

MISC. APPEAL No.174 OF 2001

Against the judgment and decree dated 3.1.2001 passed in Misc. Case No.7 of 1998, T.S.No.48 of 1996 by Sri Nitya Nand Sinha, Sub-Judge 1st, Patna.

THE STATE OF BIHAR, THROUGH THE EXECUTIVE ENGINEER, SONE CANAL MODERNIZATION DIVISION, SASARAM CAMP, DEHRI, DISTRICT-PATNA.

..... (DEFENDANT) PETITIONER APPELLANT

Versus

M/S PANDEY & COMPANY BUILDERS PVT. LTD.
HAVING ITS REGISTERED OFFICE AT MAUNA (BABAN TOLI) P.O. AND P.S.-CHAPRA, DISTRICT-CHAPRA (SARAN) THROUGH ITS MANAGING DIRECTOR, DASHRATH PANDEY (PLAINTIFF-OPPOSITE PARTY RESPONDENT).

For the State : Mr.Kumar Uday Bhanu Ray, GA-IV and Mr.Shashi Priya Pathak, AC to GA-IV

For the Resp. : Mr.Nand Kishore Singh, Adv. and Mr.Shailendra Kumar, Adv.

P R E S E N T

THE HON'BLE MR. JUSTICE JAYANANDAN SINGH

Jayanandan Singh, J.

The State of Bihar has preferred this appeal under Section 37(1)(b) of the Arbitration and Reconciliation Act, 1996 against the judgment and decree dated 3.1.2001 passed by a learned Sub-Judge 1st, Patna in Miscellaneous Case No. 7 of 1998/T.S. No.48 of 1996 whereby the learned Judge has confirmed the interim award as well as final award passed by the Arbitrator and has rejected the objections of the appellant State of Bihar.

It appears that the respondents entered into an agreement with the State of Bihar in 1988 for repair work of Sone Canal. Dispute arose with regard to the interpretation and implementation of terms of agreement. Hence, as per the arbitration clause in

the agreement, reference was made to the arbitrator in 1995. However, the arbitrator did not act. Hence the suit was filed for appointment of independent arbitrator to decide the dispute with regard to claims between the parties. In the suit, which was numbered as Title Suit No. 48 of 1996, after hearing the parties and with their agreement, one of the Hon'ble retired Judges of this Court was appointed as arbitrator by order dated 7.2.1997. The Hon'ble Arbitrator thereafter held his first sitting on 12.4.1997 in which the scale of fee and procedure was decided. As the new Act had come into force, it was agreed between the parties that in the arbitral proceeding the procedure laid down in the Act 26 of 1996 shall be adopted.

After holding the sitting on many dates, and in view of the admissions on the part of the State of Bihar, the Hon'ble Arbitrator passed interim award on 9.10.1997 in respect of two claims. Thereafter, final award was also passed by the Hon'ble Arbitrator on 31.12.1997 after full hearing in respect of remaining claims. The present appellant challenge the interim award under Section 34 of the 1996 Act on 27.1.1998 in the Court which was registered as Miscellaneous Case no.7 of 1998. However, the appellant State of Bihar did not challenge the final award under Section 34 of the 1996 Act. On the other hand, a petition was filed on

24.8.1998 in the Title Suit No. 48 of 1996 itself raising certain objections against the final award. Since both the cases related to the same arbitration proceeding the same were heard by learned Court below and by the impugned judgment and decree Miscellaneous Case as well as the objection in the Title Suit by the State of Bihar was rejected and the interim award as well as final award was confirmed.

Learned Government Advocate No.4 while challenging the said judgment and decree of the learned court below referred to the grounds of appeal formulated in the memo of appeal which are as

follows:-

(i) For that the Award confirmed is illegal, unjustified both on facts and material on record.

(ii) For that the claimants claim based on in collusion with the officer against whom a criminal case is pending and the Arbitrator has not considered this aspect of the matter.

(iii) For that the plaintiff received 2nd A/C bill amount on 27.9.88 and plaintiff did not object and did not complain for the bill during tenure of the then officer who were posted during the period.

(iv) For that the plaintiff did not applied for extension of the time beyond 15.6.88 with stipulated date of completion as per Clause 5 of the agreement.

(v) For that the work was not stopped by the department.

(vi) For that the extension of time petition found and submitted to the Arbitrator and marked as Ext.B-1 is forged document in the facts of the relevant time and with a motive to validate the agreement.

(vii) For that the signature and date on the extension of time totally tally

with the signature and dates of other forged document, bill, measurement book etc.

(viii) For that as per the agreement the work has to be completed by 15.6.1988 and during the stipulated period Sri Ramadhar Singh, Junior Engineer was incharge of the work and he prepared 1st A/C and 2nd A/C bill but 3rd and final bill prepared by Sri Brahmdeo Prasad Yadav, Junior Engineer on 21.6.1989 and Sri Vikrama Singh, S.D.O. put his signature on 26.5.90/19.6.90 and Sri Bhagwat Sinha put his signature on 23.6.90 (although he took charge on 25.6.90 A.M.). These three officers put their signature on the bill during the period 89-90 and as per the plaintiff did work in July, 1988 why the bill has not been prepared in July, 1988, when Ramadhar Singh Junior Engineer was incharge of the work.

