum from 1.8.1989 till the date of payment or date of decree, whichever was earlier.

3. The aforesaid Award, inspite of objection filed u/s 30 of the Act, filed by the State of Bihar and others, has been made Rule of Court by impugned judgment dated 26th August, 1989, with reduction in the rate of interest from 9% to 6% payable with effect from 1.8.1989 till the date of decree.

4. The State of Bihar and others have, therefore, preferred the present appeal u/s 39(i)(vi) of the Act.

5. Mr. B.B. Sinha, Government Advocate appearing on behalf of appellants submitted that under clause 1.20 of the agreement in question the contractor was to arrange his own materials duly approved by Engineer Incharge of the Division, ifit was not available in the Division and if available the materials mentioned in the said clause including cement was to be supplied at the rate and place noted against each items. No claim or damage from contractor either for non-supply or delayed supply of materials by the department was to be entertained except for consideration of extension of time if deemed fit.

6. Mr. Sinha further submitted that in claim item No. 8 on account of labour compensation and loss of waged paid because of non-supply of cement by department. A sum of Rs. 52,000/- was claimed by the contractor, which could not have been allowed in view of the fact that the agreement was very specific that in case department failed to provide materials, the contractor was bound to arrange the same from its own resources. Plea of non- supply of cement by department was mere of hoax and no compensation on account of loss of wages was payable on that account.

7. It appears that total amount of Rs. 90,487.86 paise in respect of 15 items of claim was made by the contractor, wherein item No. 8 was for Rs. 52,000/- and all other items of claim together was for Rs. 38.487.86 paise. The arbitrator made unreasoned award of lump sum amount of Rs. 72,575/-. Even if it be presumed that claims in respect of items 1 to 7 and 9 to 15 were entirely allowed the total amount comes to Rs. 38,487.86 paise and so atleast a sum of Rs. 38,088/- was given out of Rs. 52,000/- of claim item No. 8.

8. It shows that the arbitrator as well as the Court at the time of the making the award Rule of Court did not overlooked the aforesaid terms of the agreement, whereby claim on accounts of labour compensation and loss wages paid because of non-supply of cement by department was not entertainable.

9. It is true that it is not open to the court to speculate where no reason is given by Arbitrator as to what impelled him to arrive at the conclusion. But if the Award has gone beyond term of the agreement, it is open . to the court to interfere with such Award.

10. In this regard reference may be made to a decision of the apex Court in Associated Engineering Co. Vs. Government of Andhra Pradesh and another, , wherein it was observed that if Arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction, but if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error. An arbitrator who acts in manifest disregard of the contract acts without jurisdiction. He commits misconduct if by his award he decides matters excluded by the agreement and thereby the award is vitiated.

11. In the present case in view of Clause 1.20 of the agreement the contractor was not entitled to claim damage for non-supply or delayed supply of materials by the department

and as such claim item No. 8 was not maintainable, and the arbitrator, in my view, acted unreasonably in ignoring the limits and clear provision of the agreement.

12. In such circumstance, impugned judgment and decree are set aside and the matter is remanded to the Arbitrator for giving a fresh Award in accordance with law, after hearing the parties. There will be no order as to costs. Lower court records may be sent down.