



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE TWENTIETH DAY OF JUNE
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU
THE HONOURABLE SRI JUSTICE V SRINIVAS
COMMERCIAL COURT APPEAL NO: 5 OF 2022

Between:

1. Rashtriya Ispat Nigam Limited, (RINL), Visakhapatnam Steel Plant, Administrative Building, Visakhapatnam-530 031, Represented by its Assistant General Manager (Marketing) Sri. Chakkirala Srinivasa Rao, S/o. Late Sri Pitchaiah, Hindu, aged 51 years, residing at Shivajinagar, Kuriannapalem, Visakhapatnam, since retired Now Represented by its Deputy General Manager (Marketing), Sri.R.Nagaraj, S/o Late Sreeramulu, aged 54 years, RINL , Vishakapatnam Steel Plant, Vishakapatnam.

...PETITIONER(S)

AND:

1. M/s. Tarachand Logistics Solutions Limited , represented by Azad Marzil, D.No.27-3-17,851 lane, Official Colony, Srinagar, Gajuwaka, Visakhapatnam-530 026.
2. Smt. Kommu Suvarchala, Presiding Arbitrator, MIG Plot No.65, Door No.4-68-7, Lawsons Bay Colony, Visakhapatnam-530017.
3. Sri.K.V.V.Satyanarayana Murthy, Arbitrator, D.No.22-1-29/2, P.R. College Road, Kakinada-533 001, E.G District.
4. Sri. Kanumalla Suresh Kumar, Arbitrator, C/o. B.N.Murthy, H.No.16-11-51 VF/TA, GF, Shalivahananagar, Moosarambagh, Dilsukhnagar, Hyderabad-500 036.

...RESPONDENTS

Counsel for the Petitioner(s): V SUBRAHMANYAM

Counsel for the Respondents: KOTI REDDY IDAMAKANTI

The Court made the following: ORDER



*** HIGH COURT OF ANDHRA PRADESH: AMARAVATI**

HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU

AND

HON'BLE MR.JUSTICE V.SRINIVAS

+Commercial Court Appeal No.5 of 2022

% 20.06.2023

Rashtriya Ispat Nigam Limited (RINL),
Visakhapatnam Steel Plant,
Administrative Building,
Visakhapatnam

... Appellant

Vs.

\$ M/s. Tarachand Logistics Solutions Limited,
Rep., by Azad Marzil,
D.No.27-3-17, 851 lane, Official Colony,
Srinagar, Gajuwaka,
Visakhapatnam and 3 others.

... Respondents

! Counsel for the appellant: Sri W.B.Srinivas

! Counsel for the Respondents : Sri Kotireddy Idamakanti

< Gist:

> Head Note:

? Cases referred:

¹ 1969 0 AIR (Goa) 90

² 2017 AIR (Pat) 85

³ 1985 AIR (Mad) 283

⁴ AIR 2023 AP 54

⁵ AIR 1983 SC 742

**HIGH COURT OF ANDHRA PRADESH: AMARAVATI****HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU**

AND

HON'BLE MR.JUSTICE V.SRINIVAS**Commercial Court Appeal.No.5 of 2022****JUDGMENT:** *(per D.V.S.S.Somayajulu, J)*

This appeal is filed by the respondent in the Arbitration who is also the unsuccessful petitioner to a challenge under section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') before the Commercial Court, Visakhapatnam.

2. The appellant is the Rashtriya Ispat Nigam Limited (RINL). It awarded a handling contract of its Mumbai Branch to the 1st respondent on 22.04.2006 for a period of seven years, which ended on 21.04.2013. Since the new tender for work after 2013 was not finalized in time, there were correspondence between the appellant and the 1st respondent leading to an extension of contract. This also led to a dispute which was referred to a three member arbitration panel, which ultimately gave its award dated 16.07.2017 in favour of the respondent herein (Contractor). An application under section 34 of the Act was filed before the



Commercial Court, Visakhapatnam against the award, which was dismissed. Questioning the same, the present appeal is filed.

3. This Court has heard Sri W.B.Srinivas, learned senior counsel appearing for the appellant and Sri Kotireddy Idamakanti appearing for the respondents.

