
(2010) 01 DEL CK 0082
In the Delhi High Court
Case No : OMP No. 24 of 2010

Container Corporation of India Limited	APPELLANT
Vs	
Texmaco Limited	RESPONDENT

Date of Decision : 15-01-2010

Acts Referred:

Citation : (2010) 01 DEL CK 0082

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : A.S. Chandiok, Additional Solicitor General, M.M. Kalra and Kunal Kalra, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This petition u/s 34 of the Arbitration and Conciliation Act, 1996 challenges the Award dated 18.11.09 passed by the Arbitration Tribunal of three members. Two issues have been urged before this Court by the learned Additional Solicitor General on behalf of the petitioner. The first issue is that the Arbitration Tribunal erred in awarding escalation upto the original scheduled delivery dates. The second issue is with regard to the grant of interest by the Arbitrator @ 9% per annum.

2. So far as the first aspect is concerned, it is necessary to refer to the applicable Clause 10.2, the relevant portion of which reads as under:

10.2 The above price adjustment formula shall be invoked by either party subject to the following further conditions:

xxx xxx xxx b. No price increase shall be allowed beyond the original delivery dates unless specifically stated in the extension letter. As a rule no price adjustment shall be allowed for periods of delay for which the Supplier is entirely responsible. The Purchaser will however be entitled to any decrease in the Contract Price.

What is relevant is the first line of this Clause. The Arbitration Tribunal relying on this line has held that the respondent is entitled to escalation only up to the original delivery dates.

3. The Arbitrators have given their conclusions in this regard at internal pages 17 and 18 of the Award and which portion reads as under:

To appreciate the rival contention of the parties, we would focus our attention to the two Clauses of the contract, Clause 16 and Clause 10 of the Special Conditions of contract. Clause 16 in our considered opinion provides that prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier with the exception of any price adjustment authorized by the Special Conditions of contract. Clause 10 of Special Conditions of the contract unequivocally stipulates that the price payable to the supplier shall be subject to adjustment during the performance of the contract to reflect changes in the cost of labour and material components in accordance with the formula indicated therein. In our opinion, therefore, the provision for price adjustment in the Special Conditions of contract during the performance of the contract has nothing to do with the delayed performance of the contract, but as provided in Clause 10.2 and more particularly Clause 10.2(b) no price increase shall be allowed beyond the delivery dates unless specifically stated in the extension letter and this is co-related to the question whether delay in question is on account of supplier's or not. The Learned Counsel for the Respondent in our opinion totally mis-read the provision of the Special Conditions of contract referred to earlier and even in his written submissions has not noticed the true and literal meaning of the clause. When the Clause itself says "no price increase shall be allowed beyond the original delivery date", necessarily, therefore, the supplier is entitled to the price increase in accordance with the formula as on the original delivery date. Clause 10 of the Special Conditions of the contract can not be construed to sustain the arguments of the Respondent that since there has been delay in the delivery of wagons from the dates mentioned in the contract, the Claimant is not entitled to the price adjustment clause. The claim of the Claimant on the price escalation Clause is based upon the formula indicated in Clause 10 of Special Conditions of contract. The Respondent in the Written Statement refuted the aforesaid claim on the grounds that there has been delay in the delivery schedule and the extension letter did not provide that the price adjustment Clause would be applicable. In other words, there is no denial to the concerned claim on the basis of the formula provided in Clause 10 of the Special Conditions of contract. That being so and in view of our conclusion on a combine reading of Clause 16 of the contract and Clause 10 of the Special Conditions of contract and the Claimant is entitled to the price adjustment and the price adjustment Clause is applicable to the facts and circumstances of the case in hand, this Issue is answered in favour of the Claimant and against the Respondent.

4. The scope for interference by a Court to the objections u/s 34 is now

sufficiently pronounced upon. Unless the action of the Arbitrators is illegal, that is, it is beyond the law of the land or that the same is beyond the contractual provisions or that the findings/conclusions are so perverse which shocks the judicial conscience, this Court does not interfere with an Award. Putting it differently, this Court does not sit as an Appellate Court over the findings and conclusions of the Arbitrator and if two views are possible, this Court will not interfere with the Award merely if it is of another view than the plausible view which is taken by the Arbitration Tribunal. It cannot be disputed in law that the Arbitration Tribunal was indeed entitled to interpret the relevant Clause of the contract and unless there is gross perversity in such interpretation, this Court cannot interfere with such an interpretation u/s 34.

5. In my opinion by giving price escalation up to the original delivery date, and which is in fact within the terms of the express language of Sub-clause (b) of Clause 10.2 of the Contract, the Award cannot be faulted with.

