

S.B. Civil Misc. Appeal No. 2763/2004.

Vs.

State of Rajasthan

Date of Judgment :: 31.3.2016

HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA

Mr. Rajan Prajapati on behalf of

Mr. Dharamveer Tholia, AAG, for respondent(s).

BY THE COURT:

M/s Rajasthan Roller Suppliers-appellant-claimant, aggrieved of the order dated 27th October, 2004, passed by the Court of Additional District Judge No.4, Jaipur City, Jaipur in Arbitration Case No.03/2003; has instituted the present appeal with the prayer to quash and set aside the impugned order with a further prayer to restore and make rule of the Court, the award made by the Arbitrator dated 31st May, 1999.

2. Briefly, the essential skeletal material facts necessary for adjudication of the controversy are that the appellant-claimant in response to notice inviting tenders for supply of Diesel Road Rollers while in execution of "famine Relief" works in two divisions of Nagaur District i.e. Deedwana and Nagaur; supplied 12 Diesel Road

Rollers. The Collector, "Famine Relief" Works, Nagaur, approved the higher charges rates for hiring of Diesel Road Rollers along with terms and conditions vide his order dated 26th May, 1987. An agreement was arrived at on 27th May, 1987 between the parties with the stipulation that the 'Famine Relief' work will be governed as per the terms and conditions enclosed vide Collector, Nagaur's order dated 26th May, 1987. However, the agreement was revoked with the understanding to follow the earlier order dated 11th March, 1987. During the course of implementation of order 8th June, 1987, the Executive Engineer, PWD, Nagaur, restricted the charges of Road Rollers from 550/- per day inclusive of all P.O.L. Supplies service material etc. instead of previous rate of Rs. 330/- without P.O.L. Later on, the Executive Engineer, PWD, Deedwana, issued a corrigendum dated 13.7.87. Similar corrigendum was required to be issued by the Executive Engineer, PWD, Nagaur. However, the same was not issued. On a request made by the appellant-claimant, the matter was referred to the Principal Secretary, Famine Department, Jaipur, who called upon the Executive Engineer, Nagaur, to re-examine the case. Despite several efforts, the matter could not be settled, and therefore, the dispute was

referred to the sole Arbitrator for adjudication.

3. The sole arbitrator Shri M.S. Mathur made the award dated 31st May, 1999, with the consideration of an amount of Rs. 2,20,000/- (Rs. two lac twenty thousand) as arbitral amount payable to the claimant-appellant within 60 days from the signing of the award. Interest @ 15% per annum was also allowed on the arbitral amount. The respondent-State aggrieved of the award made by the sole arbitrator dated 31st May, 1999, submitted statement of objections before the Court. The Additional District Judge No.4, Jaipur City, Jaipur, on a consideration of the objections to the award, made the impugned order dated 27th October, 2004, accepting the objections and set aside the award made by the sole arbitrator dated 31st May, 1999 of which the appellant-claimant is aggrieved of.

4. Learned counsel for the appellant Mr. D.D. Sharma, reiterating the pleaded facts and grounds of the memo of appeal, argued that the court below while accepting the objections of the State-respondents has quashed the award made by the sole arbitrator mainly on three grounds. Firstly, the District Collector, Nagaur, was not empowered to enter into the agreement with the appellant-claimant for there was no arbitration clause.

Secondly, no arbitrator could have been appointed in absence of any arbitration clause by the Chief Engineer; and thirdly, final bill that was drawn for execution of the contract was accepted by the appellant-claimant without any protest.

5. Assailing the reason for interference with the award made by the sole Arbitrator on the ground that the District Collector, Nagaur, was not authorized to enter into the agreement with the appellant-claimant, learned counsel would submit that no objection to this effect was ever raised, considered or adjudicated upon by the sole arbitrator, and therefore, such a ground could not be entertained by the Court while considering the statement of objections under Section 30 of the Arbitration Act, 1940 (for short 'the Act of 1940').

