HIGH COURT OF DELHI *(D.B.)*

WISHWA MITTAR BAJAJ & SONS
V/S
UOI

Date of Decision: 10 April 2013

Citation: 2013 LawSuit(Del) 1259

Hon'ble Judges: S Ravindra Bhat, Sudershan Kumar Misra

Case Type: First Appeal From Order

Case No: 224 of 2009

Subject: Arbitration, Civil

Acts Referred:
Arbitration And Conciliation Act, 1996 Sec 34, Sec 31(7)(b), Sec 11

Final Decision: Appeal allowed

Eq. Citations: 2013 (2) ArbLR 417, 2013 (4) AD(Del) 465, 2013 (137) DRJ 468, 2013 (3) ILR(Del) 2252

Advocates: R V Sinha, Raghavendra M Bajaj

Reference Cases:
Cases Referred in (+): **14**

Judgement Text:-

S Ravindra Bhat, J

[1] The appellant (hereafter "the claimant") is aggrieved by the judgment and order of a learned Single Judge, allowing the respondent's Petition under Section 34 of the Arbitration and Conciliation Act, ("the Act") setting aside an award, made in its (i.e the appellant's) favour.

[2] The Appellant was awarded a lump sum contract, for construction of infrastructure for breeding and training of dogs at RVC Centre and School at Meerut. The total contract sum was Rs. 2,79,44,098.10 and work was to be completed by 15.04.2003. It was completed on 12.04.2003 and the Appellant submitted the final bill. The payment towards final bill was made on 11.02.2004. At the stage of payment, certain amounts were withheld by the Respondent. This led to disputes and the matter was referred to arbitration. In the arbitral proceedings, the appellant claimed amounts towards 10 heads. Claim no. 1 sought compensation on account of delay in payment of running bills and final bill; Claim no.2 was for reimbursement of additional expenditure incurred for providing extra work; Claim no.3 was for reimbursement of payment made to idle labour; Claim no.4 was for reimbursement for charges paid for testing of steel; Claim no.5 sought release of bank guarantee against retention money; Claim no. 6 was for refund of amounts deducted on account of STE from the final bill; Claim no.7 sought reimbursement of expenditure incurred on renewal of bank guarantee; Claim no.8 sought refund of testing charges; Claim no.9 for reimbursement of extra expenditure incurred on watch and ward of the building due to delay in taking over possession and Claim no.10 was towards interest.

[3] The Arbitrator disallowed claims no. 3, 6 & 8 and against other claims allowed different amounts. The learned Arbitrator allowed 12% interest for pre-arbitration period and 9 % interest for pendente lite and future periods.

[4] Claiming to be aggrieved, the Respondent filed a petition under Section 34 of the Act, seeking setting aside the award. The main ground of challenge was that the Arbitrator had awarded amounts beyond the contract and the claims raised were neither tenable nor could be adjudicated in view of specific terms of the contract. It was also argued that the claims by the Appellant were not raised during currency of the contract or at the time of presentation of the bill; the Appellant had furnished a no claim certificate and accepted the final bill without reservation.

[5] The learned Single Judge held that the work was completed on 12.04.2003 and possession was taken by the Respondent-Objector on 14.04.2003 subject to rectification of defects by 5.5.2003. After rectification of defects, a final bill was

entertained and a 'no claim certificate' was issued by the appellant. In these circumstances, it was held that the Appellant-Claimant could have raised only those disputes before the Arbitrator which had arisen during currency of the contract. After the Claimant submitted its Bill to the Respondent, it could not have projected disputes which were not highlighted in the bill or in other words claimed amounts over and above those claimed in the bills. While raising the bills the Claimant had not made any claim for additional items; the Contractor knew that a lump sum contract had been awarded. The Single Judge relied on Clause 11.2.4 and held that it specifically provided that the hardware for the doors/windows etc, though not included in the drawings, but essential for functioning (and entire completion, even if missed out) shall be provided by the contractor and the building shall be complete in all respects from utility point of view. This was deemed to be included in the lump sum quote. It was concluded that though payment was made by Union of India, the Appellant-Claimant would have at the most been allowed interest on the delayed part of the final bill and not in respect of other claims. Consequently, it was held that the award was contrary to the contract; he could not draw a new contract for the parties. The award in respect of all claims, except return of bank guarantee and interest on the unpaid final bill amount from May '03 to February '03 @ 12%, was thus set aside as rendered beyond jurisdiction.

