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10th December, 2019

DELAY & TIME EXTENSION

1. Ramnath Construction Pvt Ltd v. Union Of India, 11.12.2006, (2007) 2 SCC 453, Relevant Para 10, 12, 15, 16, 18

- Section 30 and 33 of the Arbitration Act, 1940.
- Arbitrator acting without jurisdiction or beyond jurisdiction.
- Terms of contract providing that if in case of delay attributable either to contractor or to the employer or both and the contractor sought and obtained extension of time, the Contractor would not be entitled to claim any compensation whatsoever on the ground of delay.
- Further, award of damages ignoring the terms of contract amounted to legal misconduct on the part of the arbitrator.

A Copy of the judgment attached hereto at **page no. 2 to 10.**

2. Ch. Ramalinga Reddy v. Superintending Engineer, 02.12.1994, (1999) 9 SCC 610, Relevant Para 17

- Section 14(1) and Section 14(2) of the Arbitration Act, 1940.
- Section 23 and Section 30(c) of the Arbitration Act,1940.
- When extension of time granted and it is made clear that no extra claim would lie, thus, no extra claim could be awarded.
- Claim for payment at a higher rate made contrary to the terms of contracts. Part of award allowing such a claim, rightly set aside by High Court.

A Copy of the judgment attached hereto at **page no. 11 to 19.**

3. M/s. Bahl Builders Private Limited vs. Union of India, 22.07.2009, 2009 SCC OnLine Del 2075, Relevant Para 5

- Followed Ramnath International
- Extension of time granted subject to no financial implications.
- Awards passed by the Sole Arbitrator in favour of the appellant set aside by the Ld. Single Judge as beyond the jurisdiction of the Arbitrator, being an 'expected item'.
- Held, by the Ld. Single Judge that the award given with non-application of mind to the facts.

A Copy of the judgment attached hereto at **page no. 20 to 21.**

4. ONGC vs. WIG Brothers Builders & Engineers Private Limited, 08.10.2010, 2010 13 SCC 377, Relevant Para 7, 8, 9 10

- Section 3O and 33 of the Arbitration Act, 1940.
- Arbitration awarding claim contrary to terms of contract.
- Terms of contract provided in case of any delay attributable to either ONGC or Contractor for whatever reason, contractor will only be entitled to extension of time for completion of work but will not be entitled to any compensation or damages.
- Followed Ramnath International

A Copy of the judgment attached hereto at **page no. 22 to 26.**

(2007) 2 Supreme Court Cases 453

(BEFORE H.K. SEMA AND R.V. RAVEENDRAN, JJ.)

RAMNATH INTERNATIONAL CONSTRUCTION (P) LTD. .. Appellant;

Versus

UNION OF INDIA .. Respondent.

Civil Appeals Nos. 3167-68 of 2005†, decided on December 11, 2006

Arbitration Act, 1940 — Ss. 30 and 33 — Grounds for setting aside award — Jurisdictional error — Acting without jurisdiction or beyond jurisdiction — Works contract — Terms of the contract providing that if in case of any delay attributable either to the contractor or to the employer or to both, the contractor sought and obtained extension of time, he would not be entitled to claim any compensation on the ground of such delay — In such circumstances, award of compensation to the contractor for loss suffered by him due to the delay caused by the employer, held, derogated from the terms of the contract — Hence, not sustainable — Further held, award of damages ignoring the terms of contract amounted to legal misconduct on the part of the arbitrator

The appellant was awarded contracts for construction of: (*i*) two hangars and connected works, and (*ii*) roads and allied works. Despite the grant of several extensions by the employer on the request of the contractor, the contract work in respect of both of the contracts could not be completed within the stipulated time. In regard to the Hangar Contract, the non-completion of the construction was partly due to the default on the part of the employer. Both the contracts were ultimately terminated by the employer. The contractor claimed that the execution of work was delayed on account of breaches on the part of the employer and the employer was liable to compensate the contractor for all losses and extra cost on account of such delay and extended execution. The matter was referred to arbitration. The employer resisted the said claims on the ground that the contractor himself was liable for delays and that the claims were barred by the terms of the contract. The arbitrator held that to the extent delay was caused by the employer and the employer failed to establish that the contractor had consented to accept the extension of time alone in satisfaction of his claims for the delay, he was not released of his liability for damages on account of the delays, by granting extension of time. The arbitrator, therefore, proceeded to quantify the loss and awarded certain amounts by way of compensation. Applications filed by the employer for setting aside the awards were rejected by a Single Judge of the High Court. However, a Division Bench reversed that decision on the ground that the contractor's claims in respect of each of the said contracts were in derogation of the provisions of the contract. The contractor then filed the present appeals.

Two questions arose in the said appeals before the Supreme Court: (*i*) whether the claims of the contractor were in derogation of the provisions of the contract, and (*ii*) whether the arbitrator committed a legal misconduct for not acting in terms of the said provisions.

Dismissing the appeals, the Supreme Court

† From the Final Judgment and Order dated 31-10-2002 of the High Court of Judicature at Madras in OSAs Nos. 27 of 1995 and 25 of 1996

Held :

Re: Question (i)

Clause 11(C) of the contract provided that if there was any delay, attributable either to the contractor or to the employer or to both, and the contractor sought and obtained extension of time for execution on that account, he would not be entitled to claim compensation of any nature, on the ground of such delay, in addition to the extension of time obtained by him. Therefore, the claims for compensation as a consequence of delays were barred by the said provision in the contract. (Paras 12, 16 and 10)

Associated Engg. Co. v. *Govt. of A.P.*, (1991) 4 SCC 93; *Ch. Ramalinga Reddy* v. *Superintending Engineer*, (1999) 9 SCC 610, *followed*

State of A.P. v. *Associated Engg. Enterprises*, AIR 1990 AP 294 : (1989) 2 An LT 372, *referred to*

Re: Question (ii)

Clause 11(C) of the General Conditions of the contract is a clear bar to any claim for compensation for delays, in respect of which extensions have been sought and obtained. Clause 11(C) amounts to a specific consent by the contractor to accept extension of time alone in satisfaction of his claims for delay and not to claim any compensation. In view of the clear bar against award of damages on account of delay, the arbitrator clearly exceeded his jurisdiction, in awarding damages, ignoring clause 11(C). (Para 18)

Associated Engg. Co. v. *Govt. of A.P.*, (1991) 4 SCC 93; *Rajasthan State Mines & Minerals Ltd.* v. *Eastern Engg. Enterprises*, (1999) 9 SCC 283, *followed*

The arbitrator clearly misconducted himself in awarding compensation in claims in question which was rightly set aside by the High Court in the order impugned herein, on the ground that the arbitrator had acted in excess of his jurisdiction. (Paras 20 and 10)

H-M/A/35510/C

Advocates who appeared in this case :

Yashank Adhyaru, Senior Advocate (D.P. Sharma, Abhishek Singh and Sanjay Kapur, Advocates, with him) for the Appellant;

Amarendra Saran, Additional Solicitor General (B.B. Singh, Kumar Rajesh Singh, Ms Sushma Suri and Ms Anil Katiyar, Advocates, with him) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (1999) 9 SCC 610, *Ch. Ramalinga Reddy* v. *Superintending Engineer* 459*c*
2. (1999) 9 SCC 283, *Rajasthan State Mines & Minerals Ltd.* v. *Eastern Engg. Enterprises* 460*g*
3. (1991) 4 SCC 93, *Associated Engg. Co.* v. *Govt. of A.P.* 458*f-g*, 460*b-c*
4. AIR 1990 AP 294 : (1989) 2 An LT 372, *State of A.P.* v. *Associated Engg. Enterprises* 458*f-g*

The Judgment of the Court was delivered by

H.K. SEMA, J.— The validity and legality of the judgment dated 31-10-2002 of the Division Bench of the High Court of Madras in OSAs Nos. 27 of 1995 and 25 of 1996 is assailed in these appeals.

