



IN THE HIGH COURT OF SIKKIM

Arbitration Appeal No. 8 of 2000

State of Sikkim ... Appellant.
Versus
Sagarmull Agarwal ... Respondent.

Arbitration Appeal No.9 of 2000

Sagarmull Agarwal ... Appellant.
Versus
State of Sikkim ... Respondent.

Date of Decision : 30th May, 2000.

**Coram : The Hon'ble Mr. Justice Ripusudan Dayal, Chief Justice.
The Hon'ble Mr. Justice Anup Deb, Judge.**

**Present : Mr. Udai P. Sharma, Senior Government
Advocate for the State.**

Mr. A. Moulik, Advocate for Sagarmull Agarwal.

JUDGMENT

Dayal C.J.

Both these appeals arise from the judgment and decree of the learned District Judge, East and North, dated 16th August, 1999 passed in Civil Misc. Case No. 7 of 1993 (Arbitration) making the award of the arbitrator rule of the Court except for claim No.1.



2. Sagarmull Agarwal entered into an agreement dated 12th July, 1982 with the State of Sikkim through the Chief Conservator of Forests, whereby the Government granted "to the purchaser and his agents or employee liberty and permission to lift or transport 50,000 cft @ Rs.8.15 per cft i.e. Rs.4,07,500/- of Silver Fir logs from in between Phuni and Yumthang to outside Sikkim through North Sikkim Highway at all times between the date of issue of the removal order

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to 31st day of March, 1983.” Case of Sagarmull Agarwal is that he could not lift the articles, since he could not get permit to enter into the restricted area, and, as such, there was breach of contract on the part of the State. However, there is no dispute that Forest Department is not the competent authority to grant the requisite permit and the Forest Department wrote several letters to the concerned authorities by way of assistance. The matter was referred to the arbitrator. Details of the claims made before the arbitrator and the amounts awarded by the arbitrator are as under :-

Claims of Claimant (Issue)

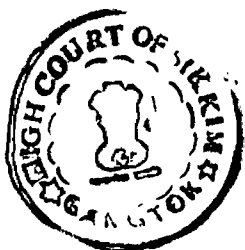
Sl. No.	Claim No.	Brief description of claims	Awarded Amount.
(a)	(b)	(c)	(d)
1.	1.	Claim for supply of fresh silver fir logs of 50,000 cft. or the present market rate. (Claim partially sustained)	Awarded the present market rate of 50,000 cft. of Silver Fir Logs at Rs.170.00 (Rupees one hundred and seventy)only per cubic feet.
2.	2(a)	Idle charge of Supervisors and other staff. Amount of claim Rs.3,76,430.00 (claim partially sustained)	Rs.3,50,000/- (Rupees three lakhs fifty thousand) only.
3.	2(b)	Charge of trucks which had to be kept idle. Amount of claim Rs.2,82,000.00 (claim partially sustained)	Rs.1,50,000 (Rupees one lakh fifty thousand) only.
4.	3	Forfeiture of money paid in advance to the truck owners. Amount of claim Rs.1,00,000.00 (claim sustained)	Rs.1,00,000 (Rupees one lakh) only.
5.	4	Interest already paid to Financers/Bankers. Amount of claim Rs.6,00,000/- (Claim Partially sustained)	Rs.3,00,000/- (Rupees three lakh) only.
6.	5	Market difference Amount of claim Rs.6,00,000/- (Claim not sustained) Nil



Sagarmull Agarwal



6. Loss and damages in business due to defamation incurred in the case. Amount of claim Rs.10,00,000/- (Claim partially sustained). Rs.5,00,000/- (Rupees five lakh) only.
7. Past, present and future interest claim at 20% per annum (Claim partially sustained) Awarded interest at 18% per annum as follows : (i) Interest awarded at 18% per annum on awarded amount except claim No.1 from the 1st Dec.1986 upto the date of reference.
- (ii) Interest awarded at 18% per annum on awarded total amount and all claims from the date of reference to date of award.
- (iii) if payment is made within 40 days, no interest is awarded from the date of award. If the payment is delayed by more than 40 days, interest awarded on awarded all claims and total amount upto date of decree from the date of award at Rs. 18% per annum.
- (iv) At 18% per annum interest awarded on all claims and total amount from the date of decree to the date of payment.
9. 8. Claim for breach of contract. Amount of claim Rs.10,00,000/- (Claim partially sustained) Rs.3,00,000/- (Rupees three lakh) only.
10. 9(a) Overhead expenses in tune. Amount of Claim Rs.3,00,000/- (Claim not sustained) NIL



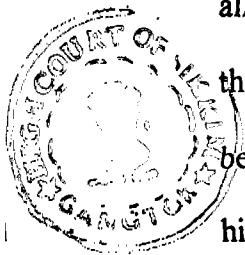
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11. 9(b) Cost of reference. Amount of claim Rs. Rs.25,000/- (Rupees
80,000/- (Claim partially sustained) twenty five thousand
only.

3. An application was filed before the learned District Judge, East and North, Sikkim by Sagarmull Agarwal for making the award the rule of the Court which was registered as Civil Misc. Case No.7 of 1993. The learned District Judge set aside the award in respect of claim No.1 giving rise to Arbitration Appeal No.9/2000 by Sagarmull Agarwal. With respect to the rest of the items awarded by the arbitrator, the award was confirmed giving rise to Arbitration Appeal No.8 of 2000 filed by the State of Sikkim.

4. Sri U. P. Sharma, learned Senior Government Advocate, appearing on behalf of the State submits that the claim made by Sri Agarwal was on the ground of the alleged breach of contract, since he could not lift the articles, as he had failed to get the necessary permit to enter into the restricted area, but there was no agreement between the parties that the Chief Conservator of Forests shall arrange permit for him. He further submits that there could not be implied contract for arranging the permit also since the Chief Conservator of Forest-cum-Secretary Forest, Government of Sikkim was not the competent authority to grant the requisite certificate. Sri A. Moulik has, on the other hand, submitted that it was known to both the parties that unless permit was granted, the contract could not be executed. In reply, Sri Sharma submits that permit must have been granted by the competent authority, if Sri Agarwal had agreed to arrange local labour, but he could not secure the permit, since he wanted to bring the labour from outside. Under Article 299 of the Constitution, agreement has to be in writing and since there was no agreement to the effect that the State shall grant the necessary permit in spite of the fact whether Sri Agarwal would bring labourers from outside or would employ



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local labour, there is no scope for reading in the agreement such an implied agreement. Since there was no agreement between the parties that the respondent would grant such a permit, there was no question of breach of contract. The learned trial Court did not enter into this aspect of the matter and observed that he has no jurisdiction to investigate into the correctness of the arbitrator's decision. But the question as to whether claims made by the arbitrator fell within the scope of the agreement does not concern merely the correctness of the decision but touches the jurisdiction of the arbitrator. The arbitrator cannot travel beyond the agreement and when the agreement does not contain a clause whereby it could be inferred that the State had agreed to provide the necessary permit, non-grant of the permit by another department cannot be said to be breach of agreement. As all the claims for which award was made by the arbitrator relate to the claims made on the alleged breach of contract, the whole award is liable to be set aside.

In the result, Arbitration Appeal No.9/2000 is dismissed and Arbitration Appeal No.8/2000 is allowed.

In the circumstances, parties shall bear their own costs.



(A. Deb)
Judge
30/5/2000

30.5.2000
(R. Dayal)
Chief Justice
30/5/2000.

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ASSISTANT REGISTRAR (JUDICIAL)
HIGH COURT OF SIKKIM
AT GANGTOK