4. Learned senior counsel appearing for the appellant rests his arguments on the fact that the Court failed to see that the Arbitral Tribunal failed to decide in terms of the contract and also gave an award without there being adequate or clear evidence.

5. Relying upon the grounds urged before the Tribunal, the learned senior counsel pointed out that ground No.5 urged in the lower Court is the most critical issue namely, whether the 1st respondent before the Court and claimant before the Tribunal was entitled to claim rates for the new contract for the period of extension. It was also pointed out that relying upon ground No.7 that the issuance of extension letters and acceptance thereof were not looked into by the Tribunal. With regard to the issue of undue influence and fraud, it is pointed out that there was no undue influence and that the same was neither pleaded nor proved with certainty and that the contractor even while giving the no claim



certificate made it clear that except the amount mentioned therein it had no further claims. It is also pointed out that the letters were executed/sent over a period of time by the respondent which was an experienced business house and that neither fraud, undue influence or coercion are borne out by the record. He relies upon a compendium of case law which is filed and the following cases are relied upon:

(1) *Bharat Sanchar Nigam Limited v. Himachal Futuristic Communications Limited*¹

(2) *Bharti Cellular Ltd., v. Union of India and others*²

(3) *City Montessori School v. State of Uttar Pradesh and others*³

(4) *R.N.Gosain v. Yashpal Dhir*⁴

(5) *M/s. New Bihar Biri Leaves Co. and others v. State of Bihar and others*⁵

¹ 2012 (194) DLT 661

² 2010 (10) SCC 174

³ 2009 (14) SCC 253

⁴ 1992 (4) SCC 683

⁵ (1981) 1 SCC 537



(6) *M/s. Bhagwati Prasad Pawan Kumar v. Union of India*⁶

(7) *Associated Engineering & Co., v. Government of A.P. & another*⁷

(8) *RINL v. M/s. Balaji Coke Industry Pvt. Ltd., Kolkata and others*⁸

(9) *PSA SICAL Terminals Pvt. Ltd., v. The Board of Trustees of V.O. Chidambranar Port Trust Tuticorin*⁹

6. It is also argued that the award based upon no evidence; an award ignoring vital evidence or an award contrary to the contract terms can be set aside by the Court. He points out that even under section 37 of the Act, these grounds are available. Relying upon section 28 of the Act, learned senior counsel submits that the primary duty of the Arbitrator was to arbitrate in terms of the contract and as per law. Therefore, he submits that the award is vitiated and the grounds under section 34 of the Act are squarely applicable. Lastly, he submits that even the primary Court

⁶ (2006) 5 SCC 311

⁷ (1991) 4 SCC 93

⁸ (2022) 1 ALT 741

⁹ AIR 2021 SC 466



committed an error in not going into these issues and deciding the same in accordance with law.

7. In reply to this, Sri I.Koti Reddy argued the matter at length. It is his contention that when more than one view is possible, the Court should lightly interfere. He argues that the scope of interference with awards is extremely low and that the Court is not sitting in an appeal over the award. He points out that the petitioner did not prove the limited grounds that were available under section 34 of the Act. He points out that after an analysis of the entire evidence, the three member Tribunal came to unanimous conclusions and therefore, he contends that this Court should not interfere. He argues that the findings are correct and are not perverse or contrary to the contract. He reiterates and argues that under section 37 of the Act, the power of this Court is further limited and that once the Court of first instance has analyzed the law and come to a conclusion, this Court should not under section 37 of the Act involve itself in re-appreciating the award. Learned counsel relies upon ***Project Director, National Highways Authority of India v. M.Hakeem and another***¹⁰ to

¹⁰ (2021) 9 SC 1



argue that there are very limited rights which are available along with the limited grounds.

8. Court: The law on the subject is very well settled and it need not be repeated. Under section 37 of the Act, there are very limited grounds available for this Court to interfere with an award. The jurisdiction exercised by the Court under section 34 of the Act is also limited and is in the nature of a supervisory jurisdiction. If there is patent illegality or the award is contrary to the agreement it can be set aside. Ignoring the terms of contract which would amount to a contravention of section 28(3) of the Act is also a ground to set aside the award.

