SUPREME COURT OF INDIA

Delhi Development Authority

Vs

M/s R.S. Sharma & Co., New Delhi

Civil Appeal No.2424 of 2002

(P. Sathasivam and Aftab Alam)

26/08/2008

JUDGMENT

P. SATHASIVAM, J.

1) This appeal, by special leave, is directed against the judgment and final order dated 10.8.2001 passed by the High Court of Delhi at New Delhi in FAO(OS) No. 104 of 1996, whereby the Division Bench of the High Court had set aside the order passed by the learned single Judge in favour of the Delhi Development Authority - the appellant herein and directed that the Award passed by the Arbitrator be made a rule of the Court along with interest @ 12% p.a. from the date of the decree till the date of payment on the entire amount as awarded by the Arbitrator.

2) The facts, in a nutshell, are as under: On 18.4.1990, an Agreement was entered into between the appellant-Delhi Development Authority (hereinafter referred to as "DDA") and the respondent - M/s R.S. Sharma & Co. (hereinafter referred to as "the Company") for carrying out the work for development of the land at Pappankalan (Dwarka) Project in South-West Delhi, Phase I according to the terms and conditions mentioned in the contract. On disputes having arisen during execution of

the work, mainly with respect to the extra cartage, the same were referred to the Sole Arbitrator, Shri A.P. Paracer, Additional Director General (Retd.), C.P.W.D., for adjudication. During the pendency of the arbitration proceedings, the work was still being executed by the Company. 13 Claims (including additional claims) for a sum of Rs. 55.19 lacs approximately were raised by the Company before the Arbitrator. Claim Nos. 1 to 3 were on account of extra lead involved in procurement of stone aggregate specified in agreement Item No.2 i.e., supplying and stacking of graded stone aggregate of size range 90 mm to 40 mm at site. While additional Claim Nos. 1 to 3 pertains to extra lead involved in bringing stone specified in agreement Item Nos. 3 & 4 i.e., supplying and stacking of stone screenings/chipping at site 12.5 mm nominal size. Under Claim No.1, the respondent-Company claimed an extra amount of Rs.30/- per cubic meter over and above the rates mentioned in the Agreement Item No.2 on account of extra lead involved in the procurement of the stone aggregates from the quarries at Nooh in Haryana instead of quarries at Delhi. Under Claim No.3, the respondent-Company sought declaratory Award to the effect that for all quantities of aggregate to be brought from Nooh in future, they are entitled to additional lead @ Rs.30/- per cubic meter excluding the quantity already claimed under Claim No.2. Similarly, under Additional claim Nos. 1 to 3, the respondent-Company claimed the rate of Rs.30 per cubic meter for extra lead involved in bringing stone, specified in agreement item Nos. 3 & 4, from the quarries at Nooh (Haryana). On 29.7.1992, the Arbitrator made the Award in favour of respondent-Company. Suit No.2981 of 1992 was filed by the respondent-Company for making the Award a rule of the Court. Cross Objections were filed by DDA. On 25.9.1995, the learned single Judge of the Delhi High Court set aside the Award with respect to Claim Nos. 1 to 3 as well as Additional Claim Nos. 1 to 3 and made the remaining part of the Award a rule of the Court and awarded interest @ 12% p.a. from the date of the decree till the date of payment by DDA. Aggrieved by the judgment of the learned single Judge, the Company filed FAO (OS) No.104 of 1996 before the Division Bench for setting aside the order to the extent it deals with Claim Nos. 1-3 and for making the Award dated 27.9.1992 a rule of the Court. The Division Bench of the High Court of Delhi, vide order dated 10.8.2001, set aside the order of the learned single Judge to the extent by which the Award of the Arbitrator on Claim Nos. 1 to 3 and Additional Claim Nos. 1 to 3 were set aside and the Award made by the Arbitrator on aforesaid Claims were made a rule of the Court. The Respondent - Company was also awarded interest @ 12% p.a. from the date of decree till the date of payment on the entire amount as awarded by the Arbitrator. Aggrieved by the said judgment, the present appeal is filed by DDA before this Court.

3) Heard Mr.Amarendra Sharan, learned Additional Solicitor General, appearing for the appellant and Mr. U.A. Rana, learned counsel, appearing for the respondent.

