REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2479 OF 2009
(Arising out of SLP (C) No.3182 of 2005)

G. Ramachandra Reddy & Co. ... Appellants

Versus

Union of India & Anr. ... Respondents

WITH

CIVIL APPEAL NO. 2536 OF 2009
(Arising out of SLP (C) No.9624 of 2006)

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Jurisdiction of a court to interfere with an arbitral award involving interpretation of a contract is involved in these appeals which arise out of a judgment and order dated 4.10.2004 passed by a Division Bench of the High Court of judicature at Madras allowing an appeal from a judgment and order

dated 14.1.2000 passed by a learned Single of the said court making the award made by Respondent No.2 herein a rule of Court.

3. For the work of construction of "Married accommodation for MCPOs/CPOs/POs and Junior Sailors at Naval Air Station, Arakkonam" by the Union of India, an advertisement was issued; pursuant whereto appellant submitted its tender on or about 9/17.7.1988 marked as Exhibit C-2. In its forwarding letter, it was stated :

> "We have kept ready all the men and material for early commencement of the work. The technical personnel engaged by the firm have the vast experience in the execution of major building projects. The total labour component involved in this work is forty per cent of the scope of the contract. We can deploy the huge skilled and unskilled labour force already on our rolls for all the works along with the machinery for successful completion of the work positively as per targeted time schedules of the Department. The latest ITCC and partnership deed are enclosed as required."

A post script added thereto reads as under :

> "When our tender opened and Rates Read out, Please Read out over (+) 2.25% under item 1 of the schedule quoted percentage and total value considered accordingly."

4. Respondent, by a letter dated 19.7.1988 (marked as Exhibit C-3) replied thereto, stating :

"On scrutiny of your forwarding letter the following comments are made :-

(a) The Labour component in the work is 20 as included under Special Condition No.17 on Serial Page 94 of the tender and not 40 as referred to by you.

(b) In case of acceptance of your tender mobilization advance of Rs.35.00 lakhs will be paid against BGBs as per conditions of the tender.

(c) It is seen that the way the revision has been made in the quoted percentage for Schedule 'A' Part I does not go well with the status of your firm. However, your tender is being considered with the reduction of minimum 2.25% over quoted percentage for Schedule 'A' Part I as also read out at the time of opening of tenders wherein your representative was also present."

Yet again on 5.8.1988, appellant in reply thereto, inter alia, stated :

"1. We hereby clarify that our rates are worked out and quoted taking total labour component involved in the scope of work as 40%. As such the department may please evaluate our tenders on the same basis and consider accordingly.

XXX XXX XXX

After ascertaining this just before dropping the tender in the tender box, our Managing Partner had to include an extra at 2.25% towards Turnover Sales Tax liability and the vertical line in the sign (+) has been hurriedly put as shown here once again (+).

> Thus, our quoted rates for item 1 of the schedule is 18.5% i.e. 16.25% quoted by us in the schedule and plus 2.25% quotd in the covering letter along with our tender against item 1 of the schedule. We regret for the misunderstanding led in this regard."

Offer of the appellant was accepted by the respondents in terms of its letter dated 11.8.1988, the relevant portion whereof reads as under :

> "Reference your letter No.Nil dated 9/17.7.1988 forwarding the tender for the above mentioned work.
> 2. On behalf of the President of India, I hereby accept your tender for the work mentioned above for the Lump Sum of Rs.7,54,03,216.00 (Rupees Seven Crores Fifty four lakhs three thousand two hundred and sixteen only).
> 3. This contract is allotted the number "CA No.CEMZ/ARK/4 of 1988-89" which will be quoted by you in all future correspondence in connection with this contract.
> 4. The tender enquiry, your tender, the letter referred to above and this letter shall be the sole repository of the contract."

