

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.8829 OF 2016
(ARISING OUT OF SLP (C) No. 24443/2007)**

M/s Harish Chandra & CompanyAppellant(s)

VERSUS

State of U.P. Thr. Superintending
EngineerRespondent(s)

WITH

SPECIAL LEAVE PETITION (C) No. 23950 of 2007

M/s Harish Chandra & CompanyPetitioner (s)

VERSUS

State of U.P. Thr. Superintending
EngineerRespondent(s)

JUDGMENT

Abhay Manohar Sapre, J.

In Special Leave Petition (c) No. 24443 of 2007

- 1) Leave granted.

2) This appeal is filed against the final judgment and order dated 17.08.2007 of the High Court of Uttarakhand at Nainital in O.A. No. 1097 of 2001 whereby the High Court allowed the appeal filed by the respondent herein and set aside the judgment and order dated 30.05.1996 passed by the Civil Judge, Dehradun and, in consequence, allowed the objections of the State of U.P. filed under Section 30/33 of the Arbitration Act, 1940 (hereinafter referred to as “the Act 1940”) against the award dated 27.11.1995 which, in turn, also resulted in its setting aside.

3) Facts of the case need mention, in brief, infra to appreciate the controversy involved in the appeal.

4) The appellant herein is a civil contractor whereas the respondent is the State of U.P. represented through Superintending Engineer Irrigation Construction Circle, Yamuna Colony,

Dehradun.

5) In the year 1979, the respondent (State) invited tender being Number 6/1979-80 for doing "Earthwork in power channels on different routes of various distances and also construction of drainage crossing in Chhoti Lui falling in 6 stretches and divided in two sections called "serial 4" and "serial 6" in a scheme called - KHARA HYDEL SCHEME".

6) The appellant submitted their tender for serial 4 and serial 6. The respondent accepted the appellant's tender. Accordingly, two agreements bearing nos. 5/SE/79-80 and 6/SE/79-80 were executed between the appellant and the respondent for execution of the work in question on 30.10.1979.

7) So far as agreement No. 5/SE/79-80 is concerned, it was in relation to work of section bearing serial 4 whereas agreement No. 6/SE/79-80 was in relation to work of section bearing serial 6.

The work, pursuant to these agreements, was to start from 01.12.1979 and had to be completed on or before 31.05.1982.

8) Disputes of various nature arose between the parties in execution of both the agreements. The disputes were related to the completion of works, its nature, manner of its completion, non-payment and withholding of appellant's bills, deduction of amount from the bills etc.. Since the disputes could not be settled amicably, the parties invoked the arbitration clause (1.47) contained in the agreements and approached the Civil Court for appointment of arbitrator and for making references to him for adjudication of the disputes which had arisen between them in relation to 2 agreements.

The request was acceded to and accordingly some disputes were referred to the sole arbitrator.

9) So far as this appeal is concerned, it arises out

of disputes, which relates to agreement No. 6/SE/79-80, i.e., (serial 6). So far as disputes relating to agreement No. 5/SE/79-80 i.e.(serial 4) and some disputes relating to agreement No. 6/SE/79-80 are concerned, they were also referred to the arbitrator for his decision. One reference, however, attained finality by the orders of this Court in **State of U.P. vs. Harish Chandra & Co.**, (1999)

1 SCC 63, whereas another reference is pending in this Court.

10) Consequent upon the reference made to the arbitrator insofar as the present appeal is concerned, the appellant (claimant) filed 6 claims (claim Nos. 12 to 17) before the sole arbitrator (Mr. Harish Chandra - retired Chief Engineer). The details of the 6 claims made by the appellant against the respondent (State) are as under: -

<u>Claim No.</u>	<u>Claim</u>	<u>Amount</u>
12.	Claim due on	Rs. 1,05,00,000.00

	account of breaking of large pieces of hard rock in the filling done from 9.00 to 9.80 KM.	along with interest @ 24% per annum from 31.5.86 to the date the amount is actually paid.
13.	Claims due as payment on account of non-payment after 30.9.85.	Rs. 11,62,650.00 along with interest at 24% per annum from 1.6.86 to the date the amount is actually paid.
14.	Payment due as claim on account of wrongful deduction of Security.	Rs. 1,04,426.00 along with interest at 24% per annum from 1.5.85 to the date the amount is actually paid.
15.	Payment due as claim on account of extra excavation.	Rs. 5,51,250.00 along with interest @ 24% per annum from 1.6.86 to the date the amount actually paid.
16.	Payment due as claim on account of dressing done on slopes of filled earth in embankments from Km. 9.00 to KM. 9.80	Rs. 4,59,200.00 along with interest @ 24% per annum from 1.6.86 to the date of amount actually paid.
17.	Stopping the respondents from deducting any quantity of excavation done by petitioner because of sitting in the monsoon year 1986 and onwards, if any.	Order respondents to accept our measurement for excavation on 31.5.86.