6. Referring to clause 23 of P.W.D. Manual, Vol. III, Government of Rajasthan, learned counsel asserted that for the purpose of appointing the sole arbitrator, the authority designated, is the Chief Engineer, who will, on receipt of notice and prescribed fee from the contractors send a panel of three names not below the rank of Superintending Engineer of the Rajasthan Government and who shall all be presently unconnected with the contract. It is further contended that during the course of

proceedings, an application for appointment of arbitrator was also moved before the District Judge, Jaipur City, Jaipur, but the same was withdrawn in view of the fact that the Chief Engineer appointed initially Shri R.C. Bhandari, as the sole arbitrator, who could not conclude the proceedings. Mr M.S. Dod was subsequent arbitrator who, during pendency of the proceedings, passed away, and therefore, the proceedings could not be concluded. Shri M.S. Mathur, succeeded as third sole arbitrator, who made the impugned award dated 31st May, 1999.

7. Further, the contract agreement which was entered into between the parties on 25.7.87, was changed and made subject to same terms and conditions which can be applicable for the same work at Deedwana, as would be evident from communication dated 30th November, 1989, by the Collector, Nagaur. Learned counsel emphatically denied the fact that the final bill was accepted without any protest for the final bill was never drawn. Further, whatever payments were made by the respondent-State were accepted but that fact by itself cannot be construed to be an acceptance of amount for the contract carried out without any protest.

8. Per contra; Mr. Rajan Prajapati, appearing on behalf of State-respondents, on being queried as to whether

any objection with response to initiation of the arbitration proceedings was raised before the sole arbitrator; referred to Page 22 of the impugned award dated 31st May, 1999, stating that such an objection was specifically pleaded.

9. On consideration of the submissions made, it is revealed that the Arbitrator accepted the stand in the written arguments wherein State-respondents raised an objection as to territorial jurisdiction for the dispute raised by the claimant, according to the State-respondents, was not arbitrable at Jaipur. As such, there is no objection as to initiation of arbitration proceedings. No other objection was raised or any argument advanced, on behalf of State-respondents, in resistance to the challenge, was put forth by the appellant-claimant.

10. I have heard the learned counsel for the parties and with their assistance perused the materials available on record as well as carefully considered the impugned order dated 27th October, 2004 so also gave my earnest consideration to the rival submissions at Bar.

11. Indisputably, no objection as to the initiation of arbitration proceedings was ever raised, considered or adjudicated upon by the sole arbitrator. Thus, the objection raised by the State-respondents for the first

time before the Court of Additional District Judge No.4, Jaipur City, Jaipur, while submitting statement of objections under Section 30 of the Act of 1940; as asserted by the appellant-claimant stands substantiated. It is also relevant to take note of the fact that there is no dispute about the factual aspect of execution of the contract as entered into between the parties.

12. In the case of ***M/s. Hind Builders Vs. Union of India***: AIR 1990 SC 1340, on a survey of earlier opinions and having considered the respective contentions of the parties, the Hon'ble Supreme Court observed that in a matter on which contract is open to two equally plausible interpretations, it is legitimate for the arbitrator to accept one or the other of the available interpretations, and even if the court may think that the other view is preferable; the court will not and should not interfere.

13. The scope of interference in award by the Court under Section 30 and 33 of the Act of 1940, has been examined by the Hon'ble Apex Court of the land, time and again. In the case of ***Rajasthan State Mines & Minerals Ltd. Vs. Eastern Engineering Enterprises & Anr.***: (1999) 9 SCC 283, the Hon'ble Supreme Court held that it is not open to the Court to admit to probe the mental process by which the arbitrator has reached his

conclusion where it is not disclosed by the terms of the award.

14. Similarly, in the case of **Himachal Pradesh State Electricity Board Vs. R.J. Shah & Company**: 1999 (2)

Arb. L.R. 316, the Hon'ble Supreme Court observed that when the Arbitrator has construed the contract the existence of an alternative construction/view would not justify the Court in substituting/replacing the view taken by the Arbitrator with the view favoured by the Court.