[6] It was argued, on behalf of the appellant, that Objections under Section 34 are based on limited grounds to challenge awards. The Respondent-Objector wished re-appreciation of findings of fact arrived by the Arbitrator. The Single Judge erred in re-appreciating the evidence, virtually as a court of appeal over the decision of the Arbitrator. The award in question is well reasoned and clearly indicates the thought process of the Arbitrator. It was submitted that there was nothing in the award, indicative of the findings being contrary to the public policy of India, or violation of the contract between parties.

[7] It was argued that the Objector cannot object to the appointment of an arbitrator or his qualification in terms of Section 11 of the Act. The matter was referred to the Sole Arbitrator with the consent of the objector. A writ petition was filed challenging that appointment. After finding that the Division bench was not agreeable to the challenge it was withdrawn. The objector was therefore estopped from questioning the appointment.

[8] The Appellant denied that any 'no claim certificate' was given. The 'no claim certificate' was part of the printed final bill proforma given in advance; it had no sanctity in law. It was alternatively argued that the document was given under circumstances which amounted to undue influence exercised by the objector as it had withheld huge

amounts from the claimant. The final bill prepared by the Respondent was signed by the Appellant on 17.2.03 along with the standard certificate and only then was it accepted for processing. It was only on 11.2.2004, that the appellant noticed that the final bill amount was paid without including the cost of additional items executed over and above the contract as per the tender that provided for such deviations. It was argued further, that even otherwise, the appellant had protested immediately after the payment, in a letter, and sought for release of amounts towards the extra work, required of by the respondents. In these circumstances, it could not be said that the appellant was estopped, by reason of any no-claim or no-objection certificate from demanding full payment of amounts that were due to it. It was argued that in any event, the Single Judge fell into error in not appreciating that at the time of receiving the payment, the appellant made an endorsement over the bill itself that it was received in protest, and therefore the said certificate cannot be used to deny the lawful claim of the Appellant. Reliance was placed on the decisions National Insurance Co. Ltd. v. Boghara Polyfab Pvt. Ltd., 2009 AIR(SC) 170, Ajmer Singh Cotton & General Mills, 1999 AIR(SC) 3027 and Chairman and M.D., N.T.P.C. Ltd. v. Reshmi Constructions, Builders and Contractors, 2004 AIR(SC) 1330 to say that documents of the variety which were relied on by the respondent-objectors, cannot be said to estop the appellant from claiming the amounts which were due to it, for the work admittedly done.

[9] Learned Counsel, Mr. Raghavendra M. Bajaj submitted that the materials on record showed that the claim for Rs. 5.8 lakhs allowed by the arbitrator, to the appellant was justified in the circumstances of the case. It was argued that the amounts were payable towards deviation orders, which had been placed upon the contractor by the respondent employer. These had been included in the final bill, and the so called objection was in a printed format. Counsel highlighted the fact that at the stage of accepting payment on 12th April 2004, the Claimant/Contractor had registered protest, and elaborated upon it, in the letter written the very next day. In these circumstances, it could not be said that the claimant had forgone its demand and entitlement for payment for the extra work done. Learned counsel also relied on the standard conditions governing such contracts. The Appellant argued that the said document does not preclude or absolve the respondent from its liability to pay for the amounts concededly billed towards works directed to be performed by it. In this regard, the appellant placed reliance on the deviation orders, which had been brought on record, and emphasizes that the Bills in respect of each such deviation order had been furnished to the respondent. The appellant argues that when the "no objection" certificate was in fact given, it was labouring under tremendous pressure, because a considerable amount of the sums due and payable by the respondent were outstanding. This alone indicated pressurization by

