

(2008) 01 DEL CK 0109
In the Delhi High Court
Case No : F.A.O. No. 309 of 1996

Alpine Industries

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 29-01-2008

Acts Referred:

Citation : (2008) 01 DEL CK 0109

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : S.C. Singhal, for the Appellant; None, for the Respondent

Judgement

Pradeep Nandrajog, J.—A petty sum of Rs. 79,690/- is the subject matter of the instant litigation.

2. The slow and grinding wheels of justice render it painful for this court to record that the ethos of the Arbitration Act, 1940, namely, speedy and cheap justice has not been achieved in the instant case.

3. The matter requires to be re-considered by the Arbitrator. I have no option but to set aside the award as also the impugned order whereunder objections filed by the appellant to the award dated 24.9.1991 published by Shri Shiv Prakash have been dismissed by the learned Additional District Judge before whom objections u/s 30 read with Section 33 of the Arbitration Act, 1940 were filed.

4. My reasons for so remanding.

5. A contract concluded between the petitioner and the Director General of Civil Supplies and Disposal (GOI) when appellant's offer as per tender floated by the Director General of Supplies and Disposal was accepted vide undated letter (Ex. P-44). Inter alias the letter of acceptance contained a price variation clause as under:

Price Variation Clause Prices:- Accepted Rates are based on present raw material price of Rs. 3000/- per kg. as fixed by Deptt. of Chemicals effective from

27.1.87. Variation in accepted rates shall be applicable on every increase/decrease of Rs. 1/- per kg. in bulk price of Rifampicin Powder during the currency of Rate Contract. The price will vary by Rs. 0.30 per 1000 cap. In respect of Rifampicin Cap. 300 mg. And Rs. 0.15 per 1000 caps. In respect of Rifampicin Caps. 150 mg.

6. Supplies had to be effected between 1.10.1987 to 30.6.1988. But the time schedule was not adhered to by the parties without demur or protest on either side.

7. The month of September, 1988 reached.

8. Under the contract the goods had to be offered for pre-shipment inspection before delivery. Appellant offered inspection of the goods on 9.9.1988, 14.9.1988 and 16.9.1988.

9. Goods offered for inspection on 9.9.1988 and 16.9.1988 were inspected on 27.9.1988. Goods offered for inspection on 14.9.1988 were inspected on 6.10.1988.

10. Post inspection the goods were thereafter delivered on various dates in the month of October, November and December, 1988.

11. Bills were raised.

12. They were raised at the contract stipulated rate.

13. While effecting payment Rs. 79,690/- was deducted by the respondents. The reason for deduction was a stated decrease in the price of raw material notified on 28.9.1988 by the Department of Chemicals and Petro-Chemicals.

14. The respondent intimated the effect of said notification to the appellant under cover of its letter dated 28.11.1988.

15. In its claim before the learned Arbitrator, appellant inter alia, urged that the raw material was admittedly consumed for manufacture of the capsules in question before the dates on which notice of inspection was given. That all dates were before 16.9.1988. According to the appellant this evidenced that the raw material consumed was the one which was purchased by the appellant before the price was reduced vide notification dated 28.9.1988.

16. The respondent did not pay heed. It refused to refund Rs. 79,690/- to the appellant.

17. Contract between the parties contained an arbitration clause. Same was invoked.

18. Before the learned Arbitrator, appellant projected its case as afore-noted. It was a simple case. Appellant stated that the raw material was consumed by 16.9.1988 evidenced by the fact that the last lot of manufactured capsules was offered for inspection on 16.9.1988. That the respondent took time to inspect the

goods and in the interregnum price of raw material was decreased is of no consequence.

19. To bring home the point that the date on which raw material was consumed was treated as the relevant date for purposes of applying the price variation clause, a letter dated 27.2.1989 written by the Director General of Supplies and Disposal (Ex. P-111) was relied upon.

20. In respect to another contract having similar clause the Director General of Supplies and Disposal had queried from the appellant as under:

To,

M/s. Alpine Industries,

A-67, Naraina Industrial Area,

Phase-I, New Delhi-110028

Sub:- This Office Rate Contract No. DM-2/RC-1963/88-89/52/COAD/427 dt. 22.4.88 for the supply of Tablet Analgin 500 mg Specn: I.P. For the period from 1.4.88 to 31.3.89

Ref:-Your letter No. 88-89/AI/DGSandD/(Analgin)/3770 dt. 6.1.89.

Dear Sirs,

You are requested to furnish a certificate from your Chartered Accountant showing the Stock Position of raw material prevailing on 20.12.88.

Please also furnish a consolidated Drawal Reports for the period from 1.4.88 to 31.1.89 against the subject Rate Contract.

This is, however, without prejudice to the terms and conditions of the Rate Contract.

21. With reference to Ex. P-111 it was urged before the Arbitrator that the respondent was itself applying the rate variation with respect to the date on which raw material was consumed and hence in the instant case also the respondent was bound to apply the same yardstick.

22. By a cryptic award learned Arbitrator has pronounced against the appellant as under:

The claim is disallowed for the reason the claimant/contractor failed to supply the ordered supply within the stipulated delivery period as per terms of the contract and supplied the same during the extended delivery period which was subject to R/R and denial clause as contained in para 2 on the extension letter.

23. The extension letter referred to by the learned Arbitrator is the letter dated 28.11.1988. As noted hereinabove the said letter is not actually the extension letter but is a letter intimating the reduction in the price of raw material as per

Government of India notification dated 28.9.1988.

24. Suffice would it be to record that the learned Arbitrator has ignored a vital document being respondent's letter dated 27.2.1989, contents whereof have been noted in para 20 above.

25. It may be noted that the contract is silent on the point of the date on which price of raw material would be applied. The contract does not state that the price of raw material to be taken into consideration would be when the goods are offered for inspection. The contract does not stipulate that the date would be when the goods are inspected. It even does not state that the date would be when goods are delivered.

26. The conduct of the parties would thus be relevant.

27. Ex.P-111 was a good evidence of conduct of the respondent for the reason when price rose, respondent required the supplier to show the date on which it consumed the raw material for the reason price paid for finished goods was in relation to the price of raw material when raw material was consumed in the manufacture of capsules.

28. If aforesaid conduct was good when price increased, the same had prima facie to hold good when price decreased.

29. Be that as it may, the inference with respect to letter Ex. P-111 was a vital inference to be considered by the learned Arbitrator.

30. Unfortunately, the learned Judge who dealt with the objections to the award has also ignored the aforesaid position.

31. It is settled law that where an Arbitrator ignores a vital evidence or eschews a vital document it amounts to a misconduct requiring award to be set aside.

32. The appeal accordingly stands disposed of setting aside the impugned order dated 22.5.1996 disposing of RCS No. 753/1995 (422/1991) Alpine Industries v. UOI. Objections filed to the award dated 24.9.1991 passed by Shri Shiv Prakash the Sole Arbitrator are allowed. The award is set aside.

33. The Director General of Supplies and Disposal is directed to appoint a fresh Arbitrator who would re-decide the claim of the appellant and while so doing would be guided by the observations in the present order.

34. The registry is directed to return the trial court record.

35. Since the record of arbitration is with the record of the learned Trial Court, learned Counsel for the appellant is notified that before the new Arbitrator appointed he would make a request to summon the record of arbitration from the Trial Court record.

36. Needless to state learned Arbitrator would not complete pleadings nor record any evidence. On the basis of the existing pleadings and the evidence, after

hearing the parties decision would be taken.

37. Since none appears at the hearing to oppose the petition I refrain from awarding any costs.