
(2019) 05 DEL CK 0148

In the Delhi High Court

Case No : Original Miscellaneous Petition (COMM) No. 102 Of 2018

Castmaster Mobitec India Private Limited

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 30-05-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 34
Delhi Municipal Corporation Act, 1957 — Section 143

Citation : (2019) 4 R.A.J. 21 : (2019) 2 RLR 205 : (2019) 261 DLT 354

Hon'ble Judges : Navin Chawla, J

Bench : Single Bench

Advocate : Dr. Arun Mohan, Saurabh Jain, Kuber Giri, Sarika, Vinayak Bhandari, Rahul Jain, Avnish Ahlawat, N.K. Singh, Sakshi

Final Decision : Dismissed

Judgement

Navin Chawla, J

Rev. Pet. 154/2018

1. The present review petition has been filed by the petitioner seeking review of the judgment/order dated 01.03.2018 passed by this Court dismissing the petition filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act'). The petitioner challenged the Arbitral Award dated 20.11.2017 as also the order dated 30.11.2017 passed by the Sole Arbitrator in Arbitration Case No.SPN 012/2012.

2. As noted in the said order, the disputes between the parties arose in relation to the award of work for installation of LED based Route Display System (RDS) in Standard Floor Buses on Build Operate Transfer (BOT) basis in lieu of Advertisement Rights in favour of the petitioner under the Concession Agreement dated 12.07.2010.

3. Learned senior counsel for the petitioner submits that in the said order, this Court has failed to consider the effect of Section 143 of the Delhi Municipal

Corporation Act, 1957 (hereinafter referred to as the 'DMC Act'). He submits that in terms of Section 143 of the DMC Act, there is a complete bar on fixation of any advertisement upon any vehicle without the written permission of the Commissioner granted in accordance with the bye-laws made under the said Act. He submits that even before the grant of the agreement, the MCD had issued a warning to the respondent on 30.04.2010, not to allot any contract for display of advertisement on the buses without taking prior permission under Section 143 of the DMC Act. This letter was, however, intentionally concealed by the respondent while awarding the contract and even thereafter till the arbitration proceedings.

4. Learned senior counsel for the petitioner further submits that by letter dated 28.06.2010, the respondent replied to the abovementioned letter of the MCD, wherein it only confined its response to the plea that it was not to share the revenue from the contract with the MCD as also seeking ex post facto permission from the MCD. He submits that even this letter was concealed by the respondent at the time of entering into the agreement as also thereafter till 10.05.2012.

5. Learned senior counsel for the petitioner submits that as the permission was never granted by the MCD, the consideration for the contract in question failed and therefore, the Arbitrator has committed an error by holding that the petitioner had the right of gainful use of these buses.

6. Learned senior counsel for the petitioner further submits that the petitioner had raised this issue of non-availability of the permission from the MCD only by its letter dated 04.04.2011. The Arbitrator has therefore, erred in holding that this issue stood settled on 25.01.2011, with the petitioner agreeing to pay the licence fee.

7. The primary submission of the learned senior counsel for the petitioner is that in absence of the permission from the MCD, the respondent was not entitled to recover the licence fee and/or retain the LED based RDS supplied by the petitioner without paying for the same. He submits that the plea of the respondent that the petitioner should have violated Section 143 of the Act and in case MCD proceeds against the petitioner for such violation, the respondent could have been made liable, cannot be accepted. He submits that in view of the above, the Award as also the order dated 01.03.2018 passed by this Court cannot be sustained.

8. I have considered the submissions made by the learned senior counsel for the petitioner, however, find no merit in the same.

9. As noted hereinabove, the Agreement between the parties was signed on 12.07.2010. It was for a total of 1500 buses. The petitioner supplied and installed LED based RDS on 605 buses. The dispute raised by the petitioner in its letter terminating the agreement was that the respondent had failed to supply the remaining buses to the petitioner, causing loss to the petitioner. This was the basis even in the Statement of Defence and the counter claim filed by the petitioner before the Sole Arbitrator.

10. The plea that the petitioner was unable to award the advertisement contracts to third parties as they required permission from the MCD, though raised in the letter dated 04.04.2011, was never made a ground for terminating the contract and/or making its claim/defence before the Arbitrator. It is correct that the said plea was raised in the passing before the Arbitrator and has also been recorded by the Arbitrator as such, however, the Arbitrator rightly held that the same had no substance, especially when the petitioner, as late as in the meeting held on 03.12.2010 agreed to pay licence fee from the date of issue of COD, that is 21.01.2011.

11. The petitioner is no novice and would have known fully well that permission from MCD is required before displaying any advertisement on the buses. However, the petitioner never enquired the status of such permission from the respondent at the time of entering into the contract or even when later committing to pay the licence fee. Incase, the petitioner had made this as a ground for seeking termination of the contract, it would have been for the respondent to have either procured such permission for the petitioner and/or to face consequences of such non-production in form of damages or otherwise. However, the petitioner never considered grant of permission from MCD as a main issue and only, as an afterthought, sought to use this plea to justify the termination of the Agreement.

In view of the above, I find no merit in the present review petition. The same is dismissed. There shall be no order as to costs.