With the said letter, the details of amended Lump-sum was appended which reads as under :

> "DETAILES OF AMENDED LUMP SUM
>
> i) Lump sum amount originally quoted Rs. 7,67,22,728.00

ii) Deducted for reduction of (-) 2.25% offered on Schedule 'A' Part I vide your letter No. NIL dated 9/17 July, 88 while forwarding the tender (i.e. 2.25% on Rs.6,18,45,000/-)	Rs. 13,91,512.00
Note : Consequent on SI (ii) above the Representing percentage on Schedule 'A' Part I stands amended to "+ 14%"	
Amended Lump Sum	Rs.7,54,03,216.00

(Rupees Seven crores fifty four lakhs three thousand two hundred and sixteen only)"

6. Indisputably, whereas the main letter dated 11.8.1988 was signed by one L.D. Sharma, Brig. Chief Engineer as accepting officer for and on behalf of the President of India, the appendix was signed by some other person for 'Accepting Officer'. Indisputably, the representative of the appellant also signed the said letter.

The said contract, however was terminated on or about 10.7.1991

7. Disputes and differences having arisen between the parties, the arbitration agreement which formed part of the general condition of the contract as also special condition of contract was resorted to. Respondent No.2 was appointed as the Arbitrator.

Before the learned Arbitrator, appellant put forth eight claims, being :

"(a) Dispute regarding additional payment of 2.25% over the quoted rates under item 1 of Schedule A with an overall effect of 4.5% over what has been paid to the plaintiff.

(b) Dispute regarding percentage of labour component in the work with reference to the escalation in labour rates and for consequential in labour rates and for consequential payments to the plaintiff.

(c) Dispute regarding escalation with reference to the extra payment of labour involved in construction of high rise building.

(d) Dispute regarding legality of the termination of the plaintiff's contract and for consequential damages.

(e) Dispute regarding release of the plaintiff's plant and equipment, together with damages for the use of the equipment by the defendant and in default payment of the market value of the plant and equipment as on the date of termination, together with the damages as aforesaid.

(f) Dispute regarding balance payment for the work done and material supplied by the plaintiff.

(g) Interest at 24% p.a. on all amounts due to plaintiff and awarded by the arbitrator from the date when the cause of action for the claim arose, till the date of payment to the plaintiff."

8. Respondent repudiated the said claims of the appellant. Respondent No.2 made and published an award on 17.9.1996. While claims Nos.1 and 5 were allowed in part, claims No.2 and 4 were allowed in toto. Claim No.3

was allowed for the amount to which the appellant itself had restricted its claim to.

Counter claim of the first respondent was rejected.

9. First respondent filed an application under Section 30 of the Arbitration Act, 1940 (hereinafter called and referred to for the sake of brevity as 'the Act').

A learned Single Judge of the High Court rejected the said objection, opining that the award did not warrant any interference. The learned Single Judge noticed that claim Nos. 5 and 6 had not been disputed by the first respondent and counter claim No.4 was not pressed. It was, therefore, directed payment of a sum of Rs.2,78,17,530.01 p. with further interest @ 6% per annum from the date of decree till the date of realization. The counter claim was also dismissed.

10. First respondent preferred an intra court appeal thereagainst in terms of clause 15 of the Letters Patent of the High Court read with Section 39 of the Act. The Division Bench of the High Court allowed the said appeal in part in respect of three items of claim. The objection in relation to fourth item was also dismissed.

11. Both parties are here before us aggrieved by and dissatisfied with the said judgment.

12. The three heads of claim which were allowed by the respondent No.2 in favour of the appellant are as under :

(i) Claim of 2.25% over and above the base price as specified in Item No.1 of Schedule A;

(ii) claim of escalation towards labour component whether 40% or 21%; and

(iii) claim towards higher minimum wages paid to the workmen in terms of a Government of India notification dated 14.10.1986.

The fourth claim which was allowed related to loss of profit allegedly suffered by the petitioner for illegal termination of the contract.

13. Mr. Gurukrishna Kumar, learned counsel appearing on behalf of the appellant, would submit :

(1) That the Division Bench of the High Court committed a serious error in so far as it failed to take into consideration the distinction between an excess of jurisdiction and an error apparent on the face of the award and as the respondent's objection was not in relation to the exercise of excess jurisdiction by the arbitrator, a strict scrutiny test should have been applied.