15. On the issue of award made by the sole arbitrator on the terms and conditions of agreement for Deedwana Division, the Additional District Judge No.4, Jaipur City, Jaipur, arrived at the finding holding thus:

" इस संबंध में यह भी उल्लेखनीय है कि सर्वजनिक निर्माण विभाग के अधीन अर्भित डेडवाना ने जिलाधीश के आदेश क्रमंक 5447 दिंक 5.5.87 के अनुसार ही कोरिजेंस जरी किया था, परन्तु अधीन अर्भित सर्वजनिक निर्माण विभाग नगौर खड्ड ने इस प्रकार का कोरिजेंस जरी नहीं किया। मैं विन अधीन विधी के इस तर्क से सहमत हूँ कि कोरिजेंस जरी किए बिना जिलाधीश नगौर के दिंक 26.5.87 के आदेश के अन्तर्गत अन्य आदेशों के शत प्रतिशत मन्म अधीन अर्भित नगौर के लिए कोई आवश्यक नहीं था। यह सही है कि जिलाधीश जिला में सरकार का सर्वोच्च प्रतिनिधि होता है, परन्तु राज्य के कार्य के लिए एक प्रविधि निर्धारित की हुई है उसी के अनुसार कार्य के अंश के जते हैं राज्य के ओ से ठर्स एण्ड कंस्ट्रक्शन पर हस्ताक्षर करने के लिए सर्वजनिक निर्माण विभाग के अधीन अर्भित के ही अधीन किया गया है। केसट के इस विषय में अधीन नहीं किया गया है। राज्य का सर्वोच्च जिला का प्रतिनिधि होने के आधार पर जिलाधीश अधीन अर्भित के निर्देशों के मन्म है परन्तु वह दूसरे पक्ष से विवरण प्रकरण के विषय में कोई सवि अथ ठर्स एण्ड कंस्ट्रक्शन तय कर पने का अधीन ही ऐसा नहीं मन ज सन है। "

16. From a glance of the finding recorded by the sole arbitrator in award dated 31st May, 1999, it is further reflected that as the full and final disputed claims were not finalised, the real cause of action arose when the

appellant/claimant requested the Chief Engineer to refer the dispute for adjudication through arbitration on 3rd March, 1991. Thus, there was no discontinuity of the response between the parties, and therefore, the sole arbitrator committed no error while adjudicating upon the issue No.4, with reference to the objections, as to limitation and the claim being barred on the ground of delay and laches whereas the Additional District Judge No.4, Jaipur City, Jaipur, has taken a contrary view in ignorance of the finding arrived at by the sole arbitrator on the basis of materials and evidence available on record.

17. According to the Additional District Judge No.4, Jaipur City, Jaipur, one of the grounds for interference with the award is acceptance of amount for carrying out the contract without any protest and thus, there was no dispute worth arbitration. The reasoning cannot be sustained for by now, it is well settled that umpire as sole arbitrator is not bound to give a reasoned award and if in passing the award he makes a mistake of law or of fact, that is no ground for challenging the validity of the award as has been held by the Hon'ble Apex Court of land in the case of ***N. Chellappan Vs. Secretary, Kerala State Electricity Board and Anr.:(1975)1 SCC***

289.

18. The Court below also fell in gross error while referring to the provisions of Section 70 of the Contract Act, in view of the limited jurisdiction available for interference as contemplated under Section 30 of the Act of 1940.

19. A glance of clause 23 of the PWD Manual Volume-III would further make it clear that the contract entered into between the parties was not in dispute. At this juncture, it will be relevant to consider the text of clause 23 of the PWD Manual Volume III, which reads thus:

"Clause 23- If any question, difference or objection whatsoever shall, arise in any way in connection with or arising out of this instrument or the meaning of operation of any part therefore of the rights, duties or liabilities of either party, then save in so far as the decision of any such matter as hereinbefore provided for and has been so decided, every such matter constitution a total claim of Rs. 5,000/- or above, whether its decision has been otherwise provided for and whether it has been finally decided accordingly or whether the contract should be terminated or has been rightly terminated and as regards the right or obligations of the parties at the result of such termination shall be referred for adjudication to a sole arbitrator to be appointed as hereinafter provided.

