

(2014) 06 BOM CK 0162

In the Bombay High Court

Case No : Arbitration Petition (L) No. 761 of 2014

Atlanta Limited

APPELLANT

Vs

Executive Engineer

RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 34(3), 36, 9

Citation : (2014) 06 BOM CK 0162

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : Aspi Chinoy, M.M. Vashi, Senior Advocates and Aparna Deokar, i/b. M.P. Vashi and Associates, Advocate for the Appellant; Dinesh Khaire, i/b. Dinesh Adgule, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R.D. Dhanuka, J.—By this petition filed u/s 9 of the Arbitration and Conciliation Act, 1996, petitioner seeks an order and injunction against the respondents from preventing the petitioner from collecting the toll on Mumbra Bypass under the present contract till 5th October, 2024.

2. On 12th July, 2000, the respondent had awarded a contract to the petitioner for construction of Mumbra Bypass off Mumbai Pune Road National Highway No. 4 on BOT Basis. There was a dispute between the parties regarding additional cost alleged to have been incurred by the petitioner which resulted in referring various disputes to arbitration.

3. During the pendency of the contract, the petitioner made claims for extension of period for collection of toll. It is case of the petitioner that at various levels, the officers of the respondents recommended period of extension for a period of 24 years 9 months and 28 days to the government for approval.

4. Before the arbitral tribunal, the petitioner made money claim as well as for extension of period for collection of toll.

5. Mr. Chinoy, learned senior counsel appearing for the petitioner invited my attention to the award and would submit that the arbitral tribunal has rendered a finding of fact that the officers of the respondent and particularly Superintendent Engineer had recommended the period of extension to the Government and such recommendation is final and conclusive. It is submitted that though the petitioner had demanded extension of time for larger period, the arbitral tribunal has considered extension for a period of 40 years and 6 months. It is submitted that the contract as on today would expire on 21st September, 2014 and thus the petitioner be permitted to collect the toll atleast for the period for which there was a recommendation made by the Superintendent of the Engineer to the government for approval. Learned senior counsel submits that the subject matter of the arbitration is required to be protected. It is submitted that if petitioner succeeds ultimately in the arbitration petition and if the interim relief as claimed is not granted, the petitioner would not be able to re-instated in the contract for collection of toll.

6. Learned counsel appearing for the respondents on the other hand would submit that both the parties have already impugned the arbitral award before this court and the petitions filed u/s 34 are admitted. It is submitted that even if the Superintendent of Engineer has made some recommendation for extension of period to collect toll, the same is not final and binding on the Government. Learned counsel submits that in any event, the arbitral tribunal while granting extension of period has also made alternate award in terms of money decree in clause (d) of clause 31 of the impugned award. Learned counsel submits that the petitioner are indirectly seeking execution of award which is automatically stayed by this court by virtue of filing petition u/s 34 by both the parties.

7. It is not in dispute that both the parties have impugned the arbitral award in this court u/s 34 of the Arbitration and Conciliation Act and both the petitions are admitted and are pending. In my view, u/s 36 of the Arbitration and Conciliation Act, 1996, once petition challenging award u/s 34 having been filed within the time prescribed u/s 34(3) of the Arbitration and Conciliation Act, the implementation and execution of the arbitral award is automatically stayed.

8. A perusal of the prayer sought in the petition clearly indicates that the petitioner seeks implementation of the part of the award during the pendency of petitions filed by both parties u/s 34 of the Arbitration and Conciliation Act. In my view, no such interim relief as prayed in the petition can be granted in view of the automatic stay of the impugned award in view of section 36 of the Arbitration and Conciliation Act read with section 34(3) of the Act.

9. In so far as submission of the learned senior counsel that the recommendation made by the Superintendent Engineer to the government for extension of time for a period of 24 years 9 months and 28 days is final and binding and the arbitral tribunal has rendered a finding of fact in that regard is concerned, it is not in dispute that the respondents have also impugned the award before this court and in view of such challenge the entire award is stayed. Finally this court

will consider the merits of the award rendered by the arbitral tribunal in the pending petitions.

10. In my view petitioner cannot be granted any interim measures in this petition for permission to collect toll also on the ground that arbitral tribunal has awarded money claim in alternate to the award of extension of period for collection of toll.

11. No case is made out for grant of interim measures u/s 9. Petition is accordingly dismissed. The petitioner is at liberty to seek early hearing of the arbitration petitions filed by the parties u/s 34 of the Act. No order as to costs.