(2) The Division Bench of the High Court committed a serious error of law in so far as it failed to take into consideration that an error apparent on the face of the award would not entitle it to enter into the merit of the matter as the same is confined to the award itself or any note appended thereto.

(3) Interpretation of an agreement admittedly being within the realm of the jurisdiction of the Arbitrator, interference therewith is not permissible even if the court takes a different view.

14. Mr. B.B. Singh, learned counsel appearing on behalf of the respondent, on the other hand, would urge :

1) As the jurisdiction of the Arbitrator emanates from the contract, he must exercise the same within the four corners thereof.

2) Interpretation of a contract although fell within the jurisdiction of the Arbitrator but in construing the same, he could not have ignored any material document, namely, the final contract entered into by and between the parties on 11.8.1988 and based his interpretation only on the basis of letter of the contractor dated 9/17.7.1988 and, thus, he must be held to have misconducted himself and the proceedings.

15. Before adverting to the rival contentions, as noticed hereinbefore, we may briefly notice the reasonings adopted by respondent No.2 in making the award.

The learned Arbitrator proceeded on the basis that :

(1) The letter of the contractor dated 9/17.7.1988 formed part of the contract.

(2) The intent of the parties must be ascertained from four documents which formed part of the contract and not de hors the same.

(3) Appendix to the letter dated 11.8.1988 having been signed by a person other than the Accepting Officer who was authorized therefor, the same was not binding on the appellant.

(4) Although the appellant had signed the work order, the same by itself would not lead to the conclusion that it was estopped and precluded from questioning the quantum of amount mentioned in the said letter dated 11.8.1988.

16. In respect of claim No.1, the learned Arbitrator held :

> "On a consideration of the letters and the Exhibits mentioned above, we have to state that a concluded contract has taken place taking into consideration the sign (+) mentioned in the covering letter. Even assuming that there was a

> mistake on the part of the respondent reading the covering letter, the contract would remain unaffected.
> The contention of the respondent that when once the claimant has accepted for the reduction, as is found in Ex.R.7, which is the contractor's work order sheet, and which is signed by the contractor on 14.9.1988., it has to be concluded that there is an acceptance for the reduction. This argument of the learned Counsel for the respondent is not well founded. An acceptance of the contract will have to be considered under the terms of Ex.C.5 dated 11.8.88. In the instance case it is common ground that there is a concluded contract between the parties and what remains is the interpretation of the contract, Ex.C.5 it is not the case of the respondent that Ex.C.5 is a counter offer which was accepted by the claimant. On the other hand, it is agreed by the respondent that acceptance of the contract is solely based on Ex.C.5. The documents filed before me in this case clearly establish the sigh (+) which is more particularly referred to in Ex.C.5 as the sole repository of the contract. (underlining is mine) In such a case, it has to be concluded that Ex.R.1 is the clear acceptance of the contract. It has to be further noted chat as per the terms of Section 7(2) of the Contract Act, if the proposer does not insist that his proposal should be accepted in the prescribed manner, he in fact accept the acceptance."

In respect of claim No.2, the relevant condition of contract, namely, clause (17) although specified that for the purpose of escalation of the labour component, the value of contract should be taken as 21% but as the appellant claimed 40% in its offer, the same would prevail over the contract, stating :

> "I state that special condition to the contract that is clause 17 at Page 4 specifies that for the purpose of escalation the labour component for the value of work will be taken as 20% which was later changed as 21%. Similarly, fuel component which was shown as 1.5% in the agreement was changed as 2% and the material component which was shown in the agreement on page 90 as 60% was changed into 58%. In other words, the total component towards labour, material and fuel comes to 81%. The claimant has not claimed anything in excess of 81%, for, the escalation clause in the agreement provides, the escalation for an amount not exceeding 81% of the value of the work done. All that he has claimed is, towards fuel 2%, towards material 39% and towards labour 40%. This change in labour component at 40% is based on Ex.C.22 (R1) dated 9/17.07.88 which has become part of the tender bid. This part of the offer that is tender bid, has been accepted by the respondent, that is to say, that this 21% mentioned in the contract has been substituted as 40%. The claimant has made this fact clear in all his subsequent letters. In other words, the contention of the claimant is that the covering letter Ex.C.2 (R1) is part of the tender bid, and since the tender bid has been accepted without any modification, the figure 21% in the condition, has, therefore, to be substituted by 40%. It is on this basis the claimant claims that the labour component should be paid at the rate of 40%, while material component would consequently come at 39% and the fuel component will remain at 2%."