For the purpose of appointing the sole arbitrator referred to above, the Chief Engineer will on receipt of notice and prescribed fee from the contractors send a panel of three names not below the rank of Superintending Engineer of the Rajasthan Government and who shall be at presently unconnected with the contract, the contractor shall on receipt of the names as aforesaid select any one of the

persons names, to be appointed as a sole Arbitrator and communicate his name to the Chief Engineer. The Chief Engineer shall thereupon appoint the said person as the sole Arbitrator without delay. The arbitration shall give reasons forward.

Subject as aforesaid, the provisions of the Arbitration Act, 1940 or any statutory modification or re-enactment there of and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause."

20. The interference, made by the court below vide impugned order dated 27th October, 2004, could not be attracted unless the statement of objections was based on some or the other grounds as contemplated under Section 30 of the Act of 1940, which reads thus:

"30. Grounds for setting aside award : An award shall not be set aside except on one or more of the following grounds namely :

(a) that an arbitrator or umpire has misconducted himself or the proceedings;

(b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35;

(c) that an award has been improperly procured or is otherwise invalid."

21. It is settled law that Court cannot sit as a court of appeal while disturbing the findings of fact. In the case of **Rajasthan State Road Transport Corporation Vs. Indag Rubber Ltd.:** (2006) 7 SCC 700, the Hon'ble Supreme Court, held thus:

"8. As against this, learned Counsel for the respondent-Company submitted that in fact there was no material on which the finding was recorded by the Arbitrator. In support thereof, learned Counsel invited our attention to a decision of this Court in the case of K.P. Poulose v. State of Kerala and Anr. reported in: AIR1975SC1259 wherein it was held that the award can be set aside on the ground of misconduct if relevant documents are not considered by the Arbitrator. Therefore, we asked learned Counsel for the appellant- Corporation to substantiate the finding recorded by the arbitrator that it is based on the material on record. In pursuance to the direction given by this Court, learned Counsel for the Corporation filed an affidavit on 12.7.2006 and submitted that the document wherein the details on divisionwise average kilometer of new tyres and retreaded tyres along with average short-fall in guaranteed kilometers for the various periods was on record of arbitrator & same was produced before us. The details were given of all the Divisions i.e. Bharatpur, Jaipur, Sikar, Kota, Ajmer, Bikaner, Jodhpur and Udaipur. In all these eight divisions for the various period i.e. from June 1991 to February, 1994 the details have been given to substantiate the allegations that what was the average mileage of the new tyre and what was the average mileage given by the retreaded tyres and on that basis, the short-fall was given and accordingly, the amount of loss was worked out. These details which were placed before us formed part of the record before the arbitrator. The arbitrator in his detailed award has recorded his finding on the basis of the average performance of new vehicle tyres with that of the retreaded tyres of the Company and on that basis he has worked out the assessment in paragraph 17 of the award. Paragraph 17 of the award reads as follows:

The RSRTC has compared the performance of retreaded tyres with the performance of new tyres in each division. In each division, as mentioned earlier, the road conditions, the vehicles used, the weather conditions, the general driving skills of the drivers and the level of maintenance and upkeep of vehicles were similar for the new tyres as well as retreaded tyres. The retreaded tyres should have given a kilometerage of 46,000 or 95 % of the life of new tyres. Therefore, the assessment of the performance done by the RSRTC is strictly in conformity with the provisions of Clause 5 of the agreement Notwithstanding the acceptance by the respondent of an error of judgment in

guaranteeing 46,000 kms for a retreaded tyre, from the Statements enclosed by the claimant with its letters mentioned in para 5 of this order, it is clear that the retreaded tyres performance fell short of the guaranteed level. I, therefore, find claim of the RSRTC to be fully justified.