4) Mr. Amarendra Sharan, learned Additional Solicitor General, appearing for the appellant-Delhi Development Authority, vehemently contended that the Division Bench of the High Court was not justified in setting aside the order passed by the learned single Judge with respect to Claim Nos. 1-3 and additional claim Nos. 1-3 inasmuch as the Arbitrator had clearly failed to advert to clause 3.16 of the Agreement which does not provide for extra cartage. According to him, clause 3.16 of the Agreement stipulates that the contractor is responsible for all the extra leads over and above the rate of payment specified in the Agreement. He further contended that since the Arbitrator failed to take note of the relevant condition, namely, clause 3.16, which prohibits extra cartage over and above the rate of payment specified in the Agreement, there is a clear error apparent on the face of the Award

and liable to be set aside in terms of Section 34(2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"). On the other hand, Mr. U.A. Rana, learned counsel appearing on behalf of the respondent, while supporting the order of the Division Bench contended that in view of the fact that stone was brought from Nooh in Haryana which was found to be more blue, better in appearance and quality, the Arbitrator was fully justified in making the Award in favour of the respondent herein on Claim Nos. 1-3 and additional Claim Nos. 1-3. He also submitted that the Arbitrator is the sole Judge of the quality as well as quantity of evidence and the Courts cannot judge the evidence placed before the Arbitrator. In the absence of plausible ground in terms of Section 34(2) of the Act, the learned single Judge is not justified in setting aside the award of the Arbitrator. Thereby, he prayed for dismissal of the appeal.

5) We have considered the rival contentions, perused the relevant materials including the terms of the Agreement, award of the Arbitrator and the orders passed by the learned single Judge as well as by the Division Bench of the High Court.

6) The work relating to development of land at Pappankalan (Dwarka) Project in South West Delhi, Phase-I was awarded under Agreement No. 6/EE/WD 10-A/90-91/DDA to M/s R.S. Sharma & Co.-respondent herein. During the execution of the said work, certain disputes arose between the parties and ultimately they were referred to Mr. A.P. Paracer, Additional Director General (Retd.) C.P.W.D. for adjudication. After adjudication, the Arbitrator, on 29.7.1992, made and published his Award. The said Award was filed in Court and after issuance of notice, DDA filed its objections. The main dispute relates to Claim Nos. 1-3 and additional Claim Nos. 1- 3 wherein the claimant had claimed extra rate of Rs.30/- per cubic meter over and above the rate agreed to in the Agreement under Item Nos. 2, 3 and 4 for extra cartage involved in bringing the stone aggregate from Nooh quarries to Delhi. According to the claimant, it was required to use Delhi quartz stone conforming to CPWD specifications and as the claimant had obtained blue quartz stone from Nooh quarries in Haryana and since DDA had failed to indicate the approved quarry at Delhi for obtaining supplies of Delhi quartz stone, the claimant was entitled to extra rates at the rate of Rs.30/- per cubic meter for procurement of stone aggregate from the quarries at Nooh in Haryana. According to DDA, the Arbitrator has misconstrued and misunderstood the Agreement between the parties, particularly, clause 3.16. Though the learned single Judge set aside the Award in respect of claim Nos. 1-3 and additional Claim Nos. 1-3 on the ground that there was no material before the Arbitrator to accept those claims, the Division Bench, reversed the same and confirmed the Award as granted by the Arbitrator.

7) In order to consider the rival contentions, it is useful to refer the relevant provisions of the Act. Chapter VII of the Act deals with `Recourse against Arbitral Award'. Section 34 enumerates various grounds/circumstances on which the Award can be set aside by the Court who reads as under:

"34. Application for setting aside arbitral award. -

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and subsection (3).

(2) An arbitral award may be set aside by the Court only if-

(a) The party making the application furnishes proof that-

(i) A party was under some incapacity, or

(ii) The arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) The arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) The Court finds that-

(i) The subject-matter of the dispute is not capable of settlement by arbitration under the law for the

time being in force, or

(ii) The arbitral award is in conflict with the public policy of India.

Explanation.-Without prejudice to the generality of sub- clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award."

8) The grounds/ circumstances mentioned in sub-section (2) of Section 34 have been considered by this Court in various decisions.In Grid Corporation of Orissa Ltd. & Anr. vs. Balasore Technical School, (2000) 9 SCC 552, this Court in paragraph 3 held as under:

"3. In this case, the High Court is of the view that a civil court does not sit in appeal against the award and the power of the court when an award is challenged is rather limited. The award of the arbitrator is ordinarily final and conclusive as long as the arbitrator has acted within his authority and according to the principle of fair play. An arbitrator's adjudication is generally considered binding between the parties for he is a tribunal selected by the parties and the power of the court to set aside the award is restricted to cases set out in Section 30 of the Arbitration Act. It is not open to the court to speculate where no reasons are given by the arbitrator, as to what impelled him to arrive at his conclusion. If the dispute is within the scope of the arbitration clause it is no part of the

province of the court to enter into the merits of the dispute. If the award goes beyond the reference or there is an error apparent on the face of the award it would certainly be open to the court to interfere with such an award. In New India Civil Erectors (P) Ltd. v. Oil & Natural Gas Corpn.(1997) 11 SCC 75 this Court considered a case of a non-speaking award. In that case the arbitrator had acted contrary to the specific stipulation/condition contained in the agreement between the parties. It was held that the arbitrator being a creature of the contract must operate within the four corners of the contract and cannot travel beyond it and he cannot award any amount which is ruled out or prohibited by the terms of the agreement. In that contract it was provided that for construction of a housing unit, in measuring the built-up area, balcony areas should be excluded. However, the arbitrator included the same which was held to be without jurisdiction. In the same manner it was also held that the price would be firm and not subject to any escalation under whatsoever ground till the completion of the work and awarding any sum as a result of escalation was not Engg. Co. v. Govt. of A.P. (1991) 4 SCC 93. It was stated that if the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error and an umpire or arbitrator cannot widen his jurisdiction by deciding a question not referred to him by the parties or by deciding a question otherwise than in accordance with the contract. A conscious disregard of the law or the provisions of the contract from which he has derived his authority vitiates the award. The principle of law stated in N. Chellappan case on which strong reliance has been placed by the learned counsel for the respondent would make it clear that except in cases of jurisdictional errors it is not open to the court to interfere with an award. That proposition is unexceptionable. However, from a reading of the decisions of this Court referred to earlier it is clear that when an award is made plainly contrary to the terms of the contract not by misinterpretation but which is plainly contrary to the terms of the contract it would certainly lead to an inference that there is an error apparent on the face of the award which results in jurisdictional error in the award. In such a case the courts can certainly interfere with the award made by the arbitrator."

9) In General Manager, Northern Railway & anr. vs. Sarvesh Chopra, (2002) 4 SCC 45, it is worthwhile to refer the following conclusion as observed in paragraph 10 as under:

"10. It was next submitted by the learned counsel for the respondent that if this Court was not inclined to agree with the submission of the learned counsel for the respondent and the interpretation sought to be placed by him on the meaning of "excepted matter" then whether or not the claim raised by the contractor is an "excepted matter" should be left to be determined by the arbitrator. It was submitted by him that while dealing with a petition under Section 20 of the Arbitration Act, 1940 the court should order the agreement to be filed and make an order of reference to the arbitrator appointed by the parties leaving it open for the arbitrator to adjudicate whether a claim should be held to be not entertainable or awardable, being an "excepted matter". With this submission too we find it difficult to agree. While dealing with a petition under Section 20, the court has to examine: (i) whether there is an arbitration agreement between the parties, (ii) whether the difference which has arisen is one to which the arbitration agreement applies, and (iii) whether there is a cause, shown to be sufficient, to decline an order of reference to the arbitrator. The word "agreement" finding place in the expression "where a difference has arisen to which the agreement applies", in sub-section (1) of Section 20 means "arbitration agreement". The reference to an arbitrator on a petition filed under Section 20 is not a function to be discharged mechanically or

ministerially by the court; it is a consequence of judicial determination, the court having applied its mind to the requirements of Section 20 and formed an opinion, that the difference sought to be referred to arbitral adjudication is one to which the arbitration agreement applies. In the case of Food Corpn. of India relied on by the learned counsel for the respondent, it has been held as the consistent view of this Court that in the event of the claims arising within the ambit of "excepted matters", the question of assumption of jurisdiction by any arbitrator either with or without the intervention of the court would not arise. In Union of India v. Popular Builders (2000) 8 SCC 1 and Steel Authority of India Ltd. v. J.C. Budharaja, Govt. and Mining Contractor (1999) 8 SCC 122, Ch. Ramalinga Reddy v. Superintending Engineer (1999) 9 SCC 610 (para 18) and Alopi Parshad and Sons Ltd. v. Union of India (1962) 2 SCR 793 at p. 804 this Court has unequivocally expressed that an award by an arbitrator over a claim which was not arbitrable as per the terms of the contract entered into between the parties would be liable to be set aside. In Prabartak Commercial Corpn. Ltd. v. Chief Administrator, Dandakaranya Project (1991) 1 SCC 498 a claim covered by "excepted matter" was referred to the arbitrator in spite of such reference having been objected to and the arbitrator gave an award. This Court held that the arbitrator had no jurisdiction in the matter and that the reference of the dispute to the arbitrator was invalid and the entire proceedings before the arbitrator including the awards made by him were null and void."