11) The respondent (State) contested the aforementioned claims by filing their reply. The State also filed their counter claims against the appellant claiming damages. The appellant contested the counter claims by filing their reply. The parties adduced evidence and examined several witnesses in support of their respective claims.

12) On 27.11.1995, the arbitrator passed a reasoned award. Out of 6 claims, the arbitrator allowed appellant's 3 claims, i.e., claim Nos. 12, 13 and 17 and rejected the claims Nos. 14, 15 and 16. The arbitrator also rejected the counter claims of the respondent (State) in toto. The details of the claims awarded and rejected are as under:

<u>Claim No.</u>	<u>Amount demanded Rs.</u>	<u>Amount Awarded Rs.</u>
12.	Rs. 1,05,00,000.00 24% interest from 31.5.86	Rs. 44,98,995.00
13.	Rs. 11,62,650 with 24% interest upto	Rs. 10,61,450/- with interest 18% from

	31.5.86	1.6.86 to 27.11.95
14.	Rs. 1,04,426 with interest from 1.5.85	Rejected
15.	Rs. 5,51,250/- with interest @ 24% from 1.6.86	Rejected
16.	Rs. 4,59,200/- with interest @ 24% from 1.6.86	Rejected
17.	Order respondent to accept measurement for excavation on 31.5.86	No deduction in quantity already paid vide 27th Running bill are justified

13) The respondent, felt aggrieved, filed objections under Section 30 of the Act 1940 before the Civil Judge(S.D.), Dehradun against the award. The appellant contested the objections and prayed for passing a decree in term of the award. By order dated 30.05.1996, the civil Judge rejected the objections and passed a decree in term of the award along with simple interest payable at the rate of 18% p.a. on the awarded sum of Rs.55,60,445/- from the date of decree till payment of amount.

14) The respondent, felt aggrieved, filed appeal being O.A. No. 1097 of 2001 before the High Court.

By impugned judgment dated 17.08.2007, the High Court allowed the appeal, set aside the order of the Trial Court and while allowing the objections filed by the State set aside the award. The High Court held that the arbitrator misconducted himself in passing the award inasmuch as he travelled beyond the terms of the agreement.

- 15) Felt aggrieved, the appellant (contractor/claimant) has filed this appeal by way of special leave against the judgment of the High Court.
- 16) Heard Mr. Vijay Hansaria, learned senior counsel for the appellant and Mr. S.R. Singh, learned senior counsel for the respondent.
- 17) Mr. Vijay Hansaria, learned senior counsel appearing for the appellant (claimant/contractor) while assailing the legality and correctness of the impugned order contended that the High Court was

clearly in error in allowing the appeal of the State (respondent) which resulted in allowing the objections filed by the State before the Civil judge which, in turn, resulted in setting aside of the said award which was rightly upheld by the Civil Judge.

18) Learned counsel urged that there was no case made out by the State in their objections of any legal misconduct committed by the arbitrator and nor there was any factual or/and legal foundation laid so as to constitute a case of any legal misconduct within the meaning of Section 30 of the Act 1940 for setting aside the award.

19) Learned counsel pointed out that even cursory reading of the order of the High Court would indicate that the apparent legal error was committed by the High Court while allowing the appeal. It was his submission that the High Court virtually acted as a first appellate Court as if the appeal before the

High Court arose directly against the award.

Learned counsel pointed out that the High Court then proceeded to examine the legality and correctness of all factual findings of the arbitrator by appreciating the evidence and then finding fault in the approach of the arbitrator so also finding error in the findings set aside the award as being bad in law.

20) Learned counsel urged that such approach of the High Court was wholly without jurisdiction being against the law laid down by this Court in series of decisions wherein this Court has, *inter alia*, ruled that the Court while hearing the objections under Section 30 of the Act 1940 against the award, cannot sit as an appellate Court over the decision of the arbitrator.

21) Learned counsel then contended that even otherwise on the merits, the award and the

judgment of the Trial Court do not suffer from any illegality and nor any case of legal misconduct is made out against the arbitrator so as to empower the Court to set aside the award under Section 30 of the Act 1940. It was his submission that the arbitrator did not travel beyond the agreement and on the other hand discussed each and every issue by appreciating the evidence on record with reference to each claim and then recorded a finding in favour of the appellant in relation to three claims and rejected the remaining claims of the appellant.