2. The appellant was awarded two contracts, the first for construction of LRMR Aircraft Hangar and Airtech Hangar and connected works; and the second for construction of roads and allied works at NAS, Arakonam. In respect of the two contracts, hereinafter referred to as "the Hangar Contract"

and "the Road Contract", the tenders submitted by the appellant were accepted on 10-10-1988 and 3-1-1989/5-1-1989 respectively. The necessary agreements were executed between the parties. Disputes arose between the parties in respect of those contracts and the matter was referred to arbitration. The arbitrator after examining the oral and documentary evidence made his awards dated 20-7-1993 and 5-3-1994. Applications were filed before the learned Single Judge by the respondent herein for setting aside the awards. The learned Single Judge by orders dated 24-8-1994 and 22-9-1995 rejected the applications and in each case made a rule of the court in terms of the award. Being aggrieved the respondent filed OSAs Nos. 27 of 1995 and 25 of 1996, which were partly allowed by the Division Bench of the High Court. Hence, the present appeals by the claimant contractor.

3. It may not be necessary for us to refer to the entire facts leading to the filing of the present appeals as the substantial question of law posed requires reference to limited facts. Suffice it to say that awards of the learned arbitrator related to claims under several heads. The controversy in these appeals relate to award in respect of Item 24 in the Hangar Contract and Items 13 to 16 in respect of the Road Contract. The particulars thereof are extracted below:

Item No.	*Description of work*	*Amount claimed*	*Amount awarded*
	Hangar Contract		
24.	Amount due on account of escalation in materials and labour	Rs 2,77,41,692	Rs 51,36,015.98
	Road Contract		
13.	Loss of profit due to turnover loss for staying beyond contract period	Rs 2,34,78,404	
14.	Additional compensation for work done beyond original contract period	Rs 22,89,200	Rs 41,51,847.50
15.	Loss of profit on balance work due to termination of contract	Rs 26,00,000	
16.	Escalation payable for the period 5-3-1992 to the date of termination	Rs 3,50,000	

4. In regard to the Hangar Contract, undisputedly, the contract work had to be completed in two phases, the first phase by 31-10-1989 and the second phase by 30-4-1990. However, the contract work could not be completed within the stipulated time, partly due to the default on the part of the respondent. It is also undisputed that on the request of the contractor, the employer gave several extensions — by a letter dated 28-2-1990 the period of completion of work was extended up to 30-6-1990; by a letter dated

10-5-1991 it was extended up to 31-5-1991; by a letter dated 27-8-1991 it was extended up to 30-9-1991; by a letter dated 23-1-1992 the time was extended up to 15-4-1992; by a letter dated 15-5-1992 it was extended up to 28-5-1992 and by a letter dated 4-6-1992, it was further extended up to 22-6-1992. The contract was subsequently terminated by the employer on 1-7-1992.

5. In respect of the Road Contract, the date of commencement of work was 3-1-1989. The due date of completion was 2-11-1990 (21 months). The employer granted extensions from time to time on the request of the contractor up to 31-5-1992. Subsequently, the contract was terminated by the employer on 14-7-1992.

6. The basis of the disputed claims is that the execution of work was delayed on account of breaches on the part of the employer and the employer is liable to compensate the contractor for all losses and extra cost on account of such delay and extended execution.

7. These claims were resisted by the employer on the ground that the contractor himself was liable for delays; that the employer had granted extension for the delays; and that the contract prohibits the contractor from making any claim for compensation or otherwise, howsoever, arising as a result of extension of time granted in terms of the contract.

8. The arbitrator held that where the work was delayed on account of delays attributable to the employer, grant of extension of time by the employer for completing of work does not exonerate the employer from the liability to pay damages for breach on account of the delay caused by the employer unless the employer establishes that the contractor has consented to accept the extension of time alone, in satisfaction of his claims for the delay. The arbitrator held that in these two contracts, the employer was not released of his liability for damages on account of the delays, by granting extension of time. He, therefore, proceeded to quantify the loss and awarded the amounts as aforesaid. The awards of the arbitrator on these items were affirmed by the learned Single Judge by making the awards a rule of the court, by judgments dated 24-8-1994 and 22-9-1995.

9. The Division Bench of the High Court after considering the threadbare submissions on the question of law arrived at a conclusion that the arbitrator has exceeded its jurisdiction in making an award towards Claim 24 in the Hangar Contract and an award towards Claims 13 to 16 in the Road Contract, as they were made in derogation of clause 11(C) of the contract, which prohibited the contractor from making any claim for compensation or otherwise, howsoever, arising, as a result of extension of time granted under the contract.

10. The core questions which arise for our consideration are these:

(*a*) Whether Claim 24 of the Hangar Contract and Claims 13 to 16 of the Road Contract are unsustainable being in derogation of clause 11(C) of the contract, which prohibits any compensation as a result of extension of time granted by the department?

(*b*) Whether the arbitrator committed a legal misconduct for not acting in terms of clause 11(C) of the contract though pleaded and submitted before him?

Re: Question (i)

11. Clause 11 of the General Conditions of Contract relates to time, delay and extension. We extract below the portions of clause 11 relevant for our purpose:

"*11. Time, delay and extension.*—(A) Time is of the essence of the contract and is specified in the contract documents or in each individual works order.

As soon as possible, after contract is let or any substantial work order is placed and before work under it is begun, the GE and the contractor shall agree upon the time and progress chart. The chart shall be prepared in direct relation to the time stated in the contract documents or the works order for completion of the individual items thereof and/or the contract or works order as a whole. It shall include the forecast of the dates for commencement and completion of the various trades, processes or sections of the work, and shall be amended as may be required by agreement between the GE and the contractor within the limitation of time imposed in the contract documents or works order. If the work be delayed:

(*i*) by force majeure, or

(*ii*) by reason of abnormally bad weather, or

(*iii*) by reason of serious loss or damage by fire, or

(*iv*) by reason of civil commotion, local combination of workmen, strike or lockout, affecting any of the tradesmen employed on the work, or

(*v*) by reason of delay on part of nominated sub-contractors, or nominated suppliers which the contractor has, in the opinion of GE, taken all practicable steps to avoid, or reduce, or

(*vi*) by reason of delay on the part of contractors or tradesmen engaged by the Government in executing work not forming part of the contract, or

* * *

(*viii*) by reason of any other cause, which in the absolute discretion of the accepting officer is beyond the contractor's control;

then in any such case the officer hereinafter mentioned may make fair and reasonable extension in the completion dates of individual items or groups of items of works for which separate periods of completion are mentioned in the contract documents or works order, as applicable.

* * *

(B) If the works be delayed:

(*a*) by reason of non-availability of government stores in Schedule B or

(*b*) by reason of non-availability or breakdown of government tools and plant listed in Schedule C;

then, in any such event, notwithstanding the provisions hereinbefore contained, the accepting officer may in his discretion, grant such extension of time as may appear reasonable to him and the same shall be communicated to the contractor by the GE in writing. The decision so communicated shall be final and binding and the contractor shall be bound to complete the works within such extended time.

(C) No claim in respect of compensation or otherwise, howsoever arising, as a result of extensions granted under Conditions (A) and (B) above shall be admitted."

12. Clause (C) provides that where extensions have been granted by reason of the delays enumerated in clause (A) which were beyond the control of the contractor, or on account of the delays on the part of the employer specified in clause (*B*), the contractor is not entitled to make any claim either for compensation or otherwise, arising in whatsoever manner, as a result of such extensions. After enumerating certain delays, sub-clause (*viii*) of clause (*A*) specifically mentions delay on account of any other cause beyond the control of the contractor. The causes for delays specified in clause (*A*), thus, encompass all delays over which the contractor has no control. This will necessarily include any delays attributable to the employer or any delay for which both the employer and the contractor are responsible. The contract thus provides that if there is any delay, attributable either to the contractor or the employer or to both, and the contractor seeks and obtains extension of time for execution on that account, he will not be entitled to claim compensation of any nature, on the ground of such delay, in addition to the extension of time obtained by him. Therefore, the claims for compensation as a consequence of delays, that is Claim 24 of the Hangar Contract and Claims 13 to 16 of the Road Contract are barred by clause 11(C).

