

RAVINDRA & ASSOCIATES
v.
UNION OF INDIA
(Civil Appeal No. 2726 of 2004)

OCTOBER 21, 2009

**[MARKANDEY KATJU AND ASOK KUMAR
GANGULY, JJ.]**

Arbitration:

Award by arbitrator – Interference with, by court – Scope of – Construction contract – Completed by contractor within stipulated time – As regards payments, dispute arose between parties and contractor filing a claim before arbitrator – Arbitrator awarding a certain amount to contractor with simple interest @ 18% for pre-reference period, pendent elite and from date of award till date of decree/payment – Award made rule of the court by Principal Sub-Judge – Interest on amount awarded reduced to 12% - High Court allowing appeal of employer – HELD: High Court has wrongly interfered with the findings of fact recorded by arbitrator – Arbitrator made the award after considering respective claims of parties – Judgement of High Court set aside – Contractor would be entitled to interest @ 12% as awarded by Principal Sub-Judge.

State of Rajasthan vs. Puri Construction Co. Ltd. (1994) 6 SCC 485; Trustees of Port of Madras vs. Engineering Construction Corporation Ltd. (1995) 5 SCC 531; EOC India Ltd. vs. Bhagwati Oxygen Ltd. (2007) 9 SCC 503 and G. Ram Chandra Reddy & Company vs. Union of India & Anr. (2009) 6 SCC 414, relied on.

Ramnath International Construction (P) Ltd. vs. Union of India (2007) 2 SCC 453, distinguished.

A Case Law Reference:

(1994) 6 SCC 485 relied on Para 5

(1995) 5 SCC 531 relied on Para 5

B (2007) 9 SCC 503 relied on Para 5

(2009) 6 SCC 414 relied on Para 5

(2007) 2 SCC 453 distinguished Para 7

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2726 of 2004.

From the Judgment & Order dated 15.1.2003 of the High Court of Kerala at Ernakulam in Misc. First Appeal No. 53 of 1998 (B).

D Sudhir Chandra, Mukesh Jain, Utpal Saha and Asha Jain Madan for the Appellant.

Mohan Jain, ASG, Dinesh Thakur Indra Sawhney, Rohini Mukherjee, Subash Kaushik, Rekha Pandey and Sushma Suri for the Respondent.

E The following Order of the Court was delivered:

ORDER

F 1. Heard learned counsel for the parties.

G 2. This appeal by special leave has been filed against the judgment and order, dated 15.1.2003 of the High Court of Kerala at Ernakulam whereby the High Court has allowed the appeal filed by the respondent herein against the order dated 9.10.1996 of the Principal Sub Judge, Kochi.

H 3. It appears that the appellant was awarded a contract for construction of married accommodation for petty officers of the Navy at Rameswaram, Kochi. The value of the work awarded

was Rs. 5,44,47,087/-. The work which commenced on 24.12.1990 had to be completed by 23.6.1993 and admittedly it was completed by the said date. A

4. Disputes arose between the parties and the parties invoked the arbitration clause provided in the General Conditions of Contract. The claimant-appellant made claims under 25 heads. The arbitrator awarded to the claimant a sum of Rs. 70,94,265/- and allowed simple interest at the rate of 18% from the date of accrual for cause of action till date of reference, from the date of reference till date of award and from the date of award till the date of decree or date of payment whichever is earlier. An application by the appellant-claimant was filed before the Principal Sub Judge, Kochi to make the award a Rule of the Court. The respondent-Union of India also filed an application for setting aside the award of the arbitrator. The Sub-Judge allowed the application of the appellant and made it a Rule of the Court, but awarded 12% interest on the amount awarded from the date of decree till realization and dismissed the application of the respondent-Union of India. Aggrieved against the order dated 9.10.1996 of the Sub-Judge, Kochi the respondent herein preferred an appeal before the High Court which has been allowed by the impugned judgment and order. Hence, the present appeal. B C D E

5. In our opinion, the High Court wrongly interfered with the arbitration award and practically acted as a Court of Appeal, which it could not do (See : *State of Rajasthan vs. Puri Construction Co. Ltd.* (1994) 6 SCC 485; *Trustees of Port of Madras vs. Engineering Construction Corporation Ltd.* (1995) 5 SCC 531; *EOC India Ltd. vs. Bhagwati Oxygen Ltd.* (2007) 9 SCC 503 and *G. Ram Chandra Reddy & Company vs. Union of India & Anr.* (2009) 6 SCC 414). F G

6. As regards the allegation that while in the contract mixture provided for in the contract is M/15, but in fact, M/20 was used, it has been held by the arbitrator that this was done at the insistence of the Department. The arbitrator also held that H

A the relevant drawing for M/15 mixture and the drawing relied upon by the respondent did not find place in the list of drawings forming part of the tender documents. Hence, in our opinion, the High Court has wrongly interfered with the findings of the arbitrator as regards claim Nos. 1 and 9.

B 7. As regards claim No. 10(b) relating to payment of over-time to labour it has been contended by the learned counsel for the appellant that there was a delay in supply of stores by the respondent and therefore the labour had to be retained for a longer period of time than envisaged under the contract and hence overtime charges had to be paid to the labour.

C 8. In this connection, the learned counsel appearing for the respondent has relied upon the decision of this Court in the case of *Ramnath International Construction (P) Ltd. vs. Union of India* (2007) 2 SCC 453. We have gone through the said decision. In our opinion that decision has no application to the case at hand as in that case the contractor sought and obtained extension of time for execution of the contract whereas in the present case neither extension of time was sought for, nor in fact, granted for completion of the contract. Hence, the aforesaid decision is clearly distinguishable. Clause 11(c) of the General Conditions of Contract has no application in this case at all.

F 9. As regards Claim No. 12 relating to difference in price of wood frames for doors and windows, it is stated that no doubt the contract provided for teak wood but it was changed to second class hard-wood at the insistence of the Department. The High Court has in this regard relied upon the decision of the Board of Officers who has made its assessment by relying upon Clause 62(G) of the General Conditions of Contract which provided that the decision of the Garrison Engineer would be final unless it was set aside in appeal. In the present case, the price was not fixed by the Garrison Engineer at all. Moreover, the Board of Officers had made an inquiry in the matter after three years and the arbitrator, in our opinion, rightly held that

such an inquiry was of no consequence.

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10. As regards Claims No. 20 and 23 relating to escalation in prices of material, in our opinion, the arbitrator has given his findings of fact and the High Court misread Clause 18 of the Special Conditions of Contract.

B

11. For the reasons given above, we are of the opinion that the High Court has wrongly interfered with the arbitration award. Accordingly, the appeal is allowed and the impugned judgment and order is set aside.

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12. We may also point out that in para 12 of the judgment there appears to be a typographical error inasmuch as the Principal Sub-Judge Kochi has reduced the interest from 18% to 12% and not 10%, as wrongly recorded in the impugned judgment. We make it clear that the appellant is entitled to interest @ 12%, as awarded by the Principal Sub Judge, Kochi.

D

Appeal allowed. No order as to the costs.

R.P.

Appeal allowed.