courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 27/10/2025

Steel Authority of India Limited Vs New Central Power and Process Private Limited

AC No. 28 of 2003 and GA No. 3632 of 2003

Court: Calcutta High Court

Date of Decision: July 11, 2007

Acts Referred:
Arbitration Act, 1940 â€" Section 20, 30, 33

Citation: (2008) 2 CHN 227

Hon'ble Judges: Sanjib Banerjee, J

Bench: Single Bench

Advocate: Shib Das Banerjee, Laxmi Kanta Pal, Dhruba Ghosh and Ashim Kumar Basu, for the Appellant;Ratnanko Banerjee, Lopita Banerjee and S. Khara, for the Respondent

Final Decision: Allowed

Judgement

Sanjib Banerjee, J.
In these proceedings under Sections 30 and 33 of the Arbitration Act, 1940, the petitioner challenges every bit of the

award that is in favour of the contractor.

2. The umpire has awarded Rs. 5 lakh by way of damages to the contractor; Rs. 50,000/- on account of costs in respect of the Court

proceedings; Rs. 7 lakh on account of costs in the reference and interest at the rate of 18 per cent per annum from March 15, 1988 until payment.

3. In end-August, 1983 the contractor was engaged for designing, manufacturing, supplying, erecting, testing and commissioning a Process Water

Reclamation Plant at the Rourkella Steel Plant of the petitioner. The work was to be completed by December, 1984. The arbitrator has found that

there was delay on the part of the employer or the engineers engaged by it that resulted in an unsuitable site being allotted. An alternative site was

thereafter provided and on the petitioner''s instructions found in a writing of March 22, 1984, the work was suspended. The work remained

suspended till or about the first week of December, 1984, and after relocation of the plant units, construction activities were taken up in the middle

of December, 1984.

4. By the beginning of 1987, the contractor instituted proceedings u/s 20 of the Arbitration Act, 1940 and the disputes were ultimately referred to

joint arbitrators and an umpire was appointed in the event there was difference between the joint arbitrators. According to the contractor, the

disputes referred to arbitration did not include any counter-claim by the employer and the joint arbitrators differed as to whether the counter-claim

would be entertained at all. Upon such difference, the matter reached the umpire and the reference culminated in an award running into some 116

pages made on July 16, 2003.

5. The contractor claimed a sum of Rs. 2.5 crore on various heads including on account of idle establishment charges (claim No. 5) and for loss of

profit (claim No. 7). The umpire held against the contractor on all 11 heads of claim originally made, save in respect of claim No. 7 and awarded a

sum of Rs. 5 lakh on such count. The umpire rejected the four additional claims made by the contractor in the supplementary statement of claim.

The entirety of the counterclaim, of value of Rs. 2.75 crore, was found unmeritorious.

6. The umpire has found that despite the original 16-months tenure of the contract having run out in December 1984, the contract was kept alive

by the parties till March 15, 1988. By an order of this Court of February 29, 1988, a chance was given to the contractor to complete the work, if

not already done, within two weeks from the date thereof. On the basis of such order, the umpire has concluded that the contract remained alive till

March 15, 1988.

7. The petitioner challenges the award for damages on account of loss of profit. The petitioner urges that loss of profit of the nature claimed and

awarded can arise only when the contract is terminated before the work contemplated thereunder is complete and such termination of work is not

on account of any breach by the contractor. The petitioner complains that the delay in the execution of the work was not for any fault on its part

and even if the delay is attributable to the petitioner, as the umpire has held, the petitioner may have been made liable for the delay on account of

idling charges. The petitioner asserts that upon the umpire having ruled against the contractor in respect of the claim on account of idling charges,

whether on account of labour or equipment, it was not lawful for the umpire to compensate the contractor by awarding damages on account of loss

of profit.

8. According to the petitioner, the contract was not terminated by it; it stood determined by the order of Court passed in proceedings instituted by

the contractor. The delay that the umpire found had been occasioned by the employer, the petitioner asserts, was more than made up by the

employer having enlarged the time for completion of the work. The petitioner urges that even if the delay on account of the petitioner is accepted,

the contractor ought to have completed the work within the enlarged time and, in any event, it was not the petitioner which closed the contract.

9. The umpire''s reasoning in awarding damages on account of loss of profit needs to be appreciated. The umpire reasoned that if the work

contemplated under the contract had been completed within the stipulated time, by end-December, 1984, the contractor could have raised bills for

the total amount covered by the contract and could have made a profit thereon which, by the reasonable estimate now accepted, is about 15 to 20

per cent of the value of the contract. The petitioner does not question the assessment of profit at 15 to 20 per cent of the value of the contract, but

challenges the factum of damages suffered by the contractor on account of loss of profit. The umpire held that the reasons for the work not being

completed within the stipulated time were attributable solely to the employer. The umpire found that there was delay on the part of the contractor

at the subsequent stage, but for the basis of his awarding damages on account of loss of profit, such delay on the part of the contractor was

irrelevant.