the respondent employer. Further, argued counsel, the payment towards the final bill was released only on 12-4-2004; even at that time, while accepting the cheque, the appellant recorded that the payment was received under protest; it also wrote to the respondent employer the very next day, recording a similar protest. In these circumstances, says the appellant, the amount of Rs. 5.8 lakhs awarded by the Arbitrator was justified.

[10] It was contended further that the impugned judgment is in clear error, as it rejects the reimbursement of expenses awarded by the Arbitrator, (incurred for renewal of bank guarantee). On this aspect, counsel highlighted that the Single Judge upheld the award in respect of Claim No. 5, i.e. release of bank guarantee. The rejection of the reimbursement claimed was therefore without any reason. Likewise, argued counsel, for Claim No. 4, i.e. steel testing charges (Rs. 60,000/-), the respondent agreed in the arbitration proceedings to pay the amount. The pleading to that effect was relied on by counsel for the Appellant/contactor.

[11] Counsel for the respondent/ objector did not dispute that in respect of claim No. 4, i.e. steel testing charges, the pleading in the arbitration proceedings had clearly admitted its liability to pay the sum of Rs. 60,000/-. However, the respondent objector relies on the "No objection" certificate, dated 17-05-2003, in respect of the claim for Rs. 5,80,000/-:

> "It is certif ed that I have prepared the final bill for claiming entire payment due to me from the contract agreement. This FB (Final Bill) includes all claims raised by me from time to time irrespective of the fact whether they are admitted/accepted by the department or not. I am now categorically certify that, I do not have more claim in r/o this contract by found these already included in this FB by me this amount so claimed by me shall be in full and final satisfaction of all claim to the extent disallowed to me from this Final Bill.
>
> Dated S/d Sharad Saigal
>
> Contractor WM Bajaj & Sons"

It was contended that there was no material to justify the award by the

arbitrator, in respect of these amounts, which were not part of the contracted services, and at any rate for which the Appellant had foregone its claims while submitting the final bill. The Appellant contractor was accordingly estopped from claiming them and the learned Single Judge correctly set aside the award under Section 34 of the Act.

Analysis and findings

[12] In the present case, a plain reading of the award would reveal that the arbitrator did not accept all contentions and claims pressed by the appellant. Even in respect of items which were paid, the arbitrator accepted claims in part, and wherever untenable, or not proved, rejected the claim. It is not as if the amounts awarded were without reason or justification. The extracts of the award, in respect of Claim No. 2 are reproduced below:

"25. Claim No. 2 for reinforcement of additional expenditure incurred on provision of extra work over and above contract provisions such as:

a. Provn. of fixed glazing

b. Provn of beams, LB, FB-2, PB-2 not shown in drawings

c. Additional reinforcement in RCC Cols C-1 C-2 and C-3

d. Provn of copper conductor in lieu of Aluminum Conductor Amount of Claim Rs. 4,93,393.00 amended to Rs. 5,38,000.00 After hearing both the parties and going into details of documents, verification of drawings and contract provisions, I conclude as under:

a. Fixed Glazing is not shown in the main plan of Admin block

b. Structural Plan BZ/MRT/87 Sheet 7/8 does not indicate provision of LB-1, Plinth Beam and FB-2 (additional) which has been provided by the Claimant

c. There was a discrepancy in reinforcement details of RCC col's C-1, C-2 and C-3. Union of India resorted to remove the discrepanc with the provision of additional Reinforcement.

d. The contract provisions regarding aluminum conductor cables is clear where as copper conductor has been provided by Claimant.