13. We are fortified in this view by several decision of this Court. We may refer to two of them. In *Associated Engg. Co.* v. *Govt. of A.P.*[1] this Court was concerned with an appeal which related to similar claims based on delays in execution. The High Court had held (*State of A.P.* v. *Associated Engg. Enterprises*[2]) thus: (AIR p. 304, para 26)

"*26.* Applying the principle of the above decision to the facts of the case before us, it must be held that clause 59 bars a claim for compensation on account of any delays or hindrances caused by the department. In such a case, the contractor is entitled only to extension of the period of contract. Indeed, such an extension was asked for, and granted on more than one occasion. (The penalty levied for completing the work beyond the extended period of contract has been waived in this

1 (1991) 4 SCC 93

2 AIR 1990 AP 294 : (1989) 2 An LT 372

case.) The contract was not avoided by the contractor, but he chose to complete the work within the extended time. In such a case, the claim for compensation is clearly barred by clause 59 of the A.P. DSS which is admittedly, a term of the agreement between the parties."

14. This Court noticed that the claims were set aside by the High Court on the ground that those claims were not supported by any agreement between the parties, and that the arbitrator had travelled outside the contract in awarding those claims. This Court held that the said claims were not payable under the contract and that the contract does not postulate, in fact prohibits, payment of any escalation under those heads. It affirmed the decision of the High Court setting aside the award of those claims.

15. In *Ch. Ramalinga Reddy* v. *Superintending Engineer*[3], while considering the similar claim, this Court observed thus: (SCC p. 616, para 17)

"*17.* Claim 8 was for 'payment of extra rates for work done beyond agreement time at schedule of rate prevailing at the time of execution'. The arbitrator awarded the sum of Rs 39,540. Clause 59 of the A.P. Standard Specifications, which applied to the contract between the parties, stated that no claim for compensation on account of delays or hindrances to the work from any cause would lie except as therein defined. The claim falls outside the defined exceptions. When extensions of time were granted to the appellant to complete the work, the respondents made it clear that no claim for compensation would lie. On both counts, therefore, Claim 8 was impermissible and the High Court was right in so holding."

16. We, therefore, answer the first question in the affirmative.

Re: Question (ii)

17. The arbitrator in his two speaking awards recorded the following finding regarding delay:

"From the facts and evidence placed before me, I find that the department cannot absolve itself of partial breaches committed which are of fundamental nature and had snowball effect. *The department alone is not fully responsible, the contractor also has contributed to certain delays*" (in the Hangar Contract).

"The documents, the evidence and the arguments clearly indicate *that the delay for completing has been a joint responsibility of both the department and contractor*" (in the Road Contract). (emphasis supplied)

18. In spite of having held that both were responsible for the delay and having noticed the arguments based on clause 11(C) of the General Conditions of Contract, the arbitrator proceeded to award damages on the ground of delay on the reasoning that the contractor is entitled to compensation, unless the employer establishes that the contractor has

3 (1999) 9 SCC 610

consented to accept the extension of time alone in satisfaction of his claim for delay. As rightly held by the High Court, which decision we have affirmed while considering Question (*i*), clause 11(C) of the General Conditions of Contract is a clear bar to any claim for compensation for delays, in respect of which extensions have been sought and obtained. Clause 11(C) amounts to a specific consent by the contractor to accept extension of time alone in satisfaction of his claims for delay and not claim any compensation. In view of the clear bar against award of damages on account of delay, the arbitrator clearly exceeded his jurisdiction, in awarding damages, ignoring clause 11(C). In *Associated Engg. Co.*[1] this Court held: (SCC pp. 103 & 105, paras 24, 26 & 28)

> "*24*. The arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. His sole function is to arbitrate in terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled outside the bounds of the contract, he has acted without jurisdiction. ...
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> * * *
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> *26*. A dispute as to the jurisdiction of the arbitrator is not a dispute within the award, but one which has to be decided outside the award. An umpire or arbitrator cannot widen his jurisdiction by deciding a question not referred to him by the parties or by deciding a question otherwise than in accordance with the contract. He cannot say that he does not care what the contract says. He is bound by it. It must bear his decision. He cannot travel outside its bounds. If he exceeded his jurisdiction by so doing, his award would be liable to be set aside. ...
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> * * *
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> *28*. In the instant case, the umpire decided matters strikingly outside his jurisdiction. He outstepped the confines of the contract. He wandered far outside the designated area. He digressed far away from the allotted task. His error arose not by misreading or misconstruing or misunderstanding the contract, but by acting in excess of what was agreed. It was an error going to the root of his jurisdiction because he asked himself the wrong question, disregarded the contract and awarded in excess of his authority. In many respects, the award flew in the face of the provisions of the contract to the contrary."

19. In *Rajasthan State Mines & Minerals Ltd.* v. *Eastern Engg. Enterprises*[4] this Court held thus: [SCC pp. 300 & 310, paras 22, 23 & 44(*h*)]

> "The rates agreed were firm, fixed and binding irrespective of any fall or rise in the cost of the work covered by the contract or for any other reason or any ground whatsoever. It is specifically agreed that the contractor will not be entitled or justified in raising any claim or dispute because of increase in cost of expenses on any ground whatsoever. By ignoring the said terms, the arbitrator has travelled beyond his

4 (1999) 9 SCC 283

jurisdiction as his existence depends upon the agreement and his function is to act within the limits of the said agreement. This deliberate departure from the contract amounts not only to manifest disregard of the authority or misconduct on his part but it may be tantamount to mala fide action.

It is settled law that the arbitrator is the creature of the contract between the parties and hence if he ignores the specific terms of the contract, it would be a question of jurisdictional error which could be corrected by the court and for that limited purpose agreement is required to be considered. ...

* * *

He cannot award an amount which is ruled out or prohibited by the terms of the agreement."

20. In the view that we have taken the arbitrator clearly misconducted himself in awarding compensation under Claim 24 under the Hangar Contract and Claims 13 to 16 under the Road Contract which was rightly set aside by the High Court in the order impugned herein, on the ground that the arbitrator had acted in excess of his jurisdiction.

21. There is no infirmity in the impugned order of the High Court. These appeals being devoid of merits are, accordingly, dismissed. Parties are asked to bear their own costs.

(2007) 2 Supreme Court Cases 461

(BEFORE DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.)

RAKESH KUMAR JAIN AND ANOTHER .. Appellants;

Versus

STATE OF U.P. THROUGH COLLECTOR AND ANOTHER .. Respondents.

Civil Appeal No. 64 of 2007†, decided on January 5, 2007

Land Acquisition Act, 1894 — S. 34 — Interest — On delayed payment — Land of appellant acquired and forcible possession thereof taken by Development Authority (Respondent 2) without following procedure under Land Acquisition Act — Order of injunction for maintaining status quo with respect to the land passed by civil court — Undertaking given by the respondent (on 31-8-2000) before the court that compensation shall be paid to appellant within 2 months from the date of the undertaking — On the basis of the undertaking injunction application disposed of by the court — But cheque issued by way of payment of compensation one year and five months after the undertaking — Appellant having refused to receive the cheque, respondent deposited the same in court which does not carry any interest — High Court in writ petition permitted appellant to withdraw the entire amount including interest, if any, which might have accrued thereon if the same had been kept in some interest bearing account on furnishing

† Arising out of SLP (C) No. 2502 of 2006. From the Judgment and Final Order dated 20-10-2005 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 15903 of 2002

Assistant Engineer in their own channel of promotion. They were eligible and were consequently selected by the Chief Engineer and later appointed as Assistant Engineers by promotion by the State Government.

36. Since it had already been found as a fact by the Tribunal while writing the main judgment that the appellant was promoted to the post of Assistant Engineer in accordance with the rules against a permanent vacancy and had been given ad hoc promotion pending concurrence of the Public Service Commission and since this finding has been upheld by us above, we have no hesitation in holding that in terms of Rule 26, the appellant, who was promoted in 1972, in which year direct recruitments of Respondents 2 to 11 were also made, shall rank senior to Respondents 2 to 11.