6. The next issue which was urged was with respect to grant of interest and to the rate at which it was granted. This aspect has been dealt with and pronounced upon by the Arbitrators while dealing with issue No. 5 and the relevant portion of the Award reads as under:

Issue No. 5 This issue is on the claim of interest. The question regarding Arbitrators' power to award interest on the sum found due and payable even for the pre-reference period, in the absence of any specific stipulation or prohibition in a contract, has been authoritatively decided by the Constitution Bench of the Supreme Court in the case of Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa, Vs. N.C. Budharaj (Dead) by Lrs. etc. etc., . The Supreme Court has held that a person deprived of the use of money to which he is legitimately entitled as a right to be compensated for the deprivation by whatever name it may be called such as interest, compensation or damages. In view of the aforesaid authoritative pronouncement of the Supreme Court and the case in hand there has been no prohibition in the contract for grant of interest, the Claimant is entitled to the interest on the amount awarded from the date it fell due and the interest would run @ 9% per annum. This issue is answered in favour of the Claimant and against the Respondent.

I am, in fact, absolutely and completely surprised at the submission that the rate of interest @ 9% can in any manner be contended as excessive. I may only state that this Court has in fact been consistently awarding interest @ 9% per annum in view of the various judgments of the Supreme Court such as Rajendra Construction Company Vs. Maharashtra Housing and Area Development Authority and Others, , McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others, , Rajasthan State Road Transport Corpn. Vs. Indag Rubber Ltd., and Krishna Bhagya Jala Nigam Ltd. Vs. G. Harischandra Reddy and Another, and State of Rajasthan v. Ferro Concrete Construction (2009) 3 Arb.LR. 140 (SC). Surely the grant of interest at 9% simple cannot be said to be excessive and hence I reject this contention.

7. Another aspect which was argued was that interest ought not to have been granted because no notice was served upon the petitioner under the Interest Act. On merits, in my opinion, this contention is not sound because the Arbitration Tribunal has rightly relied upon the observations of the Supreme Court in *Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa, Vs. N.C. Budharaj (Dead) by Lrs. etc. etc.*, case to hold that if a person is deprived of use of money, he is legitimately entitled, as of right, to be compensated for such deprivation, by granting monies by whatever name it may be called whether interest or compensation or damages. In any case, the issue is now settled, in view of the recent judgment of the Supreme Court reported as *Madnani Construction Corporation (P) Ltd. Vs. Union of India (UOI) and Others*, . In this judgment, the Supreme Court has reiterated the right of the Arbitrators to grant pendent lite and future interest till realisation. Therefore, the impugned Award to the extent it grants interest for the two periods of during reference and post Award cannot be faulted with. So far as the pre-reference period is concerned the Arbitrators have awarded interest in equity as damages/compensation, and which is permissible in view of *N.C. Budhiraja's* case. See also *State of U.P. Vs. Harish Chandra and Others*, . In fact, in *Madnani's* case (supra) the Supreme Court has reiterated the right of the Arbitrators to grant interest in spite of a stipulation to the contrary in the contract between the parties. Finally, I may state that the judgment in *Madnani's* case will apply *aforetierrari*, to the present case inasmuch as the present case is governed by the 1996 Act which has Section 31(7) which gives a statutory right to the Arbitrators to Award interest for all three periods of pre-reference, pendent-lite and post Award, and nowhere Section 31(7) in any manner restricts the right of the Arbitrators to grant interest i.e. of interest to be granted only if a notice is issued under the Interest Act, 1978.

I may state that in the Award there is no mention that any such objection that no notice was given under the Interest Act was canvassed. It appears that during final arguments this issue may not have been pressed, otherwise, in my opinion the Arbitration Tribunal headed by a retired Chief Justice of India, would have surely dealt with this issue. Also, if a vital issue was argued and supposedly overlooked then such position could have been brought to the notice of the Tribunal but, the same has not been done by moving of an appropriate application before the Arbitration Tribunal after passing of the Award. Also, I do not find for the present, any record having been filed by the petitioner to substantiate that such an issue was raised in the arbitration proceedings at the time of final arguments.

8. I may state that the Learned Additional Solicitor General wanted me to record that so far as ground (G), as alleged in the petition is concerned the same was not pressed. I record that this aspect has not been pressed by the petitioner before me and if it is available in law, the petitioner is entitled to approach the Arbitrators for any such relief on the basis of averments as contained in ground (G).

9. I may finally note that an application was moved for removal of the Arbitrators on the ground that they were biased. This application was dismissed by the Arbitration Tribunal observing that it was unfortunate that at the conclusion of the proceedings, when an application for amendment was moved by the petitioner and which was dismissed, it cannot consequently be said that the Arbitrators are thereby biased. Mr. Chandiok, Learned Additional Solicitor General has, with his usual fairness, not pressed this objection with regard to the ground for removal of the Arbitration Tribunal.

10. Accordingly, the present objection petition is dismissed with costs of Rs. 50,000/-. Costs to be deposited with the Registrar General of this Court for being utilized in the Juvenile Justice Fund within a period of four weeks from today.