

[2021] 7 S.C.R. 1111

SALUJA CONSTRUCTION COMPANY

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v.

NORTHERN COALFIELDS LIMITED

(Civil Appeal No. 7041 of 2021)

NOVEMBER 25, 2021

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[M. R. SHAH AND SANJIV KHANNA, JJ.]

Arbitration – High Court in appeal set aside award passed by the Arbitrator – Propriety – Held: On facts, the Arbitrator was required to adjudicate and decide dispute between the parties with respect to one Project (Bina Project) only – However, the Arbitrator passed an award not only with respect to the dispute relating to Bina Project but also with respect to other projects – Therefore, the High Court rightly held that the arbitrator while decreeing the award exceeded his jurisdiction in passing award in respect of four contracts – However, at the same time, the High Court at least ought to have confirmed the claim/amount awarded by the Arbitrator with respect to Bina Project – Order of High Court accordingly modified to that extent – Arbitration and Conciliation Act, 1996 – ss. 2(a), 8, 20 and 37.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7041 E
of 2021.

From the Judgment and Order dated 02.01.2018 of the High Court of Madhya Pradesh at Jabalpur in A.A. No. 30 of 2012.

Pijush K. Roy, Mrs. Kakali Roy, Rajan K. Chourasia, Advs. for F
the Appellant.

Vikas Singh, Sr. Adv., Ashwani Kumar Dubey, Pankaj Sharma, Kshitij Mudgal, Ms. Deepika Kalia, Satvik Mishra, Kapish Seth, Ashwini Kr. Upadhyay, Advs. for the Respondent.

The following Order of the Court was passed : G

O R D E R

Leave granted

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 02.01.2018 passed by the High Court of Madhya Pradesh H

- A at Jabalpur in A.A. No. 30 of 2012, by which the High Court has allowed the said appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) and has quashed and set aside the award passed by the learned Arbitrator, the original claimant has preferred the present appeal.
- B 2. That the appellant herein was awarded the contract for construction of 100 Nos. B-Type Quarters at Bina (hereinafter referred to as the Bina project). An agreement was entered into between the parties on 11.01.1986. A dispute arose between the parties with respect to the Bina project. The contractor issued a notice under Clause 9 of the agreement to appoint an arbitrator in respect of Bina Project only. The respondent rejected the claim of the contractor. The appellant raised a Bill of Rs.2,23,215/- and then filed an application under Section 8/20 of the Arbitration Act for filing of agreement and appointment of arbitrator. Thus it appears that the dispute at the relevant time was only with respect to the work relating to the Bina Project. However, before the learned Arbitrator, the claim was raised with respect to the other projects and in relation to the sister concerns regarding ‘Amlohri Project’ and ‘Jhingurda Project’. The learned Arbitrator passed an award with respect to the dispute relating to other agreements/contracts even in relation to sister concerns over and above the dispute with respect to the Bina Project.
- C The appeal under Section 34 of the Arbitration Act against the judgment and award passed by the learned Arbitrator came to be dismissed against which the respondent preferred an appeal under Section 37 before the High Court. It was submitted that the learned Arbitrator appointed only for the contract relating to Bina Project and the agreement relating to the Bina Project was filed before the learned Arbitrator. It was submitted
- D that as per Section 2(a), 8 and 20 of the Arbitration Act, the mandatory requirement was to decide the dispute in relation to a written agreement which was filed before the arbitrator. Therefore, it was submitted that the learned Arbitrator has travelled beyond in passing the award in respect of four contracts. The High Court in the impugned judgment and order has accepted the submissions on behalf of the respondent and has quashed and set aside the award passed by the learned Arbitrator.
- E 3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the contractor has preferred the present appeal.

4. We have heard Shri Pijush K. Roy, learned counsel appearing on behalf of the appellant and Shri Vikas Singh, learned senior counsel appearing on behalf of the respondent.

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5. We have gone through the judgment and order passed by the High Court. It is to be noted that the application under Section 8/20 of the Arbitration Act was filed by the appellant – Saluja Construction Company – a partnership firm, with respect to the contract for construction of 100 Nos. B-Type Quarters at Bina Project only. The agreement between the appellant and respondent with respect to the Bina Project was produced in application under 8/20 of the Arbitration act. Therefore, the learned Arbitrator was required to adjudicate and decide the dispute between the parties with respect to the Bina Project only. However, learned Arbitrator passed an award not only with respect to the dispute relating to Bina Project but also with respect to the other projects that too not only with the appellant but with the sister concerns. Therefore, the High Court has rightly observed and held that the arbitrator while decreeing the award exceeded in his jurisdiction in passing the award in respect of 4 contracts/contracts. Therefore, as such the High Court is right in quashing and setting aside the award passed by the learned Arbitrator with respect to the dues/claims with respect to the contracts other than the Bina Project and the contracts with other projects/contractors may be by sister concerns.

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6. However, at the same time, learned counsel appearing on behalf of the appellant is right in making the submissions that the High Court at least ought to have confirmed the claim/amount awarded by the learned Arbitrator with respect to the Bina Project. It is submitted that the High Court has set aside the entire award passed by the learned Arbitrator including the award with respect to the Bina Project. Therefore, to that extent the present appeal is required to be allowed in part and the judgment and order passed by the High Court is required to be modified to the extent setting aside the award passed by the learned Arbitrator with respect to the claims with respect to other projects/other contracts other than Bina Project.

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7. In view of the above, the present appeal is allowed in part. The impugned judgment and order passed by the High Court is modified to the extent quashing and setting aside the entire judgment and award passed by the learned Arbitrator. The judgment and award passed by the learned Arbitrator except the claims with respect to the Bina Project

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- A was required to be quashed and set aside and is accordingly quashed and set aside. Meaning thereby, award passed by the learned Arbitrator with respect to the Bina Project i.e. Rs.5,99,158/- is hereby confirmed. The impugned judgment and order passed by the High Court quashing and setting aside the award passed by the learned Arbitrator with respect to the projects other than Bina Project is rightly set aside by the High Court. We confirm the same. It is reported that pursuant to the earlier order passed by the High Court, the respondent has deposited 50% of the amount awarded by the learned Arbitrator. Therefore, whatever the amount deposited in excess of Rs.5,99,158/- with interest @ 8% per annum from the date of the award passed by the learned Arbitrator till
- B the amount was deposited pursuant to the interim order passed by the High Court, shall be returned by the appellant to the respondent, if any excess amount is deposited and withdrawn by the appellant. The present appeal is allowed to the aforesaid extent. In the facts and circumstances of the case there shall be no order as to costs.

Bibhuti Bhushan Bose

Appeal partly allowed.