37. For the reasons stated above, the appeal is allowed, the judgment and order passed by the Tribunal on review is set aside and the main judgment dated 4-1-1993 is restored, but without any order as to costs.

(1999) 9 Supreme Court Cases 610

(BEFORE J.S. VERMA, S.P. BHARUCHA AND S.C. SEN, JJ.)

CH. RAMALINGA REDDY .. Appellant;

Versus

SUPERINTENDING ENGINEER AND ANOTHER .. Respondents.

Civil Appeals Nos. 5528-29 of 1994, decided on December 2, 1994

A. **Limitation Act, 1963 — Art. 119(b) — Date of service of notice of filing of the award, held, can be the point of time of commencement of limitation for setting aside an award only when the notice is given by the court — Intimation from the other party without any direction by court to do so, held, would not be effective for the said purpose — Arbitration Act, 1940, Ss. 14(1) & (2), 30 and 33**

B. **Arbitration Act, 1940 — Ss. 14(1) and 14(2) — Difference between notice under S. 14(1) and notice under S. 14(2) — Notice under S. 14(2), unlike notice under S. 14(1), need not be in writing — It may be even oral**

The arbitrator made the award on 29-7-1985 and sent the same to the Court on 31-7-1985. The Court received the award on 5-8-1985. The advocate of the appellant contractor, without any direction of the Court to do so, informed the Additional Government Pleader in writing of the receipt of the award on 5-8-1985. On 7-8-1985, the Court issued notice of the award and it was received by the respondent officers of the State Government on 10-8-1985. The petition to challenge the award was filed by the respondents on 6-9-1985. The question was whether the petition was time-barred.

Held :

The difference between the provisions of Sections 14(1) and 14(2) of the Arbitration Act is significant and indicates clearly that the notice which the court is to give to the parties of the filing of the award need not be a notice in writing. The notice can be given orally. But the notice under Section 14(2) must be served by the Court. (Para 6)

Nilkantha Sidramappa Ningashetti v. *Kashinath Somanna Ningashetti*, AIR 1962 SC 666 : (1962) 2 SCR 551, *Indian Rayon Corpn. Ltd.* v. *Raunaq and Co. (P) Ltd.*, (1988) 4 SCC 31, *relied on*

In the instant case, no notice as required by Section 14(2) of the Arbitration Act, 1940, had been served on the respondents or their advocate on 5-8-1985. Therefore, that date cannot be the starting point for limitation for the filing of a petition to impugn the award. The notice of the filing of the award was given by the Court on 7-8-1985. The petition to challenge the award filed by the respondents on 6-9-1985 was, therefore, in time. (Para 7)

Food Corpn. of India v. *E Kuttappan*, (1993) 3 SCC 445, *distinguished*

C. **Arbitration Act, 1940 — Ss. 23, 15 and 30(c) — Part of award allowing claim beyond the scope of reference — Legality — Order of reference entitling the arbitrator "to consider such other points raised in the pleadings before this Court at suit stage" — In such circumstances, part of the award allowing claims raised by the party concerned not in the relevant suit but in another suit, rightly set aside by High Court (Para 14)**

D. **Arbitration Act, 1940 — Ss. 23 and 30(c) — Works contract — Claim for payment at a higher rate made contrary to the terms of contract — Part of award allowing such a claim, rightly set aside by High Court — Works contract (Para 15)**

E. **Arbitration Act, 1940 — Ss. 23 and 30(c) — Works contract for excavation — Contractor claiming extra labour charges on three grounds: (i) excess fluorine in drinking water due to which labourers suffered; (ii) idle labour due to supply of ineffective explosives; and (iii) delay in issue of cement — Contract requiring the tenderers to inspect the site of the work and to make necessary investigation for correctly evaluating the work and to satisfy themselves as to nature and location of the work, general and local conditions before arriving at his rates and negating any extra payment in case the successful tenderer had made a misjudgment — In such circumstances, High Court's decision rejecting part of the claim relevant to ground (i) but limiting the relief in respect of claim based on grounds (ii) and (iii) to 2/3rds of the total amount awarded, upheld — Works contract (Para 16)**

F. **Government Contracts — Works Contract — Claim to payment of extra rates for work done beyond agreement time at rates prevailing at the time of execution — Legality — Work governed by A.P. Standard Specifications which prohibiting any claims for compensation on account of delay except as provided therein — Claim in the instant case neither falling within the said exceptions nor permitted under the order granting extension of the time — In such circumstances, the said claim, held, impermissible — Hence, could not be allowed by the arbitrator — Arbitration Act, 1940, S. 14 — A.P. Standard Specifications (Para 17)**

P.M. Paul v. *Union of India*, 1989 Supp (1) SCC 368 : (1989) 1 SCR 115; *Sudarsan Trading Co.* v. *Govt. of Kerala*, (1989) 2 SCC 38 : (1989) 1 SCR 665, *distinguished*

G. **Arbitration Act, 1940 — Ss. 15, 30 and 39 — Power of the Court — Award allowing a claim barred by the terms of contract, held, not immune from interference by court (Para 19)**

Jajodia (Overseas) (P) Ltd. v. *Industrial Development Corpn. of Orissa Ltd.*, (1993) 2 SCC 106, *distinguished*

Secy., Irrigation Deptt., Govt. of Orissa v. *G.C. Roy*, (1992) 1 SCC 508, *referred to*

[**Ed.**: This case has been referred to in (1999) 9 SCC 283 at 309, above.]

Appeal partly allowed H-M/13872/S

Chronological list of cases cited ***on page(s)***

1. (1993) 3 SCC 445, *Food Corpn. of India* v. *E. Kuttappan* 613*h*
2. (1993) 2 SCC 106, *Jajodia (Overseas) (P) Ltd.* v. *Industrial Development Corpn. of Orissa Ltd.* 617*e-f*
3. (1992) 1 SCC 508, *Secy., Irrigation Deptt., Govt. of Orissa* v. *G.C. Roy* 615*b-c*
4. (1989) 2 SCC 38 : (1989) 1 SCR 665, *Sudarsan Trading Co.* v. *Govt. of Kerala* 617*c*
5. 1989 Supp (1) SCC 368 : (1989) 1 SCR 115, *P.M. Paul* v. *Union of India* 616*g-h*, 617*b-c*
6. (1988) 4 SCC 31, *Indian Rayon Corpn. Ltd.* v. *Raunaq and Co. (P) Ltd.* 613*d*, 614*a*, 614*g*
7. AIR 1962 SC 666 : (1962) 2 SCR 551, *Nilkantha Sidramappa Ningashetti* v. *Kashinath Somanna Ningashetti* 613*d*, 614*a*, 614*g*

The Judgment of the Court was delivered by

BHARUCHA, J.— These are appeals by special leave against the judgment and order of the High Court of Andhra Pradesh whereby the High Court set aside the arbitration award in respect of Claims 2, 3, 7, 8 and 12 and modified the award in respect of Claims 5, 6, 13 and 14. The claims were made by the appellant, a contractor, against the respondents, officers of the State Government, in respect of an excavation contract for 11.711 km to 13.287 km of Darsi Branch Canal for an amount of Rs 50,89,342.

2. Two issues were raised before the High Court, and they are raised before this Court, namely, (*i*) whether the petition filed by the respondents to set aside the award under Sections 30 and 33 of the Arbitration Act was barred by time, and (*ii*) whether the award was vitiated in regard to certain claims.

3. The award was made on 29-7-1985. It was sent by the arbitrator to the Court on 31-7-1985 and was received by the Court at 12 noon on 5-8-1985. It is the case of the appellant that his advocate informed the Additional Government Pleader in writing of the receipt of the award on 5-8-1985. On 7-8-1985, the Court issued notice of the award and it was received by the respondents on 10-8-1985. The petition to challenge the award was filed by the respondents on 6-9-1985.