In respect of claim No.3, it was held that in view of the notification issued by the Central Government dated 14.10.1980, the minimum wages payable to the workmen being over and above 20% the general wages, the

same would be payable to all the workmen and not those employed in high rise portions of the building.

17. The Division Bench, however, set aside in part the award in respect of the aforementioned claims stating as under :

> "However, we find some substance with regard to the claim No.4, loss of profit, there was an admitted delay in handling over the site and supply of materials. We confirm both the award of the Arbitrator and the order of the learned Single Judge with regard to Claim No.4, loss of profit."

18. We may, at the outset, notice the legal principles governing the dispute between the parties. Interpretation of a contract may fall within the realm of the Arbitrator. The Court while dealing with an award would not reappreciate the evidence. An award containing reasons also may not be interfered with unless they are found to be perverse or based on a wrong Proposition of law. If two views are possible, it is trite, the Court will refrain itself from interfering. {See State of U.P. v. Allied Constructions [(2003) 7 SCC 396]}.

In Pure Helium India (P) Ltd. v. Oil & Natural Gas Commission [(2003) 8 SCC 593], this court, upon referring to the decisions in Allied Constructions (supra), K.R. Raveendranathan v. State of Kerala [(1998) 9 SCC 410], H.P. Seb v. R.J. Shah & Co. [(1999) 4 SCC 214], Rajasthan State

Mines & Minerals Ltd. v. Eastern Engg. Enterprises [(1999) 9 SCC 283], Food Corporation of India v. Surendra, Devendra & Mahendra Transport Co. [(2003) 4 SCC 80] and Shyama Charan Agarwala & Sons v. Union of India [(2002) 6 SCC 201], opined as under :

> "41. The principles of law laid down in the aforementioned decisions leave no manner of doubt that the jurisdiction of the court in interfering with a non-speaking award is limited.
> 42. The upshot of the above decisions is that if the claim of the claimant is not arbitrable having regard to the bar/prohibition created under the contract, the court can set aside the award but unless such a prohibition/bar is found out, the court cannot exercise its jurisdiction under Section 30 of the Act. The High Court, therefore, misdirected itself in law in posing a wrong question. It is true that where such prohibition exists, the court will not hesitate to set aside the award."

In Sudarshan Trading Company v. Government of Kerala & Anr. [(1989) 2 SCC 38], the law was laid down in the following terms :

> "28. It was submitted before us that the High Court had exceeded its jurisdiction in acting in the manner it did on these aforesaid aspects. The first question, therefore, that arises for consideration in this case is, whether the award in question was a speaking award or not. In our opinion, the award was not a speaking award. An award can also be set aside if the arbitrator had misconducted himself or the proceedings or had proceeded beyond his jurisdiction. These are separate and distinct grounds for challenging an award. Where there are

> errors apparent on the face of the award it can only be set aside if in the award there is any proposition of law which is apparent on the face of the award, namely, in the award itself or any document incorporated in the award."

It was furthermore observed :

> "29. The next question on this aspect which requires consideration is that only in a speaking award the court can look into the reasoning of the award. It is not open to the court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion."

19. Jurisdiction of the Court to interfere with an award made by an Arbitrator is limited. One of the grounds therefor is the error apparent on the face of the award. We have noticed hereinbefore some precedents operating in the field.