This is the finding of fact given by the arbitrator. As against this, learned Single Judge as mentioned above, has held that there was no assessment in each division in similar conditions. Therefore, the learned Single Judge set aside the award but it is not factually correct. As mentioned above, there was a comparative assessment given by the Corporation and that was part of the record before the arbitrator and on that basis the finding of fact was recorded by the arbitrator. Learned Counsel for the respondents strenuously urged before us that the performance of new tyres and of retreaded tyres on roads like Jaipur-Delhi would be better as against the road of Jaipur-Lalsot. Therefore, there was no assessment of performance of the new tyres vis-a-vis the retreaded tyres supplied by the Company in similar conditions. In fact, an average has to be taken of each division. It is not necessary that in each of the divisions of the Corporation, the road conditions will be similar. Once the company has entered into an agreement knowing fully well the conditions obtaining in the State of Rajasthan that all the routes in the State are not the roads of Class 'A' category but there are roads of Class 'A', Class 'B' and Class 'C' categories also. Therefore, the average performance has been recorded taking into consideration this aspect. It is unlikely that all over the State of Rajasthan the road condition like Jaipur-Delhi will be available for all other divisions. Therefore, in all the divisions the average performance has been taken into consideration. The assessment has been based on average of similar conditions of the roads i.e. the good quality as well as the poor quality. Therefore, average performance of the new tyres with the retreaded tyres has to be taken on the basis of roads available in Rajasthan. The average running of the new tyres on these road conditions with that of the retreaded tyres was to be compared to find out whether the performance of retreaded tyres was up to 95% average or not. After assessing the comparative assessment and going through the materials on record the arbitrator has recorded his finding. It was for the company if they wanted

more information or wanted to allege that the road conditions are not similar or that the performance of the tyres which were fitted in the rear axle or on the front axle would not be the same, all these details if it wanted, it could have obtained from the Corporation but they did not do so and only at this stage the company wants to bring this factual controversy that retreaded tyres were not used in similar conditions. This argument at this belated stage cannot be accepted as all the materials have been considered by the arbitrator and after taking into consideration the average of each tyre in each region of the corporation has worked out that the performance of the retreaded tyres was not to the extent of 95%. This was a finding of fact recorded by the arbitrator and the same was made rule of the court by the District Judge. But the learned Single Judge erroneously took upon himself to sit as a court of appeal and disturbed this finding of fact. In our opinion, the view taken by the learned Single Judge of the High Court cannot be sustained."

22. In the case of ***Bhagwati Oxygen Ltd. Vs. Hindustan Copper Ltd.*** : (2005) 6 SCC 462, the Hon'ble Supreme Court while dealing with the provisions of section 30 of the Act of 1996, observed that the Court while exercising the powers under Section 30 of the Act of 1996 cannot rely the evidence or examine the correctness of the conclusions arrived at by the Arbitrator. The award cannot be interfered merely because in the opinion of the Court, other view is equally possible. At this juncture, it will be relevant to consider para 17, 19 and 24 of the judgment aforesaid, which reads thus:

"17. In the light of rival contentions of the parties, in our opinion, three questions arise for our consideration :

(1) Whether on the facts and in the circumstances of the case, the Arbitrator was right in allowing the claim of BOL?

(2) Whether the Arbitrator had misconducted himself in passing the impugned award and by dismissing the counter claim of HCL and whether the learned single Judge and the Division Bench of the High Court were right in setting aside that part of the award by directing the Arbitrator to re-consider the matter and decide it afresh? and

(3) Whether the Arbitrator had power to award interest at the rate of eighteen per cent per annum for pre-reference period, pendente lite and post reference, i.e. future interest from the date of award till the date of payment and whether the learned single Judge and the Division Bench were justified in reducing the rate of interest from eighteen per cent to six per cent?

19. Now, the Arbitrator has considered the contention of both the parties. He observed that as per the contract, BOL had undertaken to provide a VIST for storage of liquid oxygen of 50,000 litres. It was not disputed that VIST was not established by BOL and there was no provision for storage of liquid oxygen. He, however, observed that HCL neither insisted for establishing VIST nor objected for not establishing it.

24. This Court has considered the provisions of Section [30](#) of the Act in several cases and has held that the court while exercising the power under Section [30](#), cannot re-appreciate the evidence or examine correctness of the conclusions arrived at by the Arbitrator. The jurisdiction is not appellate in nature and an award passed by an Arbitrator cannot be set aside on the ground that it was erroneous. It is not open to the court to interfere with the award merely because in the opinion of the court, other view is equally possible. It is only when the court is satisfied that the Arbitrator had misconducted himself or the proceedings or the award had been improperly procured or is 'otherwise' invalid that the court may set aside such award."