22) Learned counsel lastly contended that this Court should, therefore, restore the order of the Trial Court and, in consequence, uphold the award, which is partly in favour of the appellant and partly against them, as being just and legal by setting aside of the impugned order of the High Court.

23) In reply, Mr. S.R. Singh, learned counsel for

the respondent supported the impugned order and contended that it does not call for any interference.

It was his submission that the reasoning and the conclusion arrived at by the High Court for setting aside the award is legal and proper and hence it deserves to be upheld calling no interference.

24) Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to accept the submissions of the learned counsel for the appellant as, in our opinion, it has substance.

25) The question which arises for consideration in this appeal is whether the High Court was justified in allowing the objections filed by the respondent (State) under Section 30 of the Act 1940 and thereby was justified in setting aside of the award passed by the sole arbitrator on the ground of "legal misconduct"? In other words, the question that

arises for consideration in this appeal is whether on facts any case of legal misconduct on the part of the arbitrator is made out by the State under Section 30 of the Act 1940 for setting aside of the award dated 27.11.1995?

26) This question, in our opinion, is required to be decided in the context of Section 30 of Act 1940 since repealed.

27) What is the jurisdiction of the Court under Section 30 when it examines the question as to whether any case of legal misconduct on the part of an arbitrator in passing an award is made out or not has been the subject matter of several decisions of this Court and remains no more *res integra*?

28) A three-Judge Bench of this Court in **State of U.P. vs. Allied Constructions**, (2003) 7 SCC 396 while examining the scope of Section 30 held as under:

“The award is a speaking one. The arbitrator has assigned sufficient and cogent reasons in support thereof. Interpretation of a contract, it is trite, is a matter for the arbitrator to determine.

Sudarshan Trading Co. vs. Govt. of Kerala (1989) 2 SCC 38: REFERRED TO:

Section 30 of the Arbitration Act, 1940 providing for setting aside an award is restrictive in its operation. Unless one or the other condition contained in Section 30 is satisfied, an award cannot be set aside. The arbitrator is a Judge chosen by the parties and his decision is final. The court is precluded from reappraising the evidence. Even in a case where the award contains reasons, the interference herewith would still be not available within the jurisdiction of the court unless, of course, the reasons are totally perverse or the judgment is based on a wrong proposition of law. An error apparent on the fact of the records would not imply closer 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.”

- 29) Justice S. Mukharji, as His Lordship then was, speaking for the Bench in **M/s Sudarsan Trading Co. vs. Government of Kerala, (1989) 2 SCC 38** while examining the jurisdiction of Court under Section 30 held as under:

“However, there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power of the arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. Whether a particular amount was liable to be paid or damages liable to be sustained, was a decision within the competency of the arbitrator in this. By purporting to construe the contract the court could not take upon itself the burden of saying that this was contrary to the contract and, as such, beyond jurisdiction. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded, is a possible view through perhaps not the only correct view, the award cannot be examined by the court.”

- 30) The aforesaid view was consistently followed in later decisions by this Court in **State of Andhra Pradesh & Ors. Vs. R.V. Rayanim & Ors.**, (1990) 1 SCC 433 and **Ravindra Kumar Gupta & Co. vs. Union of India** (2010) 1 SCC 409.
- 31) One cannot, therefore, dispute the legal

proposition, which is now fairly settled keeping in view the aforementioned law laid down by this Court that an award can be set aside only on the grounds specified in sub-clause (a) (b) and (c) of Section 30 of 1940 Act and on no other grounds. Indeed this is clear from the opening words of Section 30 itself which starts with the words "**An award shall not be set aside except on one or more of the following grounds.**" *A fortiori*, a reasoned award cannot be set aside unless it falls in any of the three sub-clauses (a) (b) and (c) of Section 30 of the Act 1940.

32) The grounds such as inadequacy of reasons in support of an award, error committed by the arbitrator on facts, alternate or/and more plausible view could be taken then what is taken by the arbitrator, improper appreciation of evidence done by the arbitrator in recording any finding etc. are not the grounds on which any award much less a

reasoned award can be set aside. In other words, none of these grounds can be made the foundation for setting aside the award because they do not fall within the four corners of any of the three sub-clauses of Section 30 of the Act 1940.

33) Coming now to the facts of this case, on perusal of the impugned judgment, we find that the High Court while setting aside of the award did not take into consideration the aforesaid view of this Court and thus, in our view, committed a legal error.