I therefore give my final award against Claim No. 2: Rs. 5,38,000.00"

[13] The materials on record showed that in support of these claims, Bills and reminders had been furnished to the Objector/Employer. These were:

i. Letter No. WMB/MES/MRT/07/36 dated 4-5-2002 (Ex. C-17)

ii. Letter No. WMB/MES/MRT/07/49 dated 11-2-2002 (Ex. C-06)

iii. Letter No. WMB/MES/MRT/07/91 dated 27-11-2003 (Ex. C-14)

iv. Letter No. WMB/MES/MRT/07/95 dated 19-12-200 (Ex. C-15)

The final Bill in this case was submitted on 12-4-2003; it shows that the date of measurement was 1-05-2003. This final bill itself contains recital of deviation orders - no less than 17 in number. The description of amounts in regard to these bills also reveals that certain adjustment of amounts paid towards running bills were indicated and verified. The signature of the two counter signing officers was affixed on 28- 08-2003. Yet, the cheque was handed over to the Appellant on 12-04- 2004; its signature on that day reveals that the payment was accepted under protest.

[14] In Boghara Polyfab , the Supreme Court held that mere execution of a discharge certificate did not disentitle the party concerned from claiming amounts:

"The mere execution of the discharge voucher would not always deprive the consumer from preferring claim with respect to the deficiency in service or

consequential benefits arising out of the amount paid in default of the service rendered. Despite execution of the discharge voucher, the consumer may be in a position to satisfy the Tribunal or the Commission under the Act that such discharge voucher or receipt had been obtained from him under the circumstances which can be termed as fraudulent or exercise of undue influence or by misrepresentation or the like. If in a given case the consumer satisfies the authority under the Act that the discharge voucher was obtained by fraud, misrepresentation, undue influence or the like, coercive bargaining compelled by circumstances, the authority before whom the complaint is made would be justified in granting appropriate relief.

27. Let us consider what a civil court would have done in a case where the defendant puts forth the defence of accord and satisfaction on the basis of a full and final discharge voucher issued by plaintiff, and the plaintiff alleges that it was obtained by fraud/coercion/undue influence and therefore not valid. It would consider the evidence as to whether there was any fraud, coercion or undue influence. If it found that there was none, it will accept the voucher as being in discharge of the contract and reject the claim without examining the claim on merits. On the other hand, if it found that the discharge voucher had been obtained by fraud/undue influence/coercion, it will ignore the same, examine whether plaintiff had made out the claim on merits and decide the matter accordingly. The position will be the same even when there is a provision for arbitration. The Chief Justice/his designate exercising jurisdiction under Section 11 of the Act will consider whether there was really accord and satisfaction or discharge of contract by performance. If the answer is in the affirmative, he will refuse to refer the dispute to arbitration. On the other hand, if the Chief Justice/his designate comes to the conclusion that the full and final settlement receipt or discharge voucher was the result of any fraud/coercion/undue influence, he will have to hold that there was no discharge of the contract and consequently refer the dispute to arbitration. Alternatively, where the Chief Justice/his designate is satisfied prima facie that the discharge voucher was not issued voluntarily and the claimant was under some compulsion or coercion, and that the matter deserved detailed consideration, he may instead of deciding the issue himself, refer the matter to the arbitral tribunal with a specific direction that the said question should be decided in the first instance.

28. Some illustrations (not exhaustive) as to when claims are arbitrable and when they are not, when discharge of contract by accord and satisfaction are disputed, to round up the discussion on this subject:

(i) A claim is referred to a conciliation or a pre-litigation Lok Adalat. The parties negotiate and arrive at a settlement. The terms of settlement are drawn up and signed by both the parties and attested by the Conciliator or the members of the Lok Adalat. After settlement by way of accord and satisfaction, there can be no reference to arbitration.