What is an error apparent on the face of an award and legal misconduct is stated in State of Rajasthan v. Pure Construction Co. Ltd. & Ors. [(1994) 6 SCC 485], in the following terms :

> "As reference to arbitration of disputes in commercial and other transactions involving substantial amount has increased in recent times, the courts were impelled to have fresh look on the ambit of challenge to an award by the arbitrator so that the award does not get undesirable immunity. In recent times, error in law and fact in basing an

award has not been given the wide immunity as enjoyed earlier, by expanding the import and implication of "legal misconduct" of an arbitrator so that award by the arbitrator does not perpetrate gross miscarriage of justice and the same is not reduced to mockery of a fair decision of the lis between the parties to arbitration. Precisely for the aforesaid reasons, the erroneous application of law constituting the very basis of the award and improper and incorrect findings of fact, which without closer and intrinsic scrutiny, are demonstrable on the face of the materials on record, have been held, very rightly, as legal misconduct rendering the award as invalid."

It was furthermore stated :

"Error apparent on the face of the record does not mean that on closer scrutiny of the import of documents and materials on record, the finding made by the arbitrator may be held to be erroneous. Judicial decisions over the decades have indicated that an error of law or fact committed by an arbitrator by itself does not constitute misconduct warranting interference with the award."

In Trustees of the Port of Madras v. Engineering Constructions Corporation Ltd. [(1995) 5 SCC 531], This Court opined :

"14. ... A note of clarification may be appended, viz., where the parties choose to refer a question of law as a separate and distinct matter, then the Court cannot interfere with the award even if the award lays down a wrong proposition of law or decides the question of law referred to it in an erroneous fashion. Otherwise, the well-settled position is that an arbitrator "cannot ignore the law

> or misapply it in order to do what he thinks is just and reasonable". [See Thawardas Pherumal v. Union of India]

It was clarified :

> 20. The proposition that emerges from the above decisions is this: in the case of a reasoned award, the court can interfere if the award is based upon a proposition of law which is unsound in law. The erroneous proposition of law must be established to have vitiated the decision. The error of law must appear from the award itself or from any document or note incorporated in it or appended to it. It is not permissible to travel beyond and consider material not incorporated in or appended to the award."

20. We may, however, notice that in Food Corporation of India v. Joginderpal Mohinderpal & Anr. [(1989) 2 SCC 347], referring to a large number of decisions, a Division Bench of this Court held :

> "... It has to be borne in mind, however, that wrong statement or conclusion of law, assuming even that it was a wrong statement of law, was not wrong statement of the proposition of law which was the basis for decision in this award. Error of law as such is not to be presumed; if there is legal proposition which is the basis of the award and which is erroneous as observed in Champsey Bhara & Co., then only the award can be set aside."

21. Almost to the similar effect is the decision of another Division Bench of this Court in Numaligarh Refinery Ltd. v. Daelim Industrial Company Ltd. [JT 2007 (11) SC 73], wherein it is stated :

> "17. We have considered the rival submissions of the parties. So far as the legal proposition as enunciated by this Court in various decisions mentioned above, it is correct that courts shall not ordinarily substitute their interpretation for that of the arbitrator. It is also true that if the parties with their eyes wide open have consented to refer the matter to the arbitration, then normally the finding of the arbitrator should be accepted without demur. There is no quarrel with this legal proposition. But in a case where it is found that the arbitrator has acted without jurisdiction and has put an interpretation on the clause of the agreement which is wholly contrary to law then in that case there is no prohibition for the courts to set things right."

22. A contract would warrant construction if the terms thereof are vague and ambiguous. The letter exhibiting the offer of the appellant refers to four different documents including the letter dated 9/17.07.1988 which was marked as Exhibit C-2. Whether in the said letter, the appellant had asked for increase of 2.5% over the base value or deducted 2.5% therefrom is a matter of construction.

23. The learned Arbitrator, it is not correct to contend, has not taken into consideration the ultimate contract. He did take the same into consideration.

He, however, was of the opinion that the aforementioned four letters which were said to be the sole repository of the contract formed part thereof.

He, thus, took into consideration the relevant documents for arriving at a finding as to whether they formed part of the contract. Offer of the appellant was accepted.

