

ITEM NO.20

COURT NO.6

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 4062/2020

(Arising out of impugned final judgment and order dated 03-12-2019 in SBCMA No. 225/1999 passed by the High Court Of Judicature For Rajasthan At Jodhpur)

BARMER GOLDEN TRANSPORT COMPANY

Petitioner(s)

VERSUS

THE STATE OF RAJASTHAN & ANR.

Respondent(s)

Date : 20-10-2022 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE AJAY RASTOGI
HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Petitioner(s) Mr. S. B. Upadhyay, Sr. Adv.
Mr. Pawan Upadhyay, Adv.
Mr. Vaibhav Kalra, Adv.
Mr. Nishant Kumar, Adv.
Ms. Supriya Pandey, Adv.
Mr. Gaurav Prakash Pathak, Adv.
for M/s. Unuc Legal Llp, AOR

For Respondent(s) Ms. Pragati Neekhara, AOR

UPON hearing the counsel the Court made the following
O R D E R

The present petition has been filed assailing the order dated 03.12.2019 passed by the High Court in exercise of its powers under Section 39 of the Arbitration Act, 1940.

The facts may not detain us any further for the reason that the High Court in the impugned judgment has taken care of appreciating the admitted facts arising from the subject contract executed between the parties dated 29.07.1976 for the construction of a Bridge which valued a total of Rs. 70,93,133/- with the stipulation that the contract work was to be completed by

15.09.1977.

It is also not disputed that the construction work was completed on 05.06.1978 and the final bill was released/paid to the petitioner on 31.12.1978 and for the first time, the alleged dispute was raised at the instance of the petitioner, of which a cognizance was taken by the Chief Engineer, PWD, Jaipur by Order dated 01.11.1993, which is annexed as Annexure P-11 (Page No. 92 of the paper book).

In consequence thereof, Arbitration proceedings were initiated invoking Clause 23 of the Agreement. The same is reproduced hereunder :-

"Clause 23 Decision of the Chief Engineer to be final

Except where otherwise specified in the contract the decision of the Chief Engineer of the Government of Rajasthan for the time being shall be final conclusive and binding on all parties to the contract upon all questions relating to the meaning of the specifications, designs, drawings and instructions hereinbefore mentioned and as to the quality of workmanship or materials used on the work or as to any other question claim right matter or thing what so ever in any say arising out of or relating to the contract, designs, drawings, specifications, estimate, instructions, orders or these conditions, or otherwise concerning the work, or the execution for failure to execute the same, whether arising during the progress of the work or after the completion or abandonment thereof, or the contract by the

contractor shall be final conclusive and binding on the contractor."

The Chief Engineer, PWD by an office order dated 01.11.1993 referred the matter to the sole arbitrator on the premise that there is an agreement between the parties. But it is relevant to note that Clause 23 of the Agreement, of which reference has been made, nowhere discloses of an arbitration in reference to any dispute, if arises out of the agreement executed between the parties.

It only refers that if there is any complaint in reference to the agreement in question, the Chief Engineer will take a final decision which shall be binding on the parties. But what will be the later effect of the decision being taken by the Chief Engineer, it nowhere indicates in Clause 23 of the Agreement and that apart, there is no other clause brought to our notice which may authorise the Chief Engineer of the Department to refer the matter to Arbitration, if a dispute arises under the Agreement referred to.

After the matter travelled from the Arbitration Award to the objections raised under Section 34 and, thereafter, Section 37 which further travelled invoking Section 39 of the Arbitration Act, the High Court has looked into the material on record and returned a finding that the claim which was raised by the petitioner for making reference to the arbitration was beyond the period of limitation and we further add that there is no clause in the agreement which authorises the Chief Engineer of the Department to refer the matter to arbitration.

Thus, in the given facts and circumstances, there was no occasion to record the consent of the parties and refer the matter to arbitration.

Going ahead on the said premise, the High Court set aside the award, holding that this is beyond the period of limitation under its order dated 03.12.2019. It is brought to our notice that this is the third round of litigation and at one point of time, when the respondent - State approached this Court, by an interim order dated 15.01.2001 in SLP (C) No. 18 of 2001, an order was passed to the following effect :-

"Issue notice. Stay recovery of the decretal amount on deposit of ten lakhs. The said amount deposited by the petitioner can be withdrawn by the respondent subject to furnishing security to the satisfaction of the District Judge."

The learned counsel for the respondents submits that pursuant to the interim order, a sum of Rs. 10 Lakhs was made over, although the petitioner has furnished solvent security to the satisfaction of the District Judge in terms of the order of this Court.

After we have heard the learned counsel for the parties and going through the records with their assistance, we find no reason to interfere in the Judgment impugned dated 03.12.2019. The respondents are at liberty to recover the amount which was made to the petitioner pursuant to the order dated 15.01.2001 and, in addition, if the respondents have made over any additional payment

to the petitioner, they are at liberty to recover the same in accordance with law.

Consequently, the petition fails and is dismissed.

Pending interlocutory application(s), if any, is/are disposed of.

(JAYANT KUMAR ARORA)
ASTT. REGISTRAR-cum-PS

(MATHEW ABRAHAM)
COURT MASTER