9. Learned senior counsel relied upon judgments including a Division Bench of this Court in the case of **Balaji Coke Industry Pvt. Ltd.**, (8 supra) and **PSA SICAL Terminals Pvt. Ltd.**, (9 supra), wherein the law was summarized. It is held that if the Arbitrator ignores the contract or gives a finding based upon no evidence or ignores vital evidence, the award can be set aside. This is the legal backdrop for the decision.

10. In the opinion of this Court, the essential issues that arise in this case are (a) what is the contract governing the parties; (b) was



there a modification of the contract or a part thereof, in particular, a payment term; (c) was this modification unilaterally done or under duress and compulsion. It would also be clear that if the contract was voluntarily amended and term of the contract was modified by mutual consent, it was govern the parties. The arbitrators would also be bound to decide as per the said term.

11. In the opinion of this Court, this had to be decided particularly, in view of the pleadings of the parties before the Arbitrators etc. In the claim statement which is filed by the present respondent the claimant states clearly in paras 6 and 7 that the contract was called unilaterally extended. In paras 6 and 7, the following is stated:

'6. While so by a letter No.VSP/MUM/MKTG/13-14/71 dated 23.04.2013 respondent unilaterally extended the period of contract by six months or till finalization of new contract whichever was earlier. In the same letter rates payable were mentioned as existing rates or new contract rates whichever is low. The extension was made unilaterally taking advantage of the fact that bills due to the claimant for a large amount of money of more than Rs.1.50 crores is still due from them to the claimant besides the fact that bank guarantee for a sum of Rs.305 lakhs is with them. However, the claimant did not give its consent but addressed a letter dated 02.05.2013 to the



respondent to settle the bills. The claimant had to continue the work though they did not accede to the unilateral extension of the period of contract on the basis of the rates set out in the earlier contract. Therefore respondent addressed a letter to the claimant to submit a letter of consent to avoid loss of business thus indirectly hinting that unless the claimant obliged them consequences would be serious. In the circumstances the claimant had reluctantly given a letter of consent dated 08.05.2013 which was not out of free volition but due to the compelling reasons. However the respondent crally insisted upon the claimant to give another letter agreeing to execute the work as per the existing rates and claimant accordingly gave such a letter dated 10.05.2013 as required by the respondent.

7. Thereafter claimant once again extended the period of the unilaterally upto 31.08.2013 by letter No.VSP/MKTG/MUM/13-14/371 dated 29.08.2013 and again extended the contract upto 21.10.2013 by one more letter bearing No. VSP/ MKTG/MUM/13-14/424 dated 30.09.2013. The claimant was compelled to consent for extension by letters of acceptance dated 19.08.2013 and 30.09.2013 agreeing to the extensions. The period of bank guarantee was also extended upto October 2014 as demanded by the respondent who demanded the same by purporting to invoke clause 3.1 of General Conditions of the Contract which clause in fact has no application in the circumstances of the case.'

12. In reply to this, in the counter filed by the present appellant in para 4, the details of the extension letters were given and in



paras 5, 6 and 8 it is stated that the rate payable during the extended period shall be according to the old contract dated 22.04.2006 or new contract, whichever is lower. It is also stated that the claimant received the payments for the work done as per the above understanding without any protest. It is also pointed out that after 2 ½ years, after the performance of the second contract in which the claimant was successful, the present claim is raised. It was denied that there was any coercion or undue influence. In para 13, it is clearly asserted that the claimant gave their consent and of their volition with full awareness and without any coercion. It is also stated thereafter that the claimant had an option not to accept the offer made but had in fact accepted the modification suggested.

13. In the rejoinder filed by the present respondent as claimant, it is stated in para 3 that the condition with regard to applicabilities of the rates obtained in the new tender cannot be applied unilaterally and automatically.

14. Therefore, in the opinion of this Court, the critical issue is:- whether the 2006 contract was extended in 2013 and if so, on what terms?