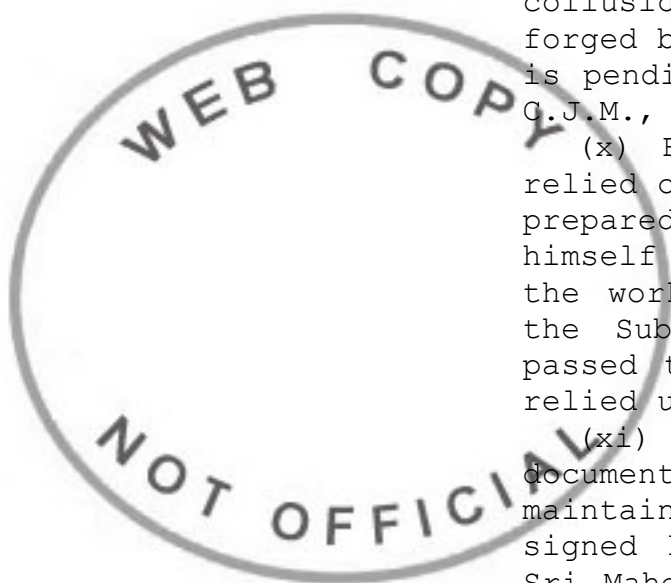
(ix) For that Sri Brahmdeo Yadav, Junior Engineer Sri Vikrama Singh, S.d.O. and Sri Bhagwat Sinha in collusion with the contractor prepared forged bill and for that a criminal case is pending against them in the court of C.J.M., Sasaram, Rohtas.

(x) For that the Hon,ble Arbitrator relied on Sri Vikrama Singh, S.D.O., who prepared a forged bill without work, who himself admitted in his deposition that the work has not done after he joined the Sub-Division as S.D.O., then how passed the bill and how the Arbitrator relied upon this witness.

(xi) For that the other important documents i.e. check and pass register maintained in the Division office and signed by the then Executive Engineer Sri Maheshwar Prasad Singh on 28.5.1990 for the bill of nil amount because the work has not done after payment of 2nd A/C bill. The Maheshwar Prasad Singh was posted as Executive Engineer from July, 1988 to 25.6.90, if the work would have been done in July, 1988 then certainly the same has been mentioned in the register of check and pass. It shows that forged bill was prepared after the transfer of Sri Maheshwar Prasad Singh.

(xii) For that in view of the facts and circumstances mentioned the award submitted by the Arbitrator is fit to be set aside.

(xiii) For that the award and



judgment and decree is otherwise fit to be set aside.

From perusal of the judgment of the learned Court below, it appears that the learned Court below held that since the parties have agreed before the Hon'ble Arbitrator for adopting the procedure for arbitration in terms of Act 26 of 1996 and in terms of which the interim award and final award was passed, the application and objection of the appellant State of Bihar had to be examined by the Court in terms of provisions of the said Act 26 of 1996. Having held thus, the learned Court below found that the Act 26 of 1996 provides for challenge to an arbitral award on certain specific grounds only. The learned Court below found that the grounds raised by the appellant State of Bihar in its application or in its objection were not covered by any of the grounds mentioned in Section 34 of Act 26 of 1996. Hence, learned Court below found no merit in either of them and the same were rejected.

For appreciation of the merits of the Miscellaneous Appeal it may be appropriate to reproduced Section 34 of Act 26 of 1996 herein:-

34. Application for setting aside arbitral award.- (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if -

(a) the party making the application furnishes proof that -

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, falling any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration :

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this part; or

(b) the Court finds that -

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

(emphasis supplied)

From perusal of the provisions of Section 34 as quoted above, it is clear that the legislature has restricted challenge to an arbitral award only on certain conditions and no other. In the opening sentence of Sub-Section 2 of Section 34 the use of word 'only' denotes that the grounds mentioned in Section 34 was challenged to an arbitral award are exhaustive. Therefore, any ground of challenge to an

arbitral award can succeed only if the same finds support from any of the grounds of challenge mentioned in Sub-Section 2 and not otherwise.

The grounds of challenge to the judgment and decree of learned Court below formulated in the memo of appeal as extracted above show that the challenge by the appellant State of Bihar to the award is only on factual aspects which challenge was not clearly available to the appellant State of Bihar in an application under Section 34 of the Act 26 of 1996.

Hence, this Court finds that the learned court below has rightly held the application and objection of the appellant State of Bihar to the interim award as well as final award being devoid of merits and not covered by the scope of challenge as laid down in Section 34 of the said Act 26 of 1996. Therefore, the application and the objection of the appellant State of Bihar was rightly dismissed by the learned court below.

In the result, this Court does not find any merit in the appeal and the same is dismissed.

(J. N. Singh, J.)

Patna High Court
The 22nd of December, 2010
N.A.F.R./Arvind