

(2010) 03 DEL CK 0047
In the Delhi High Court
Case No : O.M.P. No. 280 of 2003

GAIL (India) Ltd.

APPELLANT

Vs

BELL Ceramics Pvt. Ltd and Others

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 19, 34
Contract Act, 1872 — Section 70, 73

Citation : (2010) 03 DEL CK 0047

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Rajiv Bansal, for the Appellant; None, for the Respondent

Judgement

Valmiki J Mehta, J.—This petition u/s 34 of the Arbitration and Conciliation Act, 1996 challenges the Award dated 17.2.2003 passed by the sole Arbitrator. The dispute is between the petitioner as the supplier of Gas and the respondent as the consumer. The dispute pertained to the entitlement of transportation charges by the petitioner and against the respondent for the supply of the Gas.

2. The facts of the case are that since the respondent had laid down its own pipeline for receiving gas, the present petitioner was not charging the usual transportation charges from the respondent/consumer. There were a total of five Agreements between the petitioner and the respondent and which are dated 28.4.1993, 24.8.1993, 24.5.1994, 11.6.1996 and 10.2.1999. By the first four Agreements, the respondent increased the demand/consumption of Gas, and consequently, the consumption went up from 4000 CUM per day to 28,000 CUM with the result that the transportation charges also slab wise increased from Rs. 26,650/- per month to Rs. 2,03,837/- per month. By the 5th agreement, the consumption of Gas was however decreased from 28,000 CUM per day to 21,000 CUM per day and the transportation charges were also accordingly brought down to Rs. 49,896/- per month i.e., the same charges as payable vide Agreement dated 24.5.1994 when it was agreed to supply 21,000 CUM per day. Here it may

be noted that higher transportation charges are required for greater quantities because in such case there is higher cost to petitioner for maintaining higher pressure for transportation at different points in the pipeline.

3. The respondent however, resorted to over drawl of Gas, than as fixed under the Agreement dated 10.2.1999. This fact is an undisputed and admitted in the arbitration proceedings. The issue which therefore arose was whether the respondent is liable to pay transportation charges for over drawing in excess of 25,000 CUM per day or is it merely liable to pay transportation charges at the contractual rate of Rs. 49,896/- per month for only at the contractual quantity of 21,000 CUM per day.

4. The Arbitrator by the impugned Award has allowed additional transportation charges from 1st March, 1999 to 31st December, 1999 i.e. a period of 10 months totalling to Rs. 5,08,330.20. This would come to only Rs. 50,833/- per month, although the contractual rate for 28000 M3 per day was Rs. 2,03,837/- per month.

5. In my opinion, the Award is absolutely illegal and perverse. Once there is a breach of contract by the respondent in over drawing Gas, the respondent was bound to compensate the petitioner in proportion to the cost of transportation of higher quantities of Gas. In any case, u/s 70 of the Contract Act, 1872 a person who receives the benefit of a non-gratuitous act has also to compensate the person on from whom the benefit has been received. Transportation charges therefore have to be paid by the respondent to the petitioner in terms of the actual drawl of Gas in excess of 25000 M3 and not the transportation charges for the lesser contracted quantity of 21,000 M3. The transportation charges cannot be for the contracted quantity because the contracted quantity is 21,000 CUM per day whereas the actual drawl is admittedly in excess of 25,000 CUM per day. No doubt, the Arbitrator is not bound by the strict rules of the Evidence Act, 1872 as per Section 19 of Arbitration and Conciliation Act, however, it is not permissible for the Arbitrator to act wholly irrationally and unreasonably. As already stated if we divide the figure of