15. As stated earlier, the initial contract period was from 22.04.2006 to 21.04.2013. The letters of the 2013 period filed had to be seen by the Tribunal to decide on this important issue. On 23.04.2013, the appellant stated that the existing handling contract is extended for a period of six months or until finalization of the new contract whichever is earlier at the existing rates or the new rates whichever is lower. The respondent-claimant was requested to give his unconditional acceptance. This was followed up by letter dated 08.05.2013 informing the respondent claimant that the Steel Plant have not received an extension letter. On 08.05.2013, the respondent herein clearly stated as follows:

Dt: 08.05.13

The Sr Branch Manager,
Rashtriya spat Nigam Limited.
Nariman Point, Mumbai

Ref: Your letter No.VSP/MUM/MKTG/13-14/104 dated
08.05.2013

Dear Sir,

With reference to your above letter and as desired by you, we wish to submit that we accept to continue the contract for an extended period up till 30th June 2013 Please be advised that we have agreed to move forward with your conditions as a token of our loyalty to your esteemed organization.



Thanking you and assuring you our best of services at all times.

Yours Sincerely.

For Taracliand Logistic Solutions Ltd

Managing Director

16. This was followed up by another letter dated 10.05.2013 reiterating the fact that the respondent is pleased to accept to continue the contract for an extended period up to 30.06.2013 at the existing rates or new contract rates whichever is lower. It is clearly stated that unconditional acceptance is given by the respondent. Since the new contract was not finalized, further extension was sought by RINL and by letter dated 11.07.2013, the respondent herein agreed for extension of the contract upto 31.08.2013 at existing rate or new contract rate whichever is lower. This was on 16.08.2013. The Branch Manager of RINL, Mumbai addressed another letter informing the respondent that the extension has helped both the companies to get business in the sluggish market conditions and as the new tender finalization will take some time, a request was made to give the acceptance for two more months. On 19.08.2013, the present respondent stated that they are not in a position to extend the contract beyond 31.08.2013. Again a letter was sent on 29.08.2013 by RINL. On



30.09.2013, again RINL made a request to the present respondent to look into the matter again and give extension upto 21.10.2013. In reply to this, the respondent gave a letter on 30.09.2013 extending the contract upto 21.10.2013 at the existing rates or new contract rate whichever is lower. Therefore, the question that fell for decision before the Arbitrator was: whether the existing contract was extended with a new term of payment or not.

17. In the opinion of this Court, the Arbitrators completely missed the woods for the trees while deciding the matter, as a result of which, the present dispute is still being agitated in this Court. In para 14 of the award, which is the starting point of the decision *per se*, the point for consideration was framed as follows: ‘whether the claimant is entitled for the rates under the old contract or the rates mentioned in the extended contract’?

18. To determine this question (which was rightly framed), it was necessary to determine whether the contract between the parties dated 22.04.2006 was concluded by 22.04.2013 and whether the contract thereafter is a new contract or an extension of the old contract with a modified term of payment. In para 14 at page 16 of the award it is held that “myself with my colleague arbitrator



K.V.V.Satyanarayana Murthy opined that the new contract between the respondent and the claimant from 22.04.2013 to 21.10.2013 is an extension of the old contract between the claimant and the respondent on 22.04.2006". Unfortunately, the latter half of the question about the rates i.e. the old contract rate or the new contract rate whichever is lower has not been looked into by the Tribunal. Thereafter, in page 18, the Tribunal came to the conclusion that the claimant has not accepted the contract with pleasure or wholeheartedly though the words undue influence mentioned in IPC is not attracted. It is also stated that there are some facts beyond the control of the claimant which made them to accept the extended contracts. There is a reference to payment of labour costs at Mumbai stock yard on the basis of old contract rates etc., and there are receivables at Rs.2,95,42,052/-. It is also acknowledged that Rs.1,57,16,239/- is also paid leaving behind the claim of Rs.1,38,25,813/-. Thereafter, in para 8, it is concluded that the claimant is entitled for payment of the work done under the contract at the old rates for the work done by the contractor that is as per April, 2006 contract. Again the issue of new contract rate or old contract rate whichever is lower is missed out totally. The critical and crucial



question framed (old rate or new rate) as mentioned supra in para 17 was totally overlooked by the Tribunal.