10. The umpire has subtracted the value of the bills submitted by the contractor from the total contract value. According to the umpire, had it not

been for the delay on the employer''s part, the work under the contract could have completed by end-December, 1984 and the contractor could

have raised bills for the remaining value of the contract. On such reasoning, and after taking into account the value of the bills raised by the

contractor during the extended tenure, the umpire has awarded damages on account of loss of profit roughly at about 20 per cent of the unbilled

value. It is a view that was possible to be taken on the facts and cannot be questioned as being absurd or perverse or otherwise being opposed to

public policy in the sense that the Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., , recognises public policy to be.

11. The umpire''s finding that the delay in the initial stage and till the original tenure of the contract was attributable to the employer, is virtually

unassailable, and to be fair to the petitioner, has not been questioned with much enthusiasm. After all, the employer could not make the site

available, and alternate site had to be found out and a notice for suspension of work was issued by it. There is little basis for such employer to

challenge the finding that it was it which caused the work not to be completed within the stipulated period. If the employer was guilty of delay, the

contractor was liable to be compensated. Usually, such compensation is in the form of idle labour or idle equipment charges. The umpire held did

not award anything to the contractor on such head of claim. If the umpire had acceded to the claim for damages sought on such ground, the

employer would have been on better ground challenging any award on account of loss of profit in the facts of this case. But the umpire found

nothing was due to the contractor on account of its fifth head of claim and further found that there was nothing to assume that the contractor would

not have completed the work within the agreed time had the conditions therefore been made suitable by the employer. The employer thwarted the

execution of the contract within the stipulated time and, consequently, the contractor''s chance of running up bills of the value of the contract and

making reasonable profit thereon. The umpire concluded, on the detailed appreciation of the material before him, that the contractor was liable to

be compensated for his loss of profit and has opened his mind as to why he felt so. As long as reasons are given and the reasons disclose a

plausible view, the Court would be loathe, in proceedings of such nature, to tinker with the award.

12. It was open to the contractor to treat the contract to have been determined upon the conclusion of the stipulated time and to sue the employer

for loss of profit in respect of the unbilled value of the contract for reasons attributable to the employer. This contractor chose not to do so and

plodded away for the better part of the next three years. Surely, the estimates that the contractor had given and the basis on which it quoted its

price for the work had all gone away by reason of the extended duration of the work. The umpire has found nothing was due to the contractor on

such count and this has not been challenged by the contractor. The umpire thought it fit to merely award the contractor the 20 per cent of the

unbilled value of the contract on account of loss of profit. On a broader view, there is nothing shocking about such part of the award that will

require the Court to sit up and take notice.

13. The petitioner next urges that exorbitant costs have been awarded. The umpire awarded Rs. 50,000/- on account of costs in the Court

proceedings and Rs. 7 lakh as costs in the reference. The petitioner asserts that there is no basis for the award of Rs. 50,000/- on account of

Court proceedings. The respondent instituted proceedings u/s 20 of the 1940 Act and there were several interlocutory applications made. A sum

of Rs. 50,000/- on account of costs in the Court proceedings is probably less than what the respondent expended and what was found by the

umpire to be recoverable. It is not such a large or unconscionable amount that should detain the matter nor is the award of costs to such extent a

matter which is otherwise unsustainable.

14. It is the award of Rs. 7 lakh as costs in the reference that the petitioner attacks with more vigour. The umpire records that bills of costs as to

the reference were submitted by both sides. Each party assessed its costs in the reference to be in excess of Rs. 10 lakh. The umpire''s basis for

awarding costs is found in the following sentence:

So far as the question of costs of arbitration is concerned, both the parties have submitted their costs statements which are above Rs. 10,00,000/-

and after taking into account, further costs incurred thereafter and the fact that several items of claims and/or counter-claim have been found by me

to be non-maintainable and have been disallowed, I am inclined to allow and I hereby award a further sum of Rs. 7,00,000/- only to the claimant

on account of costs.

15. The petitioner contends that the claimant had sought an award for Rs. 2.5 crore and the employer had counter-claimed for Rs. 2.75 crore. The

award that was made was for Rs. 5 lakh, though the claimant adduced evidence to sustain the entirety of its claim. The petitioner submits that even

though the entirety of the counter-claim was disallowed, there was little time expended in the reference on account of the counter-claim. According

to the petitioner, if the entire duration that the reference lasted was taken up by the contractor"s claims and at the end of it an insignificant

percentage of the claim sustained, it is the claimant which has to bear costs and, at least, no additional burden on such count should have been

levied on the respondent since the umpire has accepted that the respondent had spent Rs. 10 lakh in the reference. As a point of principle, the

petitioner is right in such assertion. If a suitor seeks a fantastic amount and at the end of a prolonged trial in his failed attempt to sustain such

fantastic claim, a paltry sum is obtained such suitor should ordinarily not be compensated for the huge costs that have naturally been incurred in

course of the protracted proceedings. Yet there can be no formula for assessing quantum of costs on the basis of the ratio of the sum awarded to

the sum claimed.