(ii) A claimant makes several claims. The admitted or undisputed claims are paid. Thereafter negotiations are held for settlement of the disputed claims resulting in an agreement in writing settling all the pending claims and disputes. On such settlement, the amount agreed is paid and the contractor also issues a discharge voucher/no claim certificate/full and final receipt. After the contract is discharged by such accord and satisfaction, neither the contract nor any dispute survives for consideration. There cannot be any reference of any dispute to arbitration thereafter.

(iii) A contractor executes the work and claims payment of say Rupees Ten Lakhs as due in terms of the contract. The employer admits the claim only for Rupees six lakhs and informs the contractor either in writing or orally that unless the contractor gives a discharge voucher in the prescribed format acknowledging receipt of Rupees Six Lakhs in full and final satisfaction of the contract, payment of the admitted amount will not be released. The contractor who is hard pressed for funds and keen to get the admitted amount released, signs on the dotted line either in a printed form or otherwise, stating that the amount is received in full and final settlement. In such a case, the discharge is under economic duress on account of coercion employed by the employer. Obviously, the discharge voucher cannot be considered to be voluntary or as having resulted in discharge of the contract by accord and satisfaction. It will not be a bar to arbitration.

(iv) An insured makes a claim for loss suffered. The claim is neither admitted nor rejected. But the insured is informed during discussions that unless the

claimant gives a full and final voucher for a specified amount (far lesser than the amount claimed by the insured), the entire claim will be rejected. Being in financial difficulties, the claimant agrees to the demand and issues an undated discharge voucher in full and final settlement. Only a few days thereafter, the admitted amount mentioned in the voucher is paid. The accord and satisfaction in such a case is not voluntary but under duress, compulsion and coercion. The coercion is subtle, but very much real. The 'accord' is not by free consent. The arbitration agreement can thus be invoked to refer the disputes to arbitration.

(v) A claimant makes a claim for a huge sum, by way of damages. The respondent disputes the claim. The claimant who is keen to have a settlement and avoid litigation, voluntarily reduces the claim and requests for settlement. The respondent agrees and settles the claim and obtains a full and final discharge voucher. Here even if the claimant might have agreed for settlement due to financial compulsions and commercial pressure or economic duress, the decision was his free choice. There was no threat, coercion or compulsion by the respondent. Therefore, the accord and satisfaction is binding and valid and there cannot be any subsequent claim or reference to arbitration." In the earlier judgment Reshmi Construction , the Supreme Court while recognizing that there cannot be any finality precluding the party from making claims, when such discharge (or "no objection") certificates are claimed to be issued by the employer, observed that:

"18. Normally, an accord and satisfaction by itself would not affect the arbitration clause but if the dispute is that the contract itself does not subsist, the question of invoking the arbitration clause may not arise. But in the event it be held that the contract survives, recourse to the arbitration clause may be taken. [See Union of India v. Kishorilal Gupta, 1960 1 SCR 493 and Majhati Jute Mills v. Khavalirsa, 1968 1 SCR 821.

19. In Bharat Heavy Electricals Limited this court observed that whether there was discharge of the contract by accord and satisfaction or not is a dispute arising out of a contract and is liable to be referred to arbitration.

27. Even when rights and obligations of the parties are worked out the contract does not come to an end inter alia for the purpose of determination of the disputes arising thereunder, and, thus, the arbitration agreement can be invoked. Although it may not be strictly in place but we cannot shut our eyes to the ground reality that in the cases where a contractor has made huge investment, he cannot afford not to take from the employer the amount under the bills, for various reasons which may include discharge of his liability towards the banks, financial institutions and other persons. In such a situation, the public sector undertakings would have an upper hand. They would not ordinarily release the money unless a 'No Demand Certificate' is signed. Each case, therefore, is required to be considered on its own facts.

28. Further, necessities non habet legem is an old age maxim which means necessity knows no law. A person may sometimes have to succumb to the pressure of other party to the bargain who is on a stronger position."