19. Learned Arbitrator failed to look into the letters which were filed by which the extensions were sought. In each of the letters it is mentioned that in the extended period of the contract, the contractor will be entitled to the old contract rate or the new contract rate whichever is lower. This has been totally overlooked by the Tribunal. All the letters referred to above which are marked as Exhibits and are a part of the evidence before the Arbitrator clearly state that the contract is extended at the existing rate or the new contract rate whichever is lower. Initial request was made on 23.04.2014 and the last request was made on 30.09.2013. So from April 2013, till 21.10.2013, the present respondent-contractor agreed to do the work at the old contract rate or the new contract rate whichever is lower. These vital pieces of evidence have been totally overlooked by the learned Arbitrators.

20. It is also an admitted fact that the rate quoted by the respondent-contractor in the fresh contract is lower than the earlier contract. This is also accepted in para 5 of the rejoinder.



In para 5 of the counter, this issue was very categorically stated. It is also stated that the claimant regularly received the payments for the work done as per the understandings/claim without any protest. He also extended the Bank guarantee based on this.

21. Apart from the terms of the contract, the Arbitrator also had a duty to act in accordance with law of the land (section 28). The law of the land and in particular, section 62 of the Indian Contract Act, permits the parties to amend the term/terms in a contract by mutual consent. In a case of this nature, it is a term of the contract alone that is amended. The present appellant had requested for extension on a particular basis namely that the work was to be executed further but the payment would be made at the old rate or the new rate whichever is lower. Therefore, it is this term of the contract alone that has been amended in this extended period. This aspect has been overlooked by the Arbitral Tribunal. Parties can by consent alter, vary or modify the term of a contract. The law permits them to do so. For good order ***All India Power engineer Federation v. Sasan Power Ltd.***,¹¹ para 15 is relied on. The present appellant made an offer which was accepted by

¹¹ 2017 (1) SCC 487



the respondent by his letters mentioned above. In all the letters of offer and acceptance, there are two issues (a) extension of time and (b) payment at the old rate or the new rate whichever is lower. This was accepted and consequently this 'payment term' alone got amended leaving the rest of the contract intact.

22. In the opinion of this Court, the Tribunal grossly failed in considering the evidence in its true and proper perspective and merely went on to decide whether there is an extension of contract or not forgetting; the related element of 'payment' for the work done. The Tribunal ignored the vital evidence; its conclusions are not based on evidence. Therefore, this Court has no hesitation to hold that the Tribunal misconducted itself and failed to decide the dispute in accordance with law of the land and in accordance with the amended terms of the contract. The Tribunal also overlooked the implications of the documents. The contractor who got the benefit of extension of contract cannot ignore the amended payment term. The judgment of the Hon'ble Supreme Court of India in ***Bharti Cellular Ltd.***, (2 supra) clearly applies to the facts of the case. A party cannot approbate and reprobate. To the same effect is the judgment in ***Mahmadhusen Abdulrahim***



Kalota Shaikh v. Union of India¹² and also the judgment of the High Court of Delhi reported in ***Bharat Sanchar Nigam Limited*** (1 supra). In this case also, the learned Judge came to the conclusion in para 32 that the correspondence unmistakably shows that the original contract conditions stood modified by consent by parties and the clauses concerning time and price stood amended and were accepted without protest by a party. It was also held that the Arbitrator overlooked section 62 of the Contract Act. The decision of the Hon'ble Supreme Court reported in ***M/s. Bhagwati Prasad Pawan Kumar*** (6 supra) is also important as it examined the conduct of the parties.

23. Therefore, in the opinion of this Court, the Arbitral Tribunal misconducted itself and did not decide the dispute as required under law. The essential issues were overlooked and the evidence on the subject was not even discussed in its totality. All the letters that were addressed contained a request for payment at the old rate or the new rate whichever is lower. This was accepted by the contractor and these letters are executed over a period of time. The same condition is repeated in all the requests for acceptance.