23. By now, it is well settled that the Court while considering challenge to the arbitral award does not sit

in appeal over the findings and the decision of the Arbitrator. The Arbitrator is legitimately entitled to take the view which he holds to be correct one after considering the materials before him and after interpreting the provisions of the agreement. If he does so, the decision of the Arbitrator has to be accepted final and binding (***Kwality Manufacturing Corporation Vs. Central Warehousing Corporation***): (2009) 5 SCC 142.

24. In the case of ***State of Rajasthan Vs. Nav Bharat Construction Co.***: (2006) 1 SCC 86, the Hon'ble Supreme Court held that it is not the nomenclature used or chosen to christen the levy which is really determined or of the real character or nature of the levy really has to be seen, pith and substance or the real nature or character of levy which has to be adjudged. At this juncture, it will be relevant to consider the text of the judgment under paragraph 18, which reads thus:

"The relevant terms of the tender document (which is part of the contract) and the contract reads as follows;

"7. HOUSES:-

No local housing is likely to be available and the contract should arrange for suitable housing for the staff and labour. Land for the same will be granted free of charge for temporary use during the period of contract.

12. SUPPLY OF PETROL AND DIESEL:-

The contractor has to make his own arrangements for the supply of petrol and diesel and lubricants. The nearest place from where it can be obtained is Jhalawar.

Clause 12 The Engineer-in-Charge shall have power to make any alterations in or additions to the original specifications, drawings, designs and instructions, that may appear to him be necessary or advisable during the progress of the work and the contractor shall be bound to carry out the working in accordance with any instruction which may be given to him in writing signed by the Engineer-in-Charge and such alteration shall not invalidate the contract and any additional work which the Contractor may be directed to do in the manner above specified as part of the work shall be carried out by the contractor on the same conditions in all respects on which he agreed to do the main work, and at the same rates as are specified in tender for the main work. The time for the completion of the work shall be extended in the proportion that the additional work bears to the original contract work, and the certificate of the Engineer-in-Charge shall be conclusive as to such proportion. And if the additional work includes any class of work for which rate is specified in this contract then such class of work shall be carried out at the rates entered in the schedule of rates of the district if it exists and such last mentioned class of work is not entered in the schedule of rates of the district, then the contractor shall, within seven days of the date of this receipt of the order to carry out the work, inform the Engineer-in-Charge of the rate which it is his intention to charge for such class of work and if the Engineer-in-Charge does not agree to this rate he shall, by notice in writing, be at liberty to cancel his order to carry out such class of work and arrange to carry it out in such manner as he may consider advisable, provided always if the contractor shall commence work or incur any expenditure in regard thereto before the rates shall have been determined as lastly herein before mentioned, then and in such case he shall only be entitled to be paid in respect of the work carried out or expenditure incurred by him prior to the date of the determination of the rate as aforesaid according to such rate or rates as shall be fixed by the Engineer-in-Charge. In the event of a dispute, the decision of the Chief Engineer will be final.

Clause 23 Except where otherwise specified in the contract the decision of the Chief Engineer of the Government of Rajasthan for the time being shall be final, conclusive, and binding on all parties to the contract upon all questions relating to the meaning of the specifications, designs, drawings and instructions herein before mentioned and as to the quality of workmanship, or materials used on the work or as to any other question, claim, rights, matter, or thing whatsoever in any way arising out of, or relating to, the contract, designs, drawings, specifications, estimates, instructions, order, these conditions or otherwise concerning the works, or the execution or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment thereof, or the contract by the contractor shall be final, conclusive and binding on the contractor.

Clause 36 The Sales Tax or any other tax on materials issued in the process of fulfilling contract payable to the Government under rules in force will be paid by the contractor himself.

Clause 38 Fair Wages Clause:--(a) The contractor shall pay not less than fair wage to labourers engaged by him on the work.

Explanation:-- 'fair wages' means minimum wages for time on piece work fixed or revised by the State Govt. under the minimum Wages Act, 1948.

