



OD-1

APOT/295/2023
With
AP/915/2011
IA No. GA/1/2023

IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION

STATE OF WEST BENGAL
Versus
RAJPATH CONTRACTORS AND ENGINEERS LTD. AND ANR.

Before:

The Hon'ble Justice I. P. MUKERJI

And

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 30th August, 2023

Appearance:

Mr. S. N. Mookherjee, Sr. Adv.
Learned Advocate General, WB.

Mr. Paritosh Sinha, Adv.
Learned A.O.R.

Mrs. Noelle Banerjee, Adv.
Mr. Arindam Mondal, Adv.
For the State of WB.

Mr. Priyankar Saha, Adv.
Ms. Srijani Mukherjee, Adv.
For the respondents.

The Court: Sufficient cause is shown. We condone the delay in filing the appeal.

We direct the department to register the appeal immediately.

We admit the appeal.

We propose to hear it out expeditiously dispensing with all formalities. The appellant's advocate on record has brought ready to court the paper books intended to be used in the appeal. We accept the same.

Let the paper books be taken on record.

Two copies thereof be served to the advocate on record for the respondents by 1st September, 2023.



This is an appeal under Section 37 of the Arbitration & Conciliation Act, 1996. The arbitral proceedings arose out of a works contract between the parties.

Very serious allegations of irregularity to the extent of fraud have been made by the learned Advocate General. He submitted as follows:

(i) The arbitral proceedings were commenced without any notice under Section 21 of the said Act.

(ii) Without any notice to or knowledge of the arbitral proceedings by the Appellant the learned arbitral tribunal held a sitting with three engineers of the Public Works Department (Roads) of the Government of West Bengal along with a law officer and the respondent where they agreed to a consent award for payment of Rs.3.5 crores by the Government to the respondents.

(iii) The said officials had no authority to consent to any award or to bind the Government to such consent.

(iv) The purported award was never served on the appellant.

(v) When this award was discovered in the file of the department at a much later point of time, steps were taken to file an application under Section 34 of the said Act to challenge it. Such application had been filed beyond 90 days of the deemed receipt of the award but within 120 days thereof.

In the court of the first instance, the following flaw in the adjudication process is also pointed out by the learned Advocate General:

(i) Initially the delay in filing the application was condoned by the court.

(ii) Thereafter, an application was made before the self-same court for setting aside of that order.

(iii) The Hon'ble first court dismissed the Section 34 application on the ground of limitation as well as on merits.

It was contended on behalf of the appellant that without condoning the delay and admitting the S. 34 application, the merits of



the matter could not have been gone into. If it had been adjudicated upon by the court, the order was erroneous.

On the other hand, Mr. Priyankar Saha, learned advocate appearing for the respondent, submitted that the engineers of the Government who were attending the matter were very senior and qualified and had considerable reputation. Keeping all aspects of the works contract in mind, they had agreed to the consent award. This award had been duly served upon the appellant. The impugned order of the learned judge cannot be faulted as it could be viewed as one dealing with the preliminary as well as the other issues together.

Having considered the rival submissions, we are of the view that a very serious questions have to be gone into by us in this appeal.

Considering the above facts and circumstances and also the fact that the award is prior to the amendment of the said Act, 2015, we are of the view that this appeal should be heard out without requiring the appellant to furnish any security.

We order accordingly.

List this appeal for hearing on 13th September, 2023 fairly at the top.

There shall be an unconditional stay of execution of the award till the disposal of the appeal or until further order whichever is earlier.

Stay of operation of the order is prayed for and the same is considered and refused.

The stay application (IA No. GA/1/2023) is disposed of.

As affidavits were not invited, the allegation contained therein are deemed not to be admitted.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)