4. The relevant provision of the Limitation Act, 1963 is Article 119(*b*) and it reads thus:

	"Description of suits	*Period of limitation*	*Time from which period begins to run*
119.	Under the Arbitration Act, 1940—		
(*a*)	* * *		
(*b*)	for setting aside an award or getting an award remitted for reconsideration.	Thirty days.	The date of service of the notice of the filing of the award."

5. Section 14 of the Arbitration Act, so far as it is relevant, reads thus:

"14. *Award to be signed and filed.*—(1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing of the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award."

6. Section 14(1) of the Arbitration Act, 1940, requires arbitrators or umpires to give notice in writing to the parties of the making and signing of the award. Section 14(2) requires the court, after the filing of the award, to give notice to the parties of the filing of the award. The difference in the provisions of the two sub-sections with respect to the giving of notice is significant and indicates clearly that the notice which the court is to give to the parties of the filing of the award need not be a notice in writing. The notice can be given orally. (See *Nilkantha Sidramappa Ningashetti* v. *Kashinath Somanna Ningashetti*[1].) In *Indian Rayon Corpn. Ltd.* v. *Raunaq and Co. (P) Ltd.*[2] it was held that the fact that parties have notice of the filing of the award is not enough. The notice must be served by the court. There must be (*a*) filing of the award in the proper court; (*b*) service of the notice by the court or its office to the parties concerned; and (*c*) such notice need not necessarily be in writing. It is upon the date of service of such notice that the period of limitation begins for an application for setting aside the award.

7. It was found by the High Court that

"learned counsel for the respondent contractor had not drawn our attention to any material to indicate that Exhibit B-1 notice was given by the learned counsel for the contractor to the learned Government Pleader on 5-8-1985 about the receipt of the award by the Court on the basis of the directions of the Court".

It is, therefore, clear that no notice as required by Section 14(2) of the Arbitration Act, 1940, had been served on the respondents or their advocate on 5-8-1985. Therefore, that date cannot be the starting point for limitation for the filing of a petition to impugn the award. The notice of the filing of the award was given by the Court on 7-8-1985. The petition to challenge the award was filed by the respondents on 6-9-1985. The High Court was, therefore, right in holding that the petition was in time.

8. Great emphasis was laid by learned counsel for the appellant upon the judgment of this Court delivered by a Bench of two learned Judges, in *Food*

1 AIR 1962 SC 666 : (1962) 2 SCR 551
2 (1988) 4 SCC 31

Corpn. of India v. *E. Kuttappan*[3]. The two judgments aforementioned were considered and it was said: (SCC p. 451, para 11)

> "*11.* On the strength of aforementioned two cases of this Court, i.e. *Nilkantha case*[1] and *Indian Rayon case*[2] it was claimed on behalf of the appellants that though the legal requirement is that the notice be sent by the court, some other act of the court is enough to foist awareness of the filing of the award in court, wherefrom the period of limitation was to commence. Instantly, it was urged that when the award had factually been placed before the Court and the Court had accepted its placement into it on October 25, 1988 itself, the factual filing of the award had been made and sequelly notice to the respondent through his counsel. Even though the Court had subsequently on November 3, 1988 issued notice for November 7, 1988, the former act, according to the appellant, was enough compliance with the Court sending the notice and the latter act was of no consequence. *It does not lie in the mouth of the respondent to say that though he filed the award in court through his counsel,* with or without the implied or express authority of the arbitrator, *he did not have the corresponding knowledge of the filing of the award, when the award was readily received by the Court. It seems to us that the mute language inherent in the action of the Court did convey to the party placing the award before it the factum of the award being filed in court.* The mere fact that at a subsequent stage, the Court issued notice to the parties informing them of the filing of the award in court for the purpose of anyone to object to the award being made the rule of the court is an act of the court which cannot in law prejudice the rights of the parties. If once it is taken that the period of limitation for the purposes of filing the objection, insofar as the respondent was concerned, had begun on October 25, 1988, the objections filed by it on December 6, 1988 were obviously barred by time, those having been filed beyond the prescribed period of thirty days." (emphasis supplied)

9. It will be noted that it was held that it did not lie in the mouth of the party who had filed the award in court through his advocate to contend that he did not have knowledge of the filing of the award and he could not contend that it was only the subsequent date upon which the Court issued notice that was the starting point for limitation. This judgment, as the passage quoted indicates, does not in any way dilute what was laid down in the cases of *Nilkantha Sidramappa Ningashetti*[1] and *Indian Rayon Corpn. Ltd.*[2]; indeed, it could not, for those were decisions of a larger and a coordinate Bench, respectively. The judgment holds only that a party who has filed the award in court through his advocate is estopped from contending that, so far as he is concerned also, the period of limitation to challenge the award begins only when the court issues notice in respect of its filing. The ratio of the judgment has, therefore, no application to the facts of the case before us.

10. There is, accordingly, no merit in the first issue.

3 (1993) 3 SCC 445

11. As aforestated, the High Court set aside the arbitration award in respect of Claims 2, 3, 7, 8 and 12 and modified the award in respect of Claims 5, 6, 13 and 14.

12. Claim 14 related to the payment of interest on the amount claimed in the arbitration proceedings. The arbitrator awarded interest. The High Court took the view that he was in error in awarding interest for the period commencing on the date on which he entered upon the reference and ending upon the date of the award and set aside the award to that extent. At the stage of the hearing of the special leave petition, learned counsel for the respondents conceded that, in view of the law laid down by this Court in *Secy., Irrigation Deptt., Govt. of Orissa* v. *G.C. Roy*[4] the appellant was entitled to interest even for this period.

13. The award in respect to Claims 5 and 13 was modified. Learned counsel for the appellant did not press the appeals in this behalf.

14. Claim 2 was for "loss sustained due to arranging of wagon for porcelain excavations". The arbitrator awarded Rs 20,000 in respect of Claim 2. Claim 12 was for "payment of extra expenditure incurred due to release of water in Darsi Branch Canal". The arbitrator awarded Rs 50,000 in respect of Claim 12. The arbitrator was appointed by an order of the Court and what he was to decide was indicated therein. This entitled him "to consider such other points raised in the pleadings before this Court at suit stage". These pleadings did not make any reference to Claims 2 or 12. The claims in this behalf were made in the pleadings of another suit. The High Court was, therefore, right in holding that Claims 2 and 12 were beyond the scope of the reference to the arbitrator and that the award in respect of Claims 2 and 12 had to be set aside.

15. Claim 3 was for "extra rate for excavation of rocks, i.e., FF rock, hard rock, etc.". The arbitrator awarded Rs 7,45,025 and Rs 1,38,878 in respect of Claim 3. Claim 7 was for "extra cost due to bailing out of water". The arbitrator awarded Rs 1,15,945 for Claim 7. It is important to note that for the extra work that was done the appellant was paid at the contract rate. What was now sought was an increase in the rate that had been tendered by the appellant and accepted. The arbitrator awarded an extra rate of Rs 6.97 p. for excavation of 1 Cum HR with 10% overheads and Rs 4.36p. for excavation of 1 Cum of FFR with 10% overheads under Claim 3. In respect of Claim 7 he made an award on the basis of Rs 0.88 per Cum with 10% overheads. Clause 11 of Schedule E of the Special Conditions of Contract provides that every tenderer is expected, before quoting his rates, to inspect the site of the proposed work and to carry out such investigation as may be necessary to enable him to correctly evaluate the work; the Government would not, after acceptance of the contract rate, be liable to pay any extra charges in case the successful tenderer made a misjudgment. Clause 11 also states that it would be presumed that the successful tenderer had satisfied himself as to the nature and location of work, general and local conditions,

4 (1992) 1 SCC 508

including magnitude of possible seepage, river stages, etc., before arriving at his rates and the Government would bear no responsibility for lack of such acquaintance and the consequences thereof. Clause 6 of Part VII of the General Conditions of Contract states that no extra payment would be made for bailing out water for dewatering. Having regard to these terms of the contract between the parties, it is difficult to accept the submission that the appellant had encountered hard rock due to a tank nearby which had not been disclosed in the tender documents and that is why he was entitled to the extra rates as claimed. The High Court was right in pointing out that the contract expressly stated that no payment would be made on account of the lack of acquaintance of the contractor with the work site, he having been deemed to have satisfied himself in respect thereof before having quoted the rates. The arbitrator was bound by the contract between the parties and to decide the claims referred to him in the light thereof. His award being found to be contrary to the plain terms of the contract, it was liable to be set aside to that extent. The award in respect of Claims 3 and 7 was, therefore, rightly set aside.

