
(1997) 04 DEL CK 0030

In the Delhi High Court

Case No : Suit No. 312A of 1987 and Interim Application No. 3023 of 1987

Binani Metals Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-04-1997

Acts Referred:

Citation : (1997) 67 DLT 314 : (1997) 42 DRJ 124

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : Shankar Ghosh, T.K. Ganju and Sarabjeet Sharma, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) The arbitrator Shri R.N. Mishra has made and published the award on October 29, 1986. By means of I.A. No. 3023/87 this award has been challenged by the petitioner.

(2) On May 12, 1966, M/s. Metal Distributors Limited and respondent No. 1 entered into an agreement by virtue of which Metal Distributors Limited was to supply tin ingots to respondent No. 1. M/s. Metal Distributors Limited, pursuant to the scheme of amalgamation and the order dated November 23, 1983 of the Calcutta High Court and order dated October 26, 1983 of the Bombay High Court, was amalgamated with the petitioner M/s. Binani Metals Limited. Due to the disputes between the petitioner and respondent No. 1 the matter was referred for the adjudication of the above said arbitrator on a direction from this Court u/s 20 of the Arbitration Act. The arbitrator, as pointed out above, made and published his award on October 29, 1986. The award has been challenged by the petitioner on the ground that the arbitrator misconducted himself and the proceedings. The main dispute between the parties was with regard to the claim of the petitioner based on Condition No. 8 of the Special Conditions submitted by it along with the tender dated March 17, 1966. Invoking the special condition No. 8 the petitioner claimed a sum of Rs.1,27,903.15 on account of increase in the

rupee value of the costs of goods due to devaluation. The Arbitrator came to the conclusion that Condition No. 8 of the Special Conditions was not accepted by respondent No. 1 and was not an integral part of the agreement between the parties. In coming to this conclusion the arbitrator relied upon the advance acceptance of tender issued by respondent No. 1 on March 18, 1966. The arbitrator noted that respondent No. 1 by the advance acceptance of tender accepted the Special Conditions No. 6 and 7 of the tender document, but in so far as Condition No. 8 was concerned there was no reference to the same. In this regard, the arbitrator stated as follows :-

"IT may further be seen that advance acceptance dated 18.3.66 at the very beginning states that the acceptance of tender to the following extent". This condition No. 8 on which the Contractor relied stands obviously excluded from being integral part of the agreement. In the circumstances, the claim, based on clause 8 of the special conditions attached along with the letter dt. 17.3.66, is not tenable".

--- *** --- DR.Sankar Ghosh, learned senior counsel appearing for the petitioner, submitted that the Arbitrator did not consider the material documents which were on record and Therefore, came to a wrong conclusion. He invited my attention to the letter of Metal Distributors Ltd. dated March 17, 1966, particularly the following clause thereof:-

"The above price is based on the Singapore Tin Market Quotation of Malayan Dollars 682.625 per picul and the material will be priced on the basis of Singapore Tin Market Quotation prevailing on every alternate working day excluding three working days after receipt of valid import license by our Head Office at the rate of 25 Metric Tonnes per working day. The variation in price will be adjusted at the rate of one Malayan Dollar per picul = Rs. 39.85 per Metric Tonne."

He also invited my attention to Condition No. 8 of the Special Conditions accompanying the tender of the Metal Distributors Limited. This condition reads as follows :-

"The price is subject to pro rata increase in accordance with any change in exchange value of rupee consequent to devaluation."

Learned counsel also placed reliance on the letter of the Metal Distributors Ltd. dated March 18, 1966 and contended that while respondent No. 1 was not initially agreeable to clauses 6 and 7 of the Special Conditions of the offer of the petitioner, it had no reservation with regard to clause No. 8 of the Special Conditions of Contract. In this regard he referred to the following para of the said letter:-

"REGARDING withdrawing of clauses 6 and 7 of the special conditions of our offer, we regret our inability, to do so. Clause No. 6 has been incorporated in view of our past experience and the difficulty we had to face in executing the

orders when the Reserve Bank of India had announced a scheme of advance deposits against imports. Clause No. 7 regarding export license has been inserted in our offer since our overseas suppliers are some time required to obtain the export license before effecting shipments. According to our information, this is not at present applicable for the export of Tin, but as you are aware recently some countries have introduced a system of export licensing for Copper in particular. This clause, Therefore, has been introduced as a safeguard. "

