
(2009) 04 DEL CK 0294
In the Delhi High Court
Case No : O.M.P. 61 of 1998

Amar Nath Charanji Lal and Co.

APPELLANT

Vs

Telecommunication Consultants India Ltd.

RESPONDENT

Date of Decision : 29-04-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2009) 04 DEL CK 0294

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Arvind Sharma, for the Appellant; S.D. Kushwaha, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—Being aggrieved by the award dated 12th February 1998, the Claimant/ petitioner has preferred this application u/s 34 of the Arbitration & Conciliation Act, 1996 (for short, 'the Act') praying that the award be set aside to the extent it does not allow the claims of the applicant/petitioner and the petitioner should be declared entitled to payment of all the claims raised by it before the Arbitrator.

2. Facts in nutshell are that the disputes between the petitioner and the respondent were referred to the Arbitration for adjudication. The petitioner had preferred six claims and the respondent had preferred one counter claim. Out of the six claims preferred by the applicant/ petitioner, the Arbitrator allowed three claims partly and three claims of the petitioner were considered unjustified. The Arbitrator directed that both the parties shall share the costs of arbitration proceeding equally. The petitioner had asked interest @ 24% per annum but the Arbitrator allowed interest @ 18% per annum from 9th January 1997 till the date of payment. The petitioner's contention is that the Arbitrator wrongly allowed unmodified claim No. 1. Against Claim No. 1, the petitioner initially wanted a sum of Rs. 46,717/- but later on modified its claim to Rs. 83,465/-. The Arbitrator

allowed only unmodified claim. It is argued that the learned Arbitrator unjustly held that there was no justification in modifying the claim. The Arbitrator ignored the letter dated 3rd November 1997 which justified the reasons for modifying the claims. In this letter the respondent had admitted the due amount towards the petitioner as Rs. 83,465/-.

3. The learned Arbitrator had disallowed the claim No. 2 of the petitioner for an amount of Rs. 9,77,901/- made on the ground that the claimant had to pay increased wages to the labour during the extended contract period. It is submitted that since under the contract, the petitioner was bound to pay fare wages to the labour, the Arbitrator should have allowed this claim. Similarly, the petitioner argued that the claim No. 3 regarding interest on the withheld amount was also wrongly rejected by the Arbitrator and claim No. 4 for losses due to prolongation of the contract was wrongly rejected by the Arbitrator.

4. It is settled law that while deciding the objections against the award, this Court does not act as a Court of appeal and the award can be challenged only on limited grounds as set out in Section 34 of the Act. The Arbitrator is the final judge of the questions of facts as well as of law. Unless and until the Court finds that the Arbitrator has acted contrary to the public policy or contract or law of the land, the Court cannot tinker with the award.

5. It is admitted by counsel for petitioner that the contract between the parties was a firm price contract and did not provide for any escalation either on the ground of increased labour charges or increase in the material charges. I, therefore, consider that the petitioner cannot make a grievance of rejecting the claim regarding escalation in costs of labour. The contract specifically provided that the petitioner was liable to pay the fair wages to the labour as per the law laid down by the State. Even if the contract had not provided the same, the petitioner was bound by law of the land and the petitioner was to pay the fare wages to the labour. This clause in the contract only reminded the petitioner that while he is undertaking the work he has to keep in mind that the wages to the labour are to be paid as per the prevalent law and the rates must be fair. On the basis of this clause, the petitioner cannot make a claim for escalation, in view of the fact that the contract specifically provides for non-escalation of costs.

6. The award passed by the Arbitrator is a non-speaking award. The award simply stated which of the claims of the petitioner were justified and which were not justified on the basis of the documents and material placed before the Arbitrator. There was no clause in the agreement that the Arbitrator was to pass a reasoned award when the award was for an amount less than Rs. 1 lac. It was also not a condition precedent to appointment of the Arbitrator that he was to pass a reasoned award. Where an award is silent about the reasons, the Court cannot enter into the area as to what would have been the reasons for allowing or rejecting the claims. Neither the Court can set aside an award on the ground of being an unreasoned award.

7. I find that the petitioner has failed to make out a case for setting aside the award u/s 34 of the Act. The application/petition is hereby dismissed. No orders as to costs.