34) We are constrained to observe that the High Court virtually sat as an appellate Court as if it was hearing the appeal arising out of the award little realizing rather ignoring its well defined jurisdiction in such matter and proceeded to probe into all factual issues arising in the case. It seems to have gone to the extent of permitting the State's counsel

to file some documents in appeal as would be clear from para 12 of the judgment. This would also be clear from the observations of the High Court made in Paras 12, 13, 18 and 19 which read as under :

“12 The learned standing counsel has supplied the list of petty contractors in whose names the bills were submitted before the Arbitrator. The details of those bills is as below:-

S.No.	Names of Petty Contractors	Amount
1	Harish Chandra & Sons	Rs. 3,11,965.80
2	Vijay Gupta & Sons	Rs. 3,04,828.00
3	Phool Chand Gupta & Sons	Rs. 17,95,346.00
4	Ashok Gupta & Sons	Rs. 178,84,942.00
5	Vijay Gupta & Sons	Rs. 17,78,664.00
6	Phool Chand & Sons	Rs. 2,97,583.50
7	Ashok Gupta & Sons	Rs. 3,10,258.60
8	Harish Chandra & Sons	Rs. 17,84,468.00
9	Ajay Gupta & Sons	Rs. 3,00,196.90
10	Ajay Gupta & Sons	Rs. 17,73,903.98

13. The department made enquiries upon which it was revealed that in the concerned area there exist no Firms in the aforesaid names and addresses. The correspondence made in this regard is filed as Annexure No.2 (Collectively) to the Stay Application in the

appeal before this Court. The endorsement made by the postal department about non-existence of the said Firms is also Arbitrator has not considered the above facts and allowed the claims 12, 13 and 17 filed by the contractor. The Department's allegation is that the contractor for the first time raised claim Nos. 12 to 16 before it vide his letter No. 102/S.C.C./87 dated 20.9.87 and the department vide its letter No. 3911/-2/case/647/86, dated 28.11.87 has rejected the claims. Claim No. 17 was never raised before the Department and it was placed before the Arbitrator directly.

18. Now we proceed to scrutinize the claims awarded by the Arbitrator to the contractor.

19. Claim No. 12 pertains to breaking of large pieces of hard rock in the filling work done from Km. No. 9.00 to 9.80. The Arbitrator has allowed this claim on the ground that the site is located in the upper Shivalik ranges of the Himalayan mountains. These ranges are mostly built of the sedimentary rocks compressed of the material flown down the rivers since millions of years which got compressed under their own pressure and weights and got very hard due to the ageing process. This material could not be dugged out manually by pick axes or Phawaras. The possible means of excavation were only by mechanical means either by mechanical shovels, back bows, rippers or by blasting. The objections of the Department is that the Arbitrator has allowed the claim on imagination. As per the contract clause 8.05 boulders of 150 mm dimensions were to be used in the filling reach and of more than 150 mm were to be staked at the site. The stones of dimensions of above 150 mm were not to be broken and then filled in

the filling reach. The relevant clause 8.05 clearly indicates “the boulders of more than 150 mm in dimension shall not be permitted in the embankments unless specifically approved by the Engineer Incharge and shall be stacked by the contractor 10 meters away from the toe of the bank and nothing extra shall be paid to the contractor for this work”. There is no mention of breaking of the stones in the agreement clause. The Arbitrator has acted beyond the provision of the agreement in allowing this claim.”

35) The High Court then went on to examine the case on facts and eventually held that the arbitrator has travelled beyond clauses 26, 3 (1)(a) and 1.46 of the agreement and hence committed legal misconduct requiring the High Court to set aside the award.

36) With respect, we can neither agree and nor can uphold the approach and the reasoning of the High Court. In our considered view, such approach is wholly against the law laid down by this Court in the decisions quoted supra.

