

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: THE HON'BLE JUSTICE DEBANGSU BASAK

AND

THE HON'BLE JUSTICE AJAY KUMAR GUPTA

FMAT(ARBAWARD)/6/2024

THE UNION OF INDIA ... APPELLANT

VS.

M/S ANNU ENGINEERING CORPORATION AND OTHERS
... RESPONDENTS

For the appellant : Mr. V.D.Sivabalan

For the Respondents : Mr. Vikash Deep
(through virtual mode)

Heard on : February 24, 2026

Delivered on : February 24, 2026

DEBANGSU BASAK, J.

1. Appeal is at the behest of the Union of India and directed against order dated January 31, 2024 passed by the learned District Judge in Other Suit No. 01 of 2015, exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996.

2. By the impugned order, learned Single Judge, rejected the petition under Section 34 of the Act of 1996 filed by the appellant assailing the award dated October 20, 2014 passed by the Arbitrator.

3. Learned Advocate appearing for the appellant submits that, the initial order of rejection of the petition under Section 34 of the Act of 1996, passed by the learned District Judge, was set aside on appeal by the Coordinate Bench in FMA 004 of 2018 dated February 06, 2019. He submits that, the impugned order dated January 31, 2024, suffers from the same vice of no reasons as that of the earlier order of the learned District Judge.

4. Learned Advocate appearing for the appellant, draws the attention of the Court to the letter dated July 22, 2006 issued by the respondent. He submits that, respondent admitted the mistake as also acknowledged that, the material supplied were not as per specification. He submits that, in view of such admission, the counter claim made by the respondent could not be allowed by the Arbitral Tribunal. According to him, learned District Judge failed to appreciate such aspect of the matter.

5. Learned Advocate appearing for the appellant submits that, the respondent consistently failed to supply materials in accordance with the contract specification. Moreover, the materials were not checked and tested by a Government approved Laboratory prior to its user. Therefore, there was no supply in terms of the contract requiring the appellant to pay the respondent. According to him, the Arbitrator as also the learned Trial Judge failed to appreciate such aspects of the matter.

6. Learned Advocate appearing for the appellant submits that the rejection of supply made by the appellant were in terms of the agreement. Again, on the parity of same reasoning, counter claim of the respondent could not be allowed by the Arbitrator and upheld by the learned Single Judge.

7. Referring to the award, learned Advocate appearing for the appellant submits that, Arbitrator awarded interest at the rate of 15% and 18%. According to him, such rates of interest are excessive and therefore should be interfered with.

8. Respondent is represented.

9. Appellant, floated a tender for supplying and stacking of raw materials for GSB, WPM, Premix carpet. The respondent was the lowest bidder in such tender process. Respondent was awarded such tender. By several letters, date of commencement as also date of completion of the different works were fixed by the appellant.

10. In terms of the contract, respondent deposited a sum of Rs. 3,50,000/- in the form of a demand draft as Earnest Money Deposit.

11. Disputes and differences arose between the parties with regard to the contract in question. Appellant, invoked clause 37 of the General Conditions of Contract and Clause 21 of the Special Conditions of Contract and referred the disputes to the arbitration. Appellant submitted a statement of claim. Respondent submitted a statement of defence with the counter claim.

12. In the statement of claim, appellant contended that, the respondent violated the contract and was liable to pay various sums as compensation. In the statement of defence and counter claim, respondent claimed various sums as due and payable by the appellant to the respondent on account of goods sold and delivered.

13. Appellant raised three claims before the Arbitrator namely, for payment for balance work executed through other contractor, compensation for delay and interest at the rate of 18%.

14. Respondent raised nine counter claims. Such counter claims related to payment on account of goods sold and delivered, material purchased, reimbursement of miscellaneous expenditure, establishment costs, release of earnest money, loss of profit and interest as well as cost of arbitration.

15. Arbitrator by the award dated October 20, 2014, rejected the three claims made by the claimant. Arbitrator, allowed five heads of counter claim namely, claim no. 1, 6, 7, 8 and 9 aggregating to a sum of Rs. 1,26,85,300/- along with interest at the rate of 18% per annum to be paid in the event, the awarded amount was not paid within 90 days from the date of the award.

16. An award dated October 20, 2014, was challenged by the appellant by way of a petition under Section 34 of the Act of 1996 which was registered as O.S. No. 1 of 2015. Such O.S. 1 of 2015 was initially dismissed. Appeal carried therefrom being FMA 004 of 2018 was disposed of by an order dated February 6, 2019 remanding O.S.