24. The first claim was in relation to disputes regarding additional payment of 2.25% over the quoted rates under item 1 of Schedule A with an overall effect of 4.5% over what had been paid to the plaintiff. The arbitrator came to the conclusion that the letter dated 9/17.7.1988 (Ex.C.2) does not make out whether the contractor intended to quote the price with +2.25% and therefore, he held that a concluded contract has taken place after taking into consideration the sign (+) mentioned in the above letter. The contract will therefore still be enforced even if it is assumed that there was a mistake on the part of the respondent. The High Court held that it was apparent on the face of record that the contractor intended only to reduce 2.25%, which was seen from Ex.C.5, which was final and concluded, claim no 1 fails for that reason. But as the Arbitrator held that the letter of the contractor dated 9/17.7.1988 formed part of the contract, the claim cannot fail and therefore the award of the Learned Arbitrator, in respect of claim No 1 must be sustained.

25. In relation to Claim No.2, the respondent relied on the fact that the claimant received payment only at the rate of 21% towards labour escalation in the several R.A.Rs and therefore, it has to be presumed that the claimant is entitled to only 21%. The Arbitrator opined that the receipt of money at 21% cannot absolve the claimant from claiming at 40% as per the contract, particularly, when it is clearly mentioned in Ex C.2 (R1) that 40% will be the labour component which forms part of the contract, Ex C.5. The High Court held that as the Department themselves gave 21% to the contractor, and only 21% of escalation, which was in consonance with the special conditions, which was apparent on the face of the record, the second claim of escalation of 40% was to be set aside. But, keeping the same principle as applied in relation to Claim No.1, the Arbitrator held that as the covering letter (Ex.C.2) is part of the tender bid, and since the tender bid has been accepted without any modification, the Figure of 21% has to be substituted by 40%. Therefore, in respect of claim No.2, the impugned judgment of the High Court cannot be upheld and the award of the Arbitrator is sustained.

26. The matter might have been different had the respondents in categorical terms rejected the offer made by the appellant as amended by its letter dated 19.7.1988. It did not do it. Thus, the contract remained open for construction.

27. We have not been able to persuade ourselves to agree with the reasonings of the Division Bench of the High Court. The award of the learned Arbitrator in respect of claim No.1, therefore, must be sustained.

28. Keeping in view the fact that the same principle would apply in respect of claim No.2 also, the impugned judgment of the High Court cannot be upheld.

29. So far as Claim No.3 is concerned, the claim towards higher minimum wages paid to the workmen is not in dispute. A high rise building is a high rise building, it cannot be divided into two parts.

What would constitute a high rise building was defined. A portion of the building cannot be high rise and a portion would fall within the purview of the said definition. The learned Arbitrator, in our opinion, had rightly opined that the same workers may have to work for constructions of the entire building as it will be impossible for any contractor to employ any workmen to work exclusively for the high rise building. Furthermore, the same workmen may have to work in different parts of the same building at different times. It would lead to an absurd situation if the workmen at one point of time are not paid the 20% of the excess amount and then paid the same and yet again denied the same benefit. Interpretation of the High Court, therefore, that high rise building mean portion of the building, in our

opinion, keeping in view the beneficent nature of the provisions, cannot be accepted.

30. The award of the Arbitrator in respect of claim No.4 has been accepted by the Division Bench. Mr. B.B. Singh has drawn our attention to clause 11(c) of the general conditions of contract to contend that in terms thereof, no damages were payable.

The question as to whether damages were payable for illegal termination of contract cannot be a subject matter of contract. The learned Arbitrator has categorically held that not only the termination of contract was illegal, the same was mala fide. Furthermore, the contention raised before us by Mr. Singh has not been raised before the High Court.

31. In any event, there is a delay of 411 days in filing the SLP of the respondent, for which no sufficient explanation has been given.

32. For the reasons aforementioned, the appeal filed by Union of India is dismissed and that of the appellant is allowed. In the facts and circumstances of the case, however, there would be no order as to costs.

.....J.
[S.B. Sinha]

.....J.

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[Cyriac Joseph]

New Delhi;
April 15, 2009