Learned counsel submitted that in case the arbitrator would have considered the above said material his conclusion would have been different. In support of his submission the learned senior counsel relied upon the decisions of the Supreme Court in K.P. Poulose Vs. State of Kerala and Another, and Union of India v. Jain Associates and another, (1994) 4 S.C.C. 666. I have considered the submissions of the learned counsel for the petitioner. Respondent No. 1 in the opening lines of letter dated March 18, 1966 stated to the effect that the tender was being accepted to the extent mentioned therein. The letter reads as follows :-

Your above cited tender is hereby accepted to the following extent "

The words "tender is hereby accepted to the following extent" are significant and are not without meaning. These words indicate that the acceptance to the tender of the petitioner was given on specified terms as contained in the said letter. The letter nowhere mentions Condition No. 8 of the Special Conditions of the petitioner on which the petitioner was banking upon. Para (4) of this letter shows that respondent No. 1 had accepted clauses 6 and 7 of the Special Conditions of the tender. However, there was no reference to clause 8 of the Special Conditions in para (4) of this letter. The arbitrator having regard to the opening words of the letter dated March 18, 1966, namely, "tender is hereby accepted to the following extent" and para (4) thereof came to the conclusion that Condition No. 8 was excluded from being an integral part of the agreement. Thus, it is obvious that arbitrator's line of reasoning that the acceptance of the tender was to the extent indicated in the letter itself cannot be faulted. It is not disputed that the letter of advance acceptance was issued by respondent No. 1 after receipt of the letter of the petitioner dated March 18, 1966 (page 56 of Part II of the court record). While it is true that this letter does high light that the contractor was not willing to withdraw clauses 6 and 7 of the Special Conditions of the tender, this letter is blissfully silent about clause No. 8 of the Special Conditions of the tender. Dr. Ghosh submitted that it should be inferred from a reading of this letter that there was no dispute between the parties with regard to inclusion of Clause 8 in the agreement. As already pointed out, the arbitrator having regard to the contents of the advance acceptance dated March 18, 1966 came to the conclusion that clause 8 of the Special Conditions was not included in the agreement. It is well settled that the court while considering a challenge to the award of the arbitrator is not sitting as a court of appeal. It is also well settled that the court cannot go into the reasonableness of the reasons and conclusions of the arbitrator. In case the interpretation placed by the arbitrator on the

contract agreement is plausible and possible it is not for this court to take a different view of the matter. The interpretation placed by the arbitrator in the instant case on the contract was plausible and possible and, Therefore, the award of the arbitrator cannot be found fault with. In *M/s. Hind Builders Vs. Union of India*, , their Lordships of the Supreme Court held as follows :-

"In a matter on which the contract is open to two equally plausible interpretations, it is legitimate for the arbitrators to accept one or the other of the available interpretations and, even if the Court may think that the other view is preferable, the Court will not and should not interfere. This view is too well settled to need any reference to any precedent...." In *Special Organising Committee v. Meetco Originally Middle East Exchange and Trade (Meetco) Group of Companies*, 1996 (V) Ad 1, it was held as follows :-

"The interpretation placed by the learned Arbitrators on the agreement is highly plausible. It may be that the interpretation sought to be placed by the respondent is also possible but that is no ground to set aside the award as when a contract is capable of two interpretations and two views are possible, one of the possible views adopted by the Arbitrators cannot be found fault with as it is legitimate for the Arbitrators to accept one or other of the possible interpretations and even if the Court is of the opinion that the other view appears to be better, the Court still cannot interfere. This principle is adumbrated and has been followed in various judgments of the apex Court as well as the different High Courts in the country."

Reverting to the authorities cited by the learned counsel for the plaintiff, it seems to me that they do not advance the case of the petitioner. In *K.P. Poulose v. State of Kerala* and another (supra) their Lordships of the Supreme Court held that in case the arbitrator misses to consider material documents to resolve the controversy the award would suffer from manifest error apparent on the face of the record. Similarly in *Union of India v. Jain Associates* and another (supra) the Supreme Court reiterated the above principle. These decisions are of no avail to the learned counsel for the petitioner inasmuch as the arbitrator had considered all the relevant material on record and this is so stated in his award. In the circumstances, Therefore, I have not been able to persuade myself to hold that any relevant document went unnoticed by the arbitrator while rendering his award. The arbitrator, as already pointed out, construed the agreement and came to the conclusion that Condition No. 8 was not an integral part thereof. I do not find any illegality or error apparent on the face of the award and, Therefore, the challenge of the petitioner to the award is rejected. Consequently, the objections, being I.A. No. 3023/87, are rejected. The award is accordingly made a rule of the court and a decree in terms thereof is hereby passed. The award shall form part of the decree.