¹² (2009) 2 SCC 1



24. The other issue that remains is about the finding about the coercion and undue influence in the acceptance of the extension of the contract. The new tender was not finalized in the initial contract period. Since it was not getting finalized and the rates under the new contract were not available, a request was made for extension of the contract with payments being made either at the old rate or the new rate whichever is lower. Inherent in this request is the fact that the complete payment can only be made when the new rate is finalized. That there would be delay in payment is clear from a reading of this letter itself. The final payment for the work done in this period can only be at the old rate or the new rate whichever is lower. Unless this rate is pegged down and decided, the final payments cannot be made. Therefore, the conclusion of the Arbitrator that amounts were 'held up' is also not correct in the circumstances. A germane dispute cannot be termed as a 'held up' amount. The contractor did not plead that amounts due as per the contract were deliberately held up. He raised his bills as per the old rate which were disputed. This cannot be said to be 'holding back' of the amounts more so to coerce the contractor.



25. As far as the pending bills are concerned, this Court also notices that on 06.02.2014, the claimant had addressed a letter stating among other things for release of huge amounts which were blocked. To this letter dated 21.02.2014, a reply was issued and it states that the claim for huge amounts being withheld is not correct and the claimant was requested to give out bill wise amounts as per the contract and reconcile the same. Earlier on 05.12.2013 also, a request is made for held up amounts. The reply to this is on 09.12.2013 wherein it is requested that the contractor should submit differential amounts as per the new contract rates and the amount paid and the balance payable.

26. With regard to release of the Bank guarantee also, the correspondence reveals that the closure of the contract was being discussed along with the release of the Bank guarantee. These are all contained in the Exhibits marked before the Arbitrator. Ex.C.31 is a letter dated 29.08.2013 which was sent before the last extension of the contract made by the claimant-respondent. On 29.08.2013, vide Ex.C.11, RINL requested the claimant-respondent to extend the contract. On 29.08.2013, Ex.C.31 was written by respondent-contractor. It states that based upon



earlier correspondence, verbal discussions, despite having some limitations they extended the contract. It is also stated that contractor reluctantly accommodated the request from RINL twice. Therefore, they said further extension is not possible. It is important to note that the petitioner has not alleged that he was under undue influence, economic duress or coercion for issuing the extension letters at this stage. The contemporaneous correspondence does not disclose the existence of the undue influence or compulsion etc. As per the settled law, these are all matters which should be pleaded with clarity and also clearly proved. The Tribunal suddenly jumps to a conclusion on the basis of its own conclusions which are not borne out on record and on the basis of some 'ground realities'. The crux of the issue in this case was whether the letters of extension were given voluntarily or under threat/coercion. Nothing is borne out by record to show that there was undue influence or coercion in any form. It is also important to note that no oral evidence has been introduced. The Managing Director or other Officers of the claimant/respondent did not give any oral evidence to prove undue influence or compulsion. The claimant asserted undue influence compelling reasons etc., which were denied by the



respondent. On this ground also, this Court has to hold that the learned Arbitrators thoroughly misconducted themselves, grossly erred in coming to the conclusions that they did. Even the Court before which the section 34 application is made has not looked into these issues despite the same being highlighted in grounds 5, 7 and 8. The dismissal of section 34 application is also wrong and cursory. Actual issues were not considered. Ground No.5 is as follows:

(5) The arbitral tribunal was only required to decide whether the 1st respondent herein and claimant before the Tribunal was entitled to claim rates under the old contract No.MKTG/Services/2—6-2007/HC-31/227 dated 22.04.2006 or was entitled to claim rates stipulated in the new contract for the period of extension.

This was totally overlooked.

27. In that view of the matter, though this Court has limited jurisdiction, the facts and circumstances of this case are warranting interference. The award is not based upon the available evidence or as per the contract. The Arbitrators overlooked the critical documents which are marked as Exhibits. The amendment of the term of the contract is overlooked. Thus, the dispute is not settled in terms of the agreed contract. A



decision contrary to the terms of the contract is bad in law. As mentioned earlier, the Commercial Court did not also decide the matter as per law. The grounds raised and urged were not decided. The actual decision is cursory and brief.

28. For all the above reasons, this appeal is allowed. The order passed in C.A.OP.No.24 of 2018 dated 09.06.2021 and the award passed by the Arbitration Tribunal on 16.07.2017 are thus set aside. No order as to costs. As a sequel, the miscellaneous petitions if any shall stand dismissed.

D.V.S.S. SOMAYAJULU,J

V.SRINIVAS,J

Date: 20.06.2023

KLP

Note: L.R. Copy be marked.