

(1997) 03 DEL CK 0047

In the Delhi High Court

Case No : Civil Original Appeal No. 495 of 1991

Equipment Conductors and Cables (P) Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-03-1997

Acts Referred:

Citation : (1997) 41 DRJ 229

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Rajesh Banati and Jyoti Singh, for the Appellant;

Judgement

(1) The Arbitrator passed the Award on 31st December, 1990. The claimant had filed objections. The argument of learned counsel for the claimant is that the Arbitrator while considering the claims had not taken into account the effect of the Circular issued by the Government of India and whatever the claim was made by the claimant was only in accordance with the Circular issued by the Government of India. The learned counsel submits that the reference to the Claim No. 2 as against a claim of Rs. 63,928.80 that the Arbitrator had allowed to the extent of Rs. 43,211.60 being the two per cent of the price of the balance price which has not been paid to the claimants. Claim No. 3 relates to the interest on the sums as claimed by the claimants in their Claims No. 1 and 2 was also disallowed by the Arbitrator. The learned counsel for the claimants submits that having allowed the sum of Rs. 43,211.60 the Arbitrator ought to have awarded the interest on the sum claimed.

(2) Claim No. 4 is for a sum of Rs. 1,32,134.00 on account of increase in price in respect of stores supplied against the Supply Order No. 5253 dated 7.12.1987 under the Price Variation Clause of the subject contract. The Arbitrator had rejected this claim on the ground of the Circular issued by the Union of India dated 8.6.1994. The reason given by the Arbitrator is that the contents of this Circular have never been admittedly disputed by the contractor.

(3) I have perused the claim statement and the counter filed by the Union of India. With reference to the claim for Rs. 1,32,134.54, the reply by the Union of India is that the claimant is not entitled to the increase amounting to Rs. 1,32,134.54 and the claim is not tenable either in law or in contract. There are no other materials on the basis of which the Arbitrator could come to the conclusion. I have perused the Circular dated 8.6.1994. I am not able to say that the Circular dated 8.6.1994 could be taken against the claimants and the entire amount could be denied to the contractor while considering the Circular. The Arbitrator is expected to mention the relevancy of the Circular and how far it affects the claim of the contractor. Merely referring to a circular which has not been disputed by the contractor is not a reasoning of the Arbitrator. A reading of this portion of the Award would show as if there was some letter by the Union of India to the contractor with reference to some claim and that had not been disputed by the contractor. The Arbitrator had not considered the matter in the light of the provisions of the contract. In this view of the matter I am not able to sustain the award because the whole approach of the Arbitrator has not only been erroneous but also not in accordance with the dicta of the Supreme Court in various cases. Learned counsel for the respondents relied upon two decisions of this Court in Sandvik Asia Ltd. Vs. Union of India, (by My Lord the Hon'ble Mr. Justice N.G.Nandi) and Special Organising Committee Vs. Meetco Originally Middle East Exchange and Trade (Meetco) Group of Companies, (by My Lord the Hon'ble Mr. Justice Anil Dev Singh. The views taken by the learned Judges in these two cases, with great respect, cannot at all be taken into account. But the question is whether the principles laid down therein would apply to the facts of this case. I am quite unable to say that they are of any assistance in resolving the disputes that are for consideration in this case. On the question of interest also the Arbitrator should have considered the matter.

(4) For these reasons the award is set aside and in view of the fact that the Arbitrator had not considered the matter in accordance with the provisions of law and contract, the Arbitrator shall consider the matter afresh and publish the award. The Union of India shall appoint a new Arbitrator within six weeks from today and the Arbitrator shall publish the award within four months from the date of entering upon the reference. There shall be no order as to costs.