[15] Here, in this case, though the final bill was furnished in April, 2003, and verified on 1.5.2003, yet the cheque was issued only on 12.4.2004. In between, the noting/certificate relied on by the employer/respondent was written. However, the form which was signed earlier contained a printed clause to the effect that "I/We have no further claim " under the Contract, beyond the net amount of the Bill. Yet, on 12-4-2004, the Appellant, while receiving the cheque, clearly stated that the payment was received "under protest". It followed up this with a detailed letter on 13-4-2004; a copy of that letter was placed on the record. Having regard to the law declared and the surrounding circumstances, it is clear that even though the works were executed long before, some-time in end 2002, in respect of which the final bill was submitted in April, 2003, the Appellant had no option but to execute and claim the amounts in terms of the printed "no claim" format. However, even this bill reflects the items of works which had been done, and in respect of which the sum of Rs. 5,38,000/- was claimed; there is no dispute on that, since the bills were verified, though amounts were not paid as being beyond the scope of the works awarded. That aspect would be dealt with by the Court hereafter. Having regard to all these aspects, this Court is of the view that the Arbitrator did not err, or act contrary to public policy or the substantive law in India, as to entail setting aside of the award in respect of the claim of Rs. 5,38,000/- by the learned Single Judge.

[16] As regards the argument that the above sum could not have been awarded since it was in respect of works for which damages could not be claimed on the ground that the

work awarded was on lump sum basis, the Appellant had relied on Clause 7 of the General Conditions of Contracts, applicable for Lump sum contracts. The said condition reads as follows:

> "7. Deviations (Applicable specifically to Measurement and Lump sum Contracts and generally to Term Contracts)- The contractor shall not make any alteration, in addition to or omission from the Works as described in the tender documents except in pursuance of the written instructions of the GE."

> It was submitted that in the present case, the written instructions and approval of the competent authority was the basis for the deviation orders, each of which was on the file of the employer/objector. The appellant had no choice, but to execute the works, on account of the above condition. As a result, it could not be said that the claims were non arbitrable, or beyond the jurisdiction of the arbitrator.

[17] This Court is conscious of the fact that in the present case, the arbitrator had first to rule on the scope and jurisdiction of his proceeding, and held that on 29-5-2005, the agreement in question did not prohibit him from entertaining such claims, in respect of works under deviation orders. The court is mindful that the arbitrator has the jurisdiction to interpret the contract, and unless that is shown to be manifestly unreasonable, or based on an untenable interpretation of the law, the Court would be slow in substituting its opinion. In Madhya Pradesh Housing Board Vs. Progressive Writers and Publishers, 2009 AIR(SC) 1585 it was held that:-

> "Interpretation of a contract, it is trite, is a matter for the arbitrator to determine. Even in a case where the award contained reasons, the interference therewith would still be not available within the jurisdiction of the court unless, of course, the reasons are totally perverse or award is based on wrong proposition of law. An error apparent on the face of the records would not imply close scrutiny of the merits of documents and materials on record. "Once it is found that the view of the arbitrator is a plausible one, the court will refrain itself from interfering". [see Sudarsan Trading Co. Vs. Government of Kerala, 1989 2 SCC 38 and State of U.P. Vs. Allied Constructions, 2003 7 SCC 396."

Likewise, in BOC India Limited Vs. Bhagwati Oxygen Limited, 2007 9 SCC 503 the Court held that when the Arbitrator had taken a plausible view on the interpretation of contract, it was not open to the court to set aside the Award on the ground that the Arbitrator had misconducted himself in the proceedings and, therefore, the Award was liable to be set aside. The Supreme Court relied on Indu Engineering and Textile Limited Vs. Delhi Development Authority, 2001 5 SCC 691 to say that when a plausible view had been taken by the Arbitrator and unless the Award of the Arbitrator was vitiated by a manifest error on the face of the award or was wholly improbable or perverse, it was not open to the court to interfere with the Award. Although this Court is conscious of the decisions of the Supreme Court which deal with excluded matters, here, the determination of the arbitrator, based on a reading of the conditions of the contract, which obliged the contractor to follow the directions of the Garrison Engineer, and complete the extra works, cannot be faulted. There is consequently, no infirmity in the approach adopted in the Award. The Single Judge, in the opinion of this court, should not have set aside the award on this aspect.