10) In State of Rajasthan vs. Nav Bharat Construction Co., (2006) 1 SCC 86, this Court in paragraph 27 held as under:

"27. There can be no dispute to the well-established principle set out in these cases. However, these cases do not detract from the law laid down in Bharat Coking Coal Ltd. case or Continental Construction Co. Ltd. case. An arbitrator cannot go beyond the terms of the contract between the parties. In the guise of doing justice he cannot award contrary to the terms of the contract. If he does so, he will have misconducted himself. Of course if an interpretation of a term of the contract is involved then the interpretation of the arbitrator must be accepted unless it is one which could not be reasonably possible. However, where the term of the contract is clear and unambiguous the arbitrator cannot ignore it."

11) In Hindustan Zinc Ltd. vs. Friends Coal Carbonisation, (2006) 4 SCC 445, the following principles laid down in paragraphs 13 and 14 are relevant for the disposal of the present case:

"13. This Court in ONGC Ltd. v. Saw Pipes Ltd. (2003) 5 SCC

705 held that an award contrary to substantive provisions of law or the provisions of the Arbitration and Conciliation Act, 1996 or against the terms of the contract, would be patently illegal, and if it affects the rights of the parties, open to interference by the court under Section 34(2) of the Act. This Court observed: (SCC pp. 718 & 727-28, paras 13 & 31)

"13. The question, therefore, which requires consideration is--whether the award could be set aside, if the Arbitral Tribunal has not followed the mandatory procedure prescribed under Sections 24, 28 or 31(3), which affects the rights of the parties. Under sub-section (1)(a) of Section 28 there is a mandate to the Arbitral Tribunal to decide the dispute in accordance with the substantive law for the time being in force in India. Admittedly, substantive law would include the Indian Contract Act, the Transfer of Property Act and other such laws in force. Suppose, if the award is passed in violation of the provisions of the Transfer of Property Act or in violation of the Indian Contract Act, the question would be--whether such award could be set aside. Similarly, under sub-section (3), the Arbitral Tribunal is directed to decide the dispute in accordance with the terms of the contract and also after taking into account the usage of the trade applicable to the transaction. If the Arbitral Tribunal ignores the terms of the contract or usage of the trade applicable to the transaction, whether the said award could be interfered. Similarly, if the award is a non-speaking one and is in violation of Section 31(3), can such award be set aside? In our view, reading Section 34 conjointly with other provisions of the Act, it appears that the legislative intent could not be that if the award is in contravention of the provisions of the Act, still however, it couldn't be set aside by the court. If it is held that such award could not be interfered, it would be contrary to the basic concept of justice. If the Arbitral Tribunal has not followed the mandatory procedure prescribed under the Act, it would mean that it has acted beyond its jurisdiction and thereby the award would be patently illegal which could be set aside under Section 34.

* * *

31. ... in our view, the phrase `public policy of India' used in Section 34 in context is required to be given a wide 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 award is opposed to public policy and is required to be adjudged void."

14. The High Court did not have the benefit of the principles laid down in Saw Pipes, and had proceeded on the assumption that award cannot be interfered with even if it was contrary to the terms of the contract. It went to the extent of holding that contract terms cannot even be looked into for examining the correctness of the award. This Court in Saw Pipes has made it clear that it is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India."

12) From the above decisions, the following principles emerge:

(a) An Award, which is

(i) Contrary to substantive provisions of law; or

(ii) The provisions of the Arbitration and Conciliation Act, 1996; or

(iii) Against the terms of the respective contract; or

(iv) Patently illegal, or

(iv) Prejudicial to the rights of the parties, is open to interference by the Court under Section 34(2) of the Act.

(b) 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;

(c) The Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court.

(d) It is open to the Court to consider whether the Award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.

13) With these principles and statutory provisions, particularly, Section 34(2) of the Act, let us consider whether the Arbitrator as well as the Division Bench of the High Court were justified in granting the Award in respect of Claim Nos. 1-3 and additional Claim Nos. 1-3 of the claimant or the appellant-DDA has made out a case for setting aside the Award in respect of those claims with reference to the terms of the Agreement duly executed by both parties.