37) In the first place, the High Court did not apply

the law laid down by this Court while deciding the appeal and hence committed a jurisdictional error; Secondly, the High Court acted like an appellate Court and virtually treated as if the appeal arose directly against the award and then proceeded to examine all factual findings of the arbitrator by appreciating the evidence. It was not permissible in law; Thirdly, the High Court should have confined its inquiry to find out as to whether any legal misconduct was committed by the arbitrator and, if so, how and in what manner. It was, however, not done; Fourthly, the High Court went into the factual question by referring to clause 26 of the agreement for holding that the arbitrator passed an award contrary to clause 26 and thereby traveled beyond the terms of agreement which constituted a legal misconduct on his part. This finding, in our view, is, on the face of it, untenable in law for the

reason, *inter alia*, that this objection was neither raised before the arbitrator and nor before the Trial Court in the manner in which it was raised for the first time in the High Court. In any event, in the absence of any finding recorded by the arbitrator and the Trial Court, such issue could not have been gone into for the first time in appeal by the High Court. That apart, it has otherwise no substance on facts for the simple reason that it being a question of fact, the same could not be examined in appeal; Fifthly, the High Court failed to see that clause 26 only prohibits the appellant from assigning the agreement to any third person. Clause 26, therefore, had nothing to do with the claims filed by the appellants. It was an admitted fact that the appellant did not assign the agreement to any third person. If some work was got done by the appellant by employing some small contractor then it did not

constitute a case of assignment of a whole agreement in favour of small contractors within the meaning of clause 26 so as to empower the State to cancel the agreement on such ground. The finding of the High Court that the award is rendered bad because it was passed in contravention of clause 26 of the agreement is, therefore, not legally sustainable in law; Sixthly, the High Court further failed to see that there was no error apparent on the face of the record in the findings recorded by the arbitrator; Seventhly, the High Court also failed to see that the Trial Court had elaborately gone into all the factual issues and rightly did not find any substance in the objections raised by the respondent; and lastly, the award being a reasoned one (running into 36 pages-Annexure P5 pages 127-163 of the SLP paper book), the reasoning of the arbitrator could not be said to be perverse to the

extent that no man with ordinary prudence could take such view and nor any finding of the arbitrator was against any provision of law or in contravention of any of the clauses of the agreement so as to constitute a case of legal misconduct on the part of the arbitrator within the meaning of Section 30 of the Act for setting aside an award.

38) We, on perusal of the award, find that the main claim of the appellant (claimant) against the State was "claim No. 12" which was in relation to the work done by the appellant of breaking of large pieces of hard rock from 9.00 Km to 9.80 Km distance. Since the respondent (State) disputed the appellant's claim on various factual grounds and hence the issue centered around to the questions as to whether the appellant did this work and, if so, how and in what manner and to what extent and lastly, what should be the rate at which the

appellant should be paid, if it is held that the appellant has done the work.

39) The arbitrator in Paras 19 to 36 of the award examined these issues on the basis of the evidence adduced by the parties and held that the appellant has done the work in question and, therefore, they were entitled to claim its price for the work done. Though the appellant, in their claim petition, claimed the money at the rate of Rs.30 per Cu M but the arbitrator did not accept the rates claimed by the appellant and instead awarded the amount to the appellant at the rate of Rs.12.97 per Cu.M.

40) So far as claim No. 13 was concerned, it pertained to interest claimed by the appellant on their some amount whereas the claim No. 17 was in relation to some deductions already made by the respondent in the appellant's bills for certain work done under the agreement.

41) In our considered view, it is clear from the facts of the case that the claims made by the appellant were essentially based on facts. They were accordingly probed on oral and documentary evidence adduced by the parties, which resulted in partial success of 3 claims in appellant's favour and rejection of 3 claims. So far as the State is concerned, they did not pursue their counter claim consequent upon its rejection by the arbitrator.

42) We have not been able to notice any kind of perversity in the arbitrator's reasoning and nor are we able to notice any kind of apparent error whether legal or otherwise in the award which may constitute a case of any legal misconduct on the part of the arbitrator empowering the Court to set aside the award by taking recourse to Section 30 of the Act. The reasoning and the conclusion arrived at by the arbitrator is one of the possible view which is

capable of being taken by the arbitrator on the material brought on record and we find no legal ground to set it aside the same.

43) Learned counsel for the respondent made sincere attempt to support the reasoning and the conclusion reached by the High Court but in the light of what we have discussed above, we can not accept any of his submissions.

44) In the light of foregoing discussion, we are unable to concur with the reasoning and the conclusion arrived at by the High Court.

45) As a result, the appeal succeeds and is accordingly allowed. Impugned order is set aside and that of the Trial Court restored.

In Special Leave Petition (c) No. 23950 of 2007

As prayed for, the petitioner is permitted to withdraw this special leave petition with a liberty granted to the petitioner to file review petition before

the High Court. In the event of review petition being dismissed, the petitioner would be at liberty to challenge the impugned order including the order in the review petition.

With the aforesaid liberty, the special leave petition is dismissed as withdrawn.

.....J.
[J. CHELAMESWAR]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
September 08, 2016

JUDGMENT