1 of 2015 for fresh consideration. Upon fresh consideration of O.S. 1 of 2015, the impugned order was passed.

17. Scope of inquiry under Section 37 of the Act of 1996 is limited. A Court exercising jurisdiction under Section 37 of the Act of 1996 is required to evaluate as to whether or not, the Court exercising powers under Section 34 of the Act of 1996 acted within the parameters thereof.

18. An award passed under the Act of 1996 calls for minimum interference. Award passed under the Act of 1996 can be set aside, if, it is established that, the award is perverse or is vitiated by patent illegality or is against public policy.

19. In the facts and circumstances of the present case, there was a contract between the parties containing an arbitration clause. It is the appellant who invoked the arbitration clause and appointed one of its officers as the Arbitrator. Appellant raised claims before the Arbitrator. Respondent raised statement of defence with a counter claim.

20. Arbitral Tribunal considered the rival contentions and, proceeded to dismiss the claim of the appellant. Primary ground for dismissal of the claim was that, the termination of the contract made by the appellant was illegal.

21. Contract was for supply. According to the appellant, supplies were effected by the respondents albeit without the requisite testing. Arbitrator found that, the supplies affected by the respondent was

consumed by the appellant. The plea of non test by an authorized agency, was an afterthought. Therefore, the termination of the contract, made by the appellant on the ostensible plea of the respondent not supplying in accordance with the stipulated specification, was rightly held to be illegal.

22. Once, the termination was held to be illegal, the Arbitrator rightly disallowed the claim of the appellant for compensation on account of balance work done through a third party. The other two claims made by the appellant before the Arbitrator was consequential to the validity of the termination of the contract and was therefore rightly rejected once, the termination was found to be illegal.

23. Finding of the Arbitrator that the termination of the contract was not established to be perverse, vitiated with patent illegality or against public policy, either before the Court exercising jurisdiction under Section 34 of the Act of 1996 or before us.

24. As noted above, supplies were effected and that, payment in respect of such supplies were due. Arbitrator therefore, rightly allowed the claim on account of supplies effected. Arbitrator Tribunal took pains to calculate the actual amount due and payable. Such calculation is not established to be perverse, vitiated by patent illegality or against public policy. Therefore, Arbitrator rightly awarded Rs. 49,72,600/- on account of materials supplied.

25. Since, the termination of the contract made by the appellant was found to be illegal, the respondent was necessarily entitled to

refund of the earnest money of the sum of Rs.3,50,000/- which the Arbitrator rightly awarded.

26. Arbitrator took into consideration the fact of illegal termination of the contract and the loss of profit on the balance work. Arbitrator proceeded to award Rs. 6,99,100/- on such account. Again, the same is not established to be perverse, or vitiated by patent illegality or against public policy.

27. On account of interest, Arbitral Tribunal awarded interest @ 15 % per annum till the date of the award. It awarded 18% interest if the awarded amount was not paid within ninety days from the date of the award.

28. Rate of interest is one of the bone of contentions of the appellant. We find that, the appellant itself prayed for 18% interest before the Arbitrator in its claims. Purely on the basis that the appellant claimed interest @18% before the Arbitrator it does not lie in the mouth of such appellant to contend that, interest awarded by the Arbitrator @ 18% in the counter claims of the respondent is excessive. In any event, the nature of transaction between the parties is commercial. The subject tender was for supply of materials. Nationalized banks charges interests at rates not less than 18% in respect of commercial transactions. Therefore, award of interest @ 15% till the date of the award and thereafter @ 18% cannot be faulted.

29. Arbitrator, awarded cost of arbitration for the sum of Rs. 3,53,000/- and gave reasons for it. Respondents succeed in its counter claim after a finding of the termination of the contract to be illegal. Therefore, the respondent was rightly compensated with the cost of arbitration.

30. So far as impugned order is concerned, we find that, learned Court exercising jurisdiction under Section 34 of the Act of 1966, correctly applied the principles for evaluating an award. It noted the facts and circumstances of the case and did not find the award to be vitiated by patent illegality or being against public policy or to be perverse. It discussed the merits of the matter. Impugned order cannot be termed to be non- speaking.

31. In such circumstances, we find no reasons to interfere with the impugned order.

32. FMAT(ARBAWARD)/6/2024 is dismissed without any order as to costs.

(DEBANGSU BASAK, J.)

33. I agree.

(AJAY KUMAR GUPTA, J.)