16. Claim 6 was in respect of "payment of idle labour charges". The arbitrator awarded a sum of Rs 1,00,000 thereagainst. The High Court noted that this claim was made on three grounds: excess fluorine content in drinking water due to which the labourers suffered; idle labour due to supply of ineffective explosives; and delay in the issue of cement. The High Court noted, rightly, that it was the obligation of the appellant to make necessary enquiries about local conditions before quoting his rates and he could not, therefore, make any claim due to his own lapse in not making enquiries about the fluorine content of the drinking water. It was justified in holding that the award on that account was bad. It found that the explosives supplied had been ineffective and that there had been a delay in the supply of cement. Rather than set aside the award against Claim 6 on the basis that it was indivisible and a part of it was erroneous, the High Court limited it to 2/3rds of Rs 1,00,000. We see no reason to interfere.

17. Claim 8 was for "payment of extra rates for work done beyond agreement time at schedule of rate prevailing at the time of execution". The arbitrator awarded the sum of Rs 39,540. Clause 59 of the A.P. Standard Specifications, which applied to the contract between the parties, stated that no claim for compensation on account of delays or hindrances to the work from any cause would lie except as therein defined. The claim falls outside the defined exceptions. When extensions of time were granted to the appellant to complete the work, the respondents made it clear that no claim for compensation would lie. On both counts, therefore, Claim 8 was impermissible and the High Court was right in so holding. Learned counsel for the appellant drew our attention to the judgment of this Court in *P.M. Paul* v. *Union of India*[5]. The disputes that were there referred to the arbitrator were: who was responsible for the delay in completion of the building

5 1989 Supp (1) SCC 368 : (1989) 1 SCR 115

contracted for, what were the repercussions of such delay and how the consequences of the responsibility were to be apportioned. After discussing the evidence and the submissions of the parties, the arbitrator found that there was escalation and that it was, therefore, reasonable to allow compensation on account of losses under the first claim, which was "on account of losses caused due to increase in prices of materials and cost of labour and transport during the extended period of contract ...". In this context, this Court said that once it was found that the arbitrator had jurisdiction to hold that there was delay in the execution of the contract due to the conduct of the respondent, the respondent was liable for the consequences of the delay, namely, increase in prices. There was in *P.M. Paul case*[5] no clause in the contract which provided that the respondent would not be liable to pay compensation on account of delay in the work from any cause nor was it stipulated, when extension of time was granted to the appellant to complete the work, that no claim for compensation would lie.

18. The judgment in *Sudarsan Trading Co.* v. *Govt. of Kerala*[6] does not assist the appellant, if fully read. It was there observed that there are two different and distinct grounds involved in many cases concerning the setting aside of arbitration awards. One is that there is error apparent on the face of the award and the other is that the arbitrator exceeded his jurisdiction. In the latter case the court can look into the arbitration agreement but in the former it cannot. An award may be set aside on the ground that the arbitrator had exceeded his jurisdiction in making it. In the case before us, the arbitrator was required to decide the claims referred to him having regard to the contract between the parties. His jurisdiction, therefore, was limited by the terms of the contract. Where the contract plainly barred the appellant from making any claim, it was impermissible to make an award in respect thereof and the Court was entitled to intervene.

19. Learned counsel for the appellant also relied upon the judgment in *Jajodia (Overseas) (P) Ltd.* v. *Industrial Development Corpn. of Orissa Ltd.*[7] and upon the observations made therein that the court should be very circumspect about setting aside an award reached by an arbitrator, for parties had agreed that disputes that may arise or had arisen between them should be resolved not by a court of law but by arbitration. We agree, but circumspection does not mean that the court will not intervene when the arbitrator has made an award in respect of a claim which is, by the terms of contract between parties, plainly barred.

20. In the result, the appeals are allowed only to this extent, that the appellant is entitled to receive, in respect of Claim 14, interest on the amount of the award for the period commencing on the date on which the arbitrator entered upon the reference and ending upon the date of the award, and the judgment of the High Court shall stand modified to that extent. For the rest, the judgment of the High Court is affirmed.

6 (1989) 2 SCC 38 : (1989) 1 SCR 665
7 (1993) 2 SCC 106

21. The appellant shall pay to the respondents the costs of the appeals quantified at Rs 10,000.

(1999) 9 Supreme Court Cases 618

(BEFORE V.N. KHARE AND SYED SHAH MOHAMMED QUADRI, JJ.)

OM PRAKASH .. Appellant;

Versus

BASANTHILAL .. Respondent.

Civil Appeal No. 2285 of 1998, decided on July 20, 1999

A. **Rent Control and Eviction — Bona fide need of landlord — Different requirements to be satisfied under different statutory provisions in A.P. Rent Act — A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (15 of 1960) — Ss. 10(3)(iii)(b) and 10(3)(iii)(c) (bona fide need of tenanted premises to start a business and bona fide need for additional accommodation for residential purposes or for business landlord already carrying on where landlord is in occupation of part of building and tenant of other part) — Ss. 10(3)(iii)(b) and 10(3)(iii)(c) held, are mutually exclusive and operate in different fields even though one of the ingredients may overlap — Landlord has to satisfy different requirements under each sub-clause of S. 10(3)(iii) — High Court in revision erred in not maintaining the distinction between the two provisions and in deciding the case in respondent landlord's favour on the basis of S. 10(3)(iii)(c) when there was no foundation for it in landlord's eviction petition, which was based upon S. 10(3)(iii)(b) — Pleadings — A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (15 of 1960), Ss. 10(3)(iii)(b) and 10(3)(iii)(c)**

B. **Civil Procedure Code, 1908 — S. 115 — Revision — High Court commits an error if it decides a case on the basis of a statutory provision in respect of which there is no foundation in the pleadings**

A-M/21614/S

ORDER

1. The appellant herein is the tenant, whereas the respondent is the landlord. The landlord filed a petition for eviction of the tenant from the premises on the ground that he required the said non-residential accommodation for the purpose of setting up a new business for his son who was unemployed. The said petition was rejected by the Additional Rent Controller, Hyderabad. The appeal against the said order was also rejected. The respondent landlord filed a revision under Section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter referred to as "the Act"). The High Court allowed the revision petition after setting aside the trial court's as well as the appellate court's judgments.

2. Learned counsel appearing for the appellant urged that the High Court had totally misdirected itself in deciding the case of the landlord under Section 10(3)(*iii*)(*c*), whereas the case of the landlord was founded upon

F.A.O. (OS) NO. 412 of 2008

BAHL Builders Pvt. Ltd. v. Union of India

2009 SCC OnLine Del 2075

(BEFORE MUKUL MUDGAL AND NEERAJ KISHAN KAUL, JJ.)

M/S. Bahl Builders Pvt. Ltd. ..... Appellant

Mr. Sandeep Sharma, Advocate.

v.

Union of India ..... Respondent

Ms. Raman Oberoi, Advocate.

F.A.O. (OS) NO. 412 of 2008
Decided on July 22, 2009

Arbitration — Award passed by sole arbitrator in favour of the appellant set aside by learned Single Judge as the matter was beyond the jurisdiction of the Arbitrator, being an 'excepted item' — Learned Judge coming to the conclusion that the award betrays non-application of mind to the facts — Held, the learned Single Judge correctly analyzed Cl. 11 and decision in Ramnath International, (2007) 2 SCC 453 which squarely covers the issue involved as the clauses are identical — It is also apparent that there is nothing in K.R. Raveendranathan, (1998) 9 SCC 410 or Shyama Charan Agarwala, 1999 (1) Arb. LR 699, two orders cited by the appellant to suggest that the view taken in *Ramnath International (supra)* is contrary to the said views — Appeal dismissed

The judgement of the court was delivered by

MUKUL MUDGAL, J.(ORAL):—This appeal challenges the judgment of the learned Single Judge dated 13th August, 2008. By the impugned judgment, the award of the Sole Arbitrator dated 24th April, 2003 whereby the claim was allowed to the extent of Rs. 2,30,000/- in favour of the appellant contractor with interest @ 15 per cent per annum was set aside.