(b) The contractor shall not withstanding the provisions of...contract to the contrary cause to be paid fair wages to labourers indirectly engaged on the work including any labour engaged by him, his sub-contractors in connection with the said work as if the labourers has been immediately or directly employed by him.

(c) In respect of all labourers indirectly or directly employed on the work for the purpose of the contractor's part of this agreement, the contractor shall comply with or cause to be complied with the P.W.D. contractor's labour regulation made way of that be made by the Government from time to time in regard to payment of wages period, deductions, maintenance of wages register, wage card, publications and submission of wages periodical returns in all other matters of like nature.

(d) The Executive Engineer-in-Charge shall have the right to deduct from the money due to the

contractor may sum required to estimate to be required for making good the loss suffered by a worker by reasons of non-fulfillment of the conditions of the contract for the benefit of the worker or workers non-payment of wages or deductions made therefore which are not justified by the terms of contract or as a result of non-observance of the aforesaid regulations. (e) Vis-à-vis the Government of Rajasthan the contractor shall be primarily liable for all payments to be made and for the observance of the regulations aforesaid without prejudice to his right to claim indemnity from his sub-contract. (f) The regulations aforesaid shall be deemed to be part of this contract and breach thereof shall be deemed to be breach of contract."

25. In the case of ***Rashtriya Ispat Nigam Ltd. Vs. Dewan Chand Ram Saran***: (2012) 5 SCC 306, the Hon'ble Apex Court of the land observed that the Arbitrator is entitled to take a view which he holds to be correct after considering the facts before him and after interpreting the provisions of the agreement-contract. The relevant observations under paragraph 29 of the judgment, reads thus:

29. In any case, assuming that Clause 9.3 was capable of two interpretations, the view taken by the arbitrator was clearly a possible if not a plausible one. It is not possible to say that the arbitrator had travelled outside his jurisdiction, or that the view taken by him was against the terms of contract. That being the position, the High Court had no reason to interfere with the award and substitute its view in place of the interpretation accepted by the arbitrator. The legal position in this behalf has been summarized in paragraph 18 of the judgment of this Court in **Sail v. Gupta Brother Steel Tubes Ltd.** (supra) and which has been referred to above. Similar view has been taken later in **Sumitomo Heavy Industries Limited. v. ONGC Limited** reported in 2010 (11) SCC 296 to which one of us (Gokhale

J.) was a party. The observations in paragraph 43 thereof are instructive in this behalf. This paragraph 43 reads as follows:

43. ...The umpire has considered the fact situation and placed a construction on the clauses of the agreement which according to him was the correct one. One may at the highest say that one would have preferred another construction of Clause 17.3 but that cannot make the award in any way perverse. Nor can one substitute one's own view in such a situation, in place of the one taken by the umpire, which would amount to sitting in appeal. As held by this Court in **Kwality Mfg. Corpn. v. Central Warehousing Corpn** 2009 (5) SCC 142. The Court while considering challenge to arbitral award does not sit in appeal over the findings and decision of the arbitrator, which is what the High Court has practically done in this matter. The umpire is legitimately entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the agreement. If he does so, the decision of the umpire has to be accepted as final and binding."

26. From a glance of the award dated 31st May, 1999 made by the sole arbitrator and materials available on record, it is not reflected that sole arbitrator committed any illegality so as to fall within the definition of misconduct as contemplated under Section 30(a) of the Act of 1940, for the arbitrator on the face of award arrived at the conclusions on the basis of pleadings and evidence adduced by the parties as well as materials available on record. Therefore, the award and the findings arrived at by the sole Arbitrator were not open for interference by the court below.

27. In the result, the appeal preferred on behalf of the

appellant-claimant succeeds and is hereby allowed.

28. The impugned order passed by the Additional District Judge No.4 Jaipur City, Jaipur, dated 27th October, 2004, is quashed and set aside and the award made by the sole Arbitrator dated 31st May, 1999, is hereby restored.

No costs.

(VEERENDR SINGH SIRADHANA), J.

Item No.105
bm gandhi/

All corrections made in the judgment/order have been incorporated in the judgment/order being e-mailed Brij Mohan Gandhi Sr.P.A.
Cum JW



सत्यमेव जयते