[18] It is settled position legal position that the Court while exercising jurisdiction under Section 34 of the Act does not second guess the arbitrator's decision as if in an appeal to re-assess the material evidence and the terms of the contract assessed and interpreted by the arbitrators. It is also established that the court, while exercising jurisdiction under Section 34 of the Act, would not substitute its opinion for that of the arbitrators. In Hindustan Iron Co. v. K. Shashikant & Co., 1987 AIR(SC) 81 the Court held that the award of the Arbitrator ought not to be set aside for the reason that, in the opinion of the Court, the Arbitrator reached wrong conclusions or failed to appreciate the facts. It is only an error of law and not a mistake of fact, committed by the arbitrator, which is justiciable in the application/objection before the Court. If there is no legal proposition either in the award, or in any document annexed with the award, which is erroneous; and the alleged mistakes or alleged errors, are only mistakes of fact; and if the award is made fairly, after giving adequate opportunity to the parties to place their grievances in the manner provided by the arbitration agreement, the award is not amenable to corrections of the Court. Hindustan Construction Co. Ltd. v. Governor of Orissa, 1995 AIR(SC) 2189 it was reiterated that the Court cannot re-appreciate the material on the record. In Trustees of the Port of Madras v. Engineering Constructions Corporation Ltd., 1995 5 SCC 531, the decision of a Division Bench of the High Court of Madras, which reversed the Award on a question of fact and not a question of law, was

set aside by the Supreme Court. As to what can be valid ground to interfere with an award was succinctly spelt out in McDermott International Inc. v. Burn Standard Co. Ltd. and Ors., 2006 11 SCC 181, in the following terms:

> "31. Therefore, in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term "public policy" in Renusagar case it is required to be held that the award could be set aside if it is patently illegal. The result would be - award could be set aside if it is contrary to:
>
> (a) fundamental policy of Indian law; or
>
> (b) the interest of India; or
>
> (c) justice or morality, or
>
> (d) in addition, if it is patently illegal.
>
> Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such aw!ard is opposed to public policy and is required to be adjudged void."

[19] Following the above judgments, this Court holds that the questions whether the claims were tenable or not are based on the contract itself and were arbitrable. The question whether there has been a full and final settlement of a claim under the contract is itself a dispute arising 'upon' or 'in relation to' or 'in connection with' the contract.

These words are wide enough to cover the dispute sought to be referred. The interpretation or construction of a contract or a contractual clause is the province of the Arbitrator to whom a dispute is referred for final determination by the parties. The construction imparted by the Arbitral Tribunal to a contract or a contractual clause should remain impervious to another view which may happen to be preferred by the Court. Though the condition 65 of IAFW-2249 (General Conditions of Contract) forming part of the contract agreement states that no further claims shall be made by the contractor after the submission of the final bill, whether the no claim certificate and acceptance of final payment was under protest or not is a question of fact. Once the Arbitrator found that these were arbitrable, and the claims tenable, the Court did not have the jurisdiction to examine the merits, re-appreciate the evidence on record and arrive at contrary findings; clearly, there was nothing in the award disclosing that it was contrary to public policy in the sense understood by the law, to warrant interference under Section 34. In the present case the award is sufficiently reasoned and is not without application of mind. The Single Judge should not have interfered with it. The impugned judgment is consequently set aside and the award is also upheld. Since, the award is upheld, the post award interest till date of payment shall be in accordance with Section 31 (7) (b) of the Arbitration and Conciliation Act. In addition, the Appellant shall be entitled to costs throughout, quantified at Rs. 55,000/-. These amounts shall be paid to the Appellant, by the respondent/objector, within six weeks from today. The appeal is allowed in these terms.