2. The appellant/contractor sought to challenge the judgment of the learned Single Judge on the ground that judgment of the Hon'ble Supreme Court in the case of *Ramnath International Construction (P) Ltd.* v. *Union of India* reported in (2007) 2 Supreme Court Cases 453 was not applicable but, in fact, the issue involved was covered by a three judges Bench decision of the Hon'ble Supreme Court in the case of *K.R. Raveendranathan* v. *State of Kerala* reported in (1998) 9 SCC 410. Learned counsel submitted that in view of this judgment, the learned Single Judge ought not to have relied on *Ramnath International (supra)* and ought to have relied on *K.R. Raveendranathan (supra)*. However, it has not been disputed before us that Clause 11 involving interpretation in *Ramnath International (supra)* was identical to Clause 11 in the present appeal. The orders passed in the cases of *K.R. Raveendranathan (supra)* and *Shyama Charan Agarwala & Sons* v. *Union of India*; 1999 (1) Arb. LR 699 have been produced by the appellant before us.

3. The order passed in *Shyama Charan Agarwala (supra)* followed the judgment of Hon'ble Supreme Court in *K.R. Raveendranathan (supra)* and stated no other issue; and the order passed in *K.R. Raveendranathan (supra)* followed the judgment of the Hon'ble Supreme Court in *Sudarsan Trading Co.* v. *Government of Kerala;* (1989) 2 SCC 38 and *Hindustan Construction Co. Ltd.* v. *State of Jammu & Kashmir;* (1992) 4 SCC 17.

4. In our view, the learned Single Judge has correctly analyzed Clause 11 and decision in judgment of *Ramnath International (supra)* which squarely covers the issue involved as the clauses are identical. It is also apparent that there is nothing in the two orders cited by the appellant to suggest that the view taken in *Ramnath International (supra)* is contrary to the said views.

5. Accordingly, we are satisfied that learned Single Judge was justified in applying *Ramnath International (supra)*. The clause involved in *Ramnath International (supra)* was identical to the clause involved in the present appeal. The learned Single Judge has rightly held that the award was in respect of a matter that was clearly beyond the jurisdiction of the Arbitrator, being an "excepted" item. Learned Single Judge has correctly come to the conclusion that the award betrays non-application of mind to the facts as the appellant's letter of extension dated 12th August, 1997 had clearly posited that it was subject to "Nil" financial implication. This meant that the contractor could not have claimed any amount, towards the head which was ultimately awarded. Learned Single Judge also took note of the fact that nothing was shown from the correspondence or the record to support the contractor's disclaimer or protest against this conditional extension of time. Learned Single Judge, thus, in our view, correctly held that the Arbitrator could not have awarded the sum that he did.

6. Accordingly, the appeal is dismissed.

7. The deposits made pursuant to the order of learned Single Judge are now permitted to be withdrawn by the Union of India upon an appropriate application being made before the Registry.

MUKUL MUDGAL, J.

NEERAJ KISHAN KAUL, J.

43. As the offer of 1% discount on the quoted price and the non-mentioning of excise duty amount in rupees in the bid of Ion Exchange were not in breach of the essential terms of the tender documents, it was for IRCTC to evaluate the valid offers of Ion Exchange and Doshion on the merits of the two offers. We find that on the basis of the recommendations of the Tender Committee, the accepting authority of IRCTC found the offer of Ion Exchange at a net price of ₹18,47,34,000 to be better than the offer of Doshion at the price of ₹18,66,00,000 and that tax and duties including excise duty had no adverse financial implications on IRCTC and accordingly accepted the offer of Ion Exchange. By reversing this decision of the accepting authority of IRCTC, the Division Bench of the High Court, in our considered opinion, acted as an appellate court and exceeded its power of judicial review in a matter relating to award of contract contrary to the law laid down by this Court in the leading case of *Tata Cellular*[2].

44. In the result, we set aside the impugned judgment and order of the Division Bench of the High Court and allow the appeals of IRCTC and Ion Exchange and dismiss the appeal of Doshion. There shall be no order as to costs.

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(2010) 13 Supreme Court Cases 377

(BEFORE R.V. RAVEENDRAN AND H.L. GOKHALE, JJ.)

OIL AND NATURAL GAS CORPORATION . . Appellant;

Versus

WIG BROTHERS BUILDERS AND ENGINEERS PRIVATE LIMITED . . Respondent.

Civil Appeal No. 8817 of 2010†, decided on October 8, 2010

A. **Arbitration Act, 1940 — Ss. 30 and 33 — Arbitrator awarding claim contrary to terms of contract — Tenability — Terms of contract provided that in case of any delay attributable to employer for whatever reason, contractor will only be entitled to extension of time for completion of work but will not be entitled to any compensation or damages — Despite said term, arbitrator observed that there was no provision in agreement precluding contractor from making said claim, and that as both contractor and employer were equally responsible for delay, awarded compensation for loss to contractor for half of the period — Held, arbitrator exceeded his jurisdiction in ignoring express bar contained in contract — Hence, award was beyond jurisdiction of arbitrator requiring interference by court — Hence that part of award set aside — Arbitration and Conciliation Act, 1996 — S. 34(2)(iv) — Contract and Specific Relief — Remedies/Relief — Remedies for Breach of Contract — Damages — Extra expense/cost due to breach (Paras 5 to 11)**

2 *Tata Cellular* v. *Union of India*, (1994) 6 SCC 651

† Arising out of SLP (C) No. 12188 of 2009. From the Judgment and Order dated 14-6-2007 of the High Court of Uttaranchal at Nainital in AO No. 348 of 2002

Ramnath International Construction (P) Ltd. v. *Union of India*, (2007) 2 SCC 453; *Associated Engg. Co.* v. *Govt. of A.P.*, (1991) 4 SCC 93; *Rajasthan State Mines & Minerals Ltd.* v. *Eastern Engg. Enterprises*, (1999) 9 SCC 283, *followed*

B. **Arbitration Act, 1940 — Ss. 30 and 33 — Challenge to award — Matters for consideration — Interference by court — When permissible — Held, court while considering challenge under Ss. 30 and 33 can neither examine award as if in appeal nor reappreciate material on record — An award is not open to challenge on ground that arbitrator had reached wrong conclusion or had failed to appreciate some facts — However, if there is error apparent on face of award or misconduct by arbitrator or legal misconduct in conducting the proceedings or in making award, court will interfere with award — Arbitration and Conciliation Act, 1996 — S. 34**

(Para 4)

Appeal partly allowed N-D/46882/SV

Advocates who appeared in this case :
Parag P. Tripathi, Additional Solicitor General (Ms Medumeet Kapur, Amey Nargolkar, Ms Ashu Bhatia and V.N. Raghupathy, Advocates) for the Appellant;
Arun Khosla and M.A. Chinnasamy, Advocates, for the Respondent.

Chronological list of cases cited ***on page(s)***

1. (2007) 2 SCC 453, *Ramnath International Construction (P) Ltd.* v. *Union of India* 380*e*
2. (1999) 9 SCC 283, *Rajasthan State Mines & Minerals Ltd.* v. *Eastern Engg. Enterprises* 380*a-b*
3. (1991) 4 SCC 93, *Associated Engg. Co.* v. *Govt. of A.P.* 379*h*

The Judgment of the Court was delivered by

R.V. RAVEENDRAN, J.— Leave granted. The appellant (also referred to as "ONGC") entrusted a construction work to the respondent under a contract dated 11-10-1983. Clause 25 of the contract provided for settlement of disputes by arbitration. Certain disputes arose between the parties in regard to the said contract and they were referred to a sole arbitrator on 31-12-1986.