16. There is no material produced by the petitioner here in support of the point that it now seeks to canvass that the reference was hardly detained

by the weight of the employer"s counter-claim. It is for the petitioner assailing the award to establish that the entire duration of the reference was

taken up in the assessment of the contractor"s claim. If better material in such regard had been furnished by the petitioner, the principle that it

propounded could have been carried forward and the award of costs assessed on the basis of such material. But in the absence of relevant data,

despite the scanty reasons found in support of the award of costs that exceeds the award on the principal head, the award on such score should

not be disturbed. It is, to take the petitioner"s case at the highest, a somewhat arbitrary assessment by the umpire. To accept the petitioner"s

contention now would be, on the basis of what the petitioner had put on display in support of such ground, a more arbitrary assessment. At least,

the umpire had the benefit of presiding over the reference and the sparse reasoning in support of the award for costs is supported by his subjective

assessment with the benefit of having conducted the reference. The award of costs in a commercial matter is of some significance and not a trifling

matter. Oftentimes the commercial gain from a favourable order or award is offset by the time and money expended unless realistic costs are

awarded.

17. The petitioner last assails the award of interest at the rate of 18 per cent per annum. The Court is reminded that the reference was conducted

under the 1940 Act without the benefit of the figure of 18 per cent in the statute that the Arbitration and Conciliation Act, 1996 recognises. The

decision reported at Krishna Bhagya Jala Nigam Ltd. Vs. G. Harischandra Reddy and Another, is cited and paragraph 11 thereof placed in

support of the petitioner''s contention that in view of the low interest regime, the grant of interest at the rate of 18 per cent was not justified.

18. The solitary line in the award justifying grant of interest at 18 per cent per annum speaks of both parties having claimed 18 per cent interest in

their respective claims. Implicit in such reason is that since either party claimed at such rate, there was no further justification necessary for award

of interest at that rate. With respect, interest is a measure of compensation. A party is compensated for money due to it, being withheld. The

compensation is to offset damages that such party suffers on account of the money being received at a later date. If a person is found to have been

entitled to a certain sum at an earlier date, he is compensated by the award of interest so that at the time that he receives the money, he can get, as

nearly as possible, the same basket of goods or services that he could have obtained had he been afforded use of the money when he was

originally entitled to it. Loosely, the principle is that the quantum of money ultimately received by a successful suitor is such as the original amount

due to him, with the usual accretions, would have amounted to. It is in such context that paragraph 11 of the Supreme Court judgment may be

referred to:

11. On the merits of the claims made by the contractor we find from the impugned award dated 25.6.2000 that it contains several heads. The

arbitrator has meticulously examined the claims of the contractor under each separate head. We do not see any reason to interfere except on the

rates of interest and on the quantum awarded for letting machines of the contractor remaining idle for the periods mentioned in the award. Here

also we may add that we do not wish to interfere with the award except to say that after economic reforms in our country the interest regime has

changed and the rates have substantially reduced and, therefore, we are of the view that the interest awarded by the arbitrator at 18% for the pre-

arbitration period, for the pendente lite period and future interest be reduced to 9%.

19. The Supreme Court has taken notice of interest rates having fallen in recent times. The umpire has awarded interest from March 15, 1988 till

payment. In the usual course money does not grow these days at the rate of 18 per cent per annum in this country. For almost the entirety of the

decade of 1990s money did not command, in the usual course, a return of 18 per cent. Given that the award of interest is from March 15, 1988, a

rate of 12 per cent per annum would be a reasonable compensation for the contractor and more appropriate, in view of judicial notice having been

taken by the Supreme Court of the prevailing commercial scenario.

The award is modified only to the extent of the interest awarded being reduced from 18 per cent per annum to 12 per cent per annum from March

15, 1988vtill payment. The rest of the award remains.

The petition is allowed to the limited extent as above and is disposed of without any order as to costs.

In view of the above, there will be judgment and decree in favour of New Central Power & Process Private Limited in terms of the award save

that the interest will be at the rate of 12 per cent per annum from March 15, 1988 till payment. The award holder will also be entitled to interest at

the rate of 12 per cent annum on the principal sum of Rs. 5 lakh till payment and on the sums of Rs. 50,000/- and Rs. 7 lakh from the date of the

award till payment.

20. Urgent photostat certified copies of this judgment, if applied for, be issued to the parties upon compliance with requisite formalities.