14) The main dispute relates to extra cartage that is, stone brought from Nooh, Haryana. It is the stand of the claimant that apart from the Agreement dated 18.4.1990, both parties were agreed to abide by the conditions mentioned in the letter dated 10.4.1990 of the claimant - M/s R.S. Sharma & Co. to the Chief Engineer (WZ), DDA, Vikas Minar, New Delhi. In paragraph 6 of the said letter, it was stated as under:

"6. We will use Delhi Quartz stone as per CPWD specifications and specifications mentioned in the tender documents. This condition has been accepted by the Department in the case of Ist lowest tenderer for this work."

15) It is stated by the learned counsel appearing for the claimant that since the DDA has not approved Delhi Quartz stone which was not as per CPWD specifications and specifications mentioned in the tender document, stones were brought from Nooh, Haryana which satisfied those specifications. As rightly pointed out by the learned ASG appearing for DDA, there is no specific clause in the terms of agreement for extra cartage for bringing stones from elsewhere. In this regard, the appellant heavily relied on clause 3.16 of the Agreement which reads as under:

"3.16 - The collection and stacking of material shall include all leads. The rates quoted by the contractor shall hold good irrespective of the source from which the material are brought so long as they conform to the specifications. The closure of particular quarry will not entitle the contractor to any revision in the rates."

16) The perusal of the Award of the Arbitrator as well as the judgment of the Division Bench clearly shows that they did not advert to the above clause 3.16. It is relevant to point out that the extra cartage has been awarded by the Arbitrator without adverting to clause 3.16 of the Agreement, hence, the learned single Judge was wholly justified in partially setting aside the Award in respect of the claims with respect to the extra cartage. We also perused the pleadings and evidence placed on record pertaining to Claim Nos. 1-3 and additional Claim Nos. 1-3. As rightly observed by the learned single Judge, there was no material on record to substantiate the case of the claimant, viz., DDA had insisted upon the claimant for using the stone aggregates brought from Nooh in Haryana.

In those circumstances and of the fact that the terms and conditions of the Agreement are binding on both the parties, in the absence of specific clause with regard to payment of extra cartage and in view of clause 3.16, the respondent- claimant cannot claim extra cartage @ Rs.30/- per cubic meter on the ground of extra lead involved in bringing the stone aggregates from Nooh in Haryana. The Division Bench like the Arbitrator proceeded on the sole basis that DDA had compelled the claimant-Company from bringing the stone aggregates from Nooh in Haryana and committed an error in affirming the erroneous conclusion arrived at by the Arbitrator insofar as the additional claims are concerned. As rightly pointed out by the learned Additional Solicitor General, the Division Bench proceeded on an erroneous premise that the appellant-DDA has nowhere stipulated where the stone was to be brought from. It is true that DDA had given certain specifications required to be conformed. Further, the cost of the work was irrespective of the source or lead from where the stone was brought. The award is completely silent on the relevant clause viz. clause 3.16 of the Agreement which makes it clear that the contractor is wholly responsible for all the extra leads. In fact, the Arbitrator has given no reason whatsoever so far as the rate claimed for the extra lead by the claimant and has verbatim accepted the claim without giving any justification for the same. We are satisfied that this is an error apparent on the face of the record as well as contrary to the terms of the Agreement.

17) For the sake of brevity, we point out that in terms of clause 3.16 of the Contract, it is the responsibility of the Contractor to collect and stock the material and the rates quoted by him including all leads irrespective of the source from where the material was brought. However, if DDA had refused to accept the stone aggregate brought to site by the contractor from a quarry in Delhi and insisted upon bringing the material from Nooh quarry, Haryana, the Contractor will be entitled to the extra lead for bringing the said material from Nooh. As rightly pointed out by learned counsel for the appellant, in the present case, there is nothing on record to show that the Department had insisted upon bringing the stone aggregate only from Nooh. Hence, the contractor will not be entitled to the increased rates for extra lead. Without a specific request or additional clause, the

Arbitrator in respect of Claim Nos. 1-3 and additional Claim Nos. 1-3 proceeded on the wrong assumption that the Department had insisted upon the use of stone aggregate to be brought from Nooh, hence, the learned single Judge is perfectly right in holding that there is an error apparent on the face of the Award and the Award is liable to be set aside. As stated earlier, the Arbitrator has ignored clause 3.16 of the contract and made a departure from the contract while granting relief in respect of Claim Nos. 1-3 and additional Claim Nos. 1-3 and the same, in our view, cannot be sustained.

18) Under these circumstances, we allow the appeal of DDA and set aside the judgment and order dated 10.8.2001 passed by the Division Bench in FAO (OS) No. 104 of 1996 and restore the order of the learned single Judge insofar as Claim Nos. 1-3 and additional Claim Nos. 1-3 are concerned. There shall be no order as to costs.

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