2. The claimant made several claims aggregating to ₹82,89,000. ONGC made counterclaims aggregating to ₹1,24,87,000. The arbitrator awarded ₹9,50,000 under the first claim, ₹7,80,132 under the second claim, ₹4,77,129 under the fifth claim and several smaller amounts under Claims 3, 4, 6 to 13, 15 and 17, in all aggregating to ₹25,26,270. The arbitrator also awarded 12% pendente lite interest and 6% from the date of the award/decree. The counterclaims were rejected.

3. ONGC challenged the said award by filing a petition under Sections 30 and 33 of the Arbitration Act, 1940 ("the Act", for short). The civil court (Additional District Judge, Dehradun) dismissed the said petition filed by ONGC and made the award a rule of the court. ONGC filed an appeal before the Uttarakhand High Court. By the impugned judgment dated 14-6-2007, the High Court upheld the judgment of the civil court making the award the rule of the court, subject only to one change, by reducing the rate of pendente lite interest from 12% to 6% per annum. The said judgment is challenged by ONGC in this appeal by special leave.

4. It is now well settled that a court, while considering a challenge to an award under Sections 30 and 33 of the Arbitration Act, 1940, does not examine the award, as an appellate court. It will not reappreciate the material on record. An award is not open to challenge on the ground that the arbitrator had reached a wrong conclusion or had failed to appreciate some facts. But if there is an error apparent on the face of the award or if there is misconduct on the part of the arbitrator or legal misconduct in conducting the proceedings or in making the award, the court will interfere with the award. Keeping the said principles in view, we will consider the challenge.

5. The award has been made with reference to several claims. The appellant has not been able to make any valid ground to attack except with reference to Claim 1. In fact, the learned counsel for the appellant rightly concentrated upon the award on Claim 1, which relates to the claim for compensation for loss on account of prolongation of the completion period on account of ONGC's failure to perform its contractual obligations. The arbitrator has held that the delay in completion was due to the fault of both the contractor and ONGC and that both are equally liable for the delay of 19 months. The arbitrator held that as both were equally liable, the contractor was entitled to compensation at the rate of ₹1 lakh for a period of 9½ months (that is, half of the period of delay of 19 months) in all ₹9,50,000.

6. The arbitrator has observed that there is no provision in the contract by which the contractor can be estopped from raising a dispute in regard to the said claim. But Clause 5-A of the contract pertains to extension of time for completion of work and specifically bars any claim for damages. The said clause is extracted below:

> "In the event of delay by the Engineer-in-charge to hand over to the contractor possession of land/lands necessary for the execution of the work or to give the necessary notice to the contractor to commence work or to provide the necessary drawing or instructions or to do any act or thing which has the effect of delaying the execution of the work, then notwithstanding anything contained in the contract or alter the character thereof or entitle the contractor to any damages or compensation thereof but in all such cases the Engineer-in-charge may grant such extension or extensions of the completion date as may be deemed fair and reasonable by the Engineer-in-charge and such decision shall be final and binding."

7. In view of the above, in the event of the work being delayed for whatsoever reason, that is, even delay which is attributable to ONGC, the contractor will only be entitled to extension of time for completion of work but will not be entitled to any compensation or damages. The arbitrator exceeded his jurisdiction in ignoring the said express bar contained in the contract and in awarding the compensation of ₹9.5 lakhs. This aspect is covered by several decisions of this Court. We may refer to some of them.

8. In *Associated Engg. Co.* v. *Govt. of A.P.*[1] this Court observed: (SCC p. 103, para 24)

1 (1991) 4 SCC 93

"*24*. The arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. His sole function is to arbitrate in terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled outside the bounds of the contract, he has acted without jurisdiction."

9. In *Rajasthan State Mines & Minerals Ltd.* v. *Eastern Engg. Enterprises*[2] this Court held: (SCC pp. 300 & 310, paras 22-23 & 44)

"*22*. ... The rates agreed were firm, fixed and binding irrespective of any fall or rise in the cost of the work covered by the contract or for any other reason or any ground whatsoever. It is specifically agreed that the contractor will not be entitled or justified in raising any claim or dispute because of increase in cost of expenses on any ground whatsoever. By ignoring the said terms, the arbitrator has travelled beyond his jurisdiction as his existence depends upon the agreement and his function is to act within the limits of the said agreement. This deliberate departure from the contract amounts not only to manifest disregard of the authority or misconduct on his part but it may tantamount to mala fide action.

23. It is settled law that the arbitrator is the creature of the contract between the parties and hence if he ignores the specific terms of the contract, it would be a question of jurisdictional error which could be corrected by the court and for that limited purpose agreement is required to be considered. ...

* * *

44. (*h*) ... He cannot award an amount which is ruled out or prohibited by the terms of the agreement."

10. In *Ramnath International Construction (P) Ltd.* v. *Union of India*[3] a similar issue was considered. This Court held that Clause 11(C) of the general conditions of contract (similar to Clause 5-A under consideration in this case) was a clear bar to any claim for compensation for delays, in respect of which extensions had been sought and obtained. This Court further held that such a clause amounts to a specific consent by the contractor to accept extension of time alone in satisfaction of claims for delay and not to claim any compensation; and that in view of such a bar contained in the contract in regard to award of damages on account of delay, if an arbitrator awards compensation, he would be exceeding his jurisdiction.

11. In view of the above, the award of the arbitrator in violation of the bar contained in the contract has to be held as one beyond his jurisdiction requiring interference. Consequently, this appeal is allowed in part, as follows:

(*a*) The judgment of the High Court and that of the civil court making the award the rule of the court is partly set aside insofar as it

2 (1999) 9 SCC 283
3 (2007) 2 SCC 453

relates to the award of ₹9.5 lakhs under Claim 1 and the award of interest thereon.

(*b*) The judgment of the civil court as affirmed by the High Court in regard to other items of the award is not disturbed.

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(BEFORE H.S. BEDI AND R.M. LODHA, JJ.)

BRUNDABAN MOHARANA AND ANOTHER .. Appellants;

Versus

STATE OF ORISSA .. Respondent.

Criminal Appeal No. 170 of 2006†, decided on September 28, 2010

Penal Code, 1860 — Ss. 302/34, 304-B/34 and 498-A — Dowry death — Conviction reversed — Appellants allegedly sprinkled kerosene on deceased and set her ablaze — Dying declarations recorded by doctor and by investigating officer (IO) — Dying declaration made to IO supported by evidence of PWs 3 and 7 — High Court in appeal against conviction by trial court discarded dying declaration recorded by doctor, available in form of a xerox copy — High Court discarding the same as there was no evidence to show that original had been destroyed and thus said, document could not be taken in evidence as secondary evidence — High Court, however, confirmed conviction relying on dying declaration recorded by IO, supported by PWs 3 and 7 — Dying declaration recorded by IO, not endorsed by doctor present there — Statement of doctor treating the injured, regarding fitness to make a statement, also not recorded therein — Statements of PWs 3 and 7, allegedly supporting said dying declaration, found doubtful — Lastly, capacity of injured to make a statement found doubtful — Hence, held, no reliance can be placed on such dying declaration recorded by IO — No presumption in favour of prosecution arises in case of murder — Evidence Act, 1872 — Ss. 32(1) and 65 — Criminal Procedure Code, 1973, S. 161

(Paras 9 to 14)

Appeal allowed J-D/46949/SR

Advocates who appeared in this case :
G. Prakash, Advocate, for the Appellants;
Shibashish Misra, Advocate, for the Respondent.

ORDER

1. This appeal arises out of the following facts: Amani Moharana, since deceased had been married to Pitabas Moharana, son of Appellants 2 and 3 about 5 years prior to the incident. It appears that the in-laws and the family members of the deceased started misbehaving with her soon after the marriage, and at about 7 p.m. on 28-10-1990, in the course of a family

† From the Judgment and Order dated 9-9-2003 of the High Court of Orissa at Cuttack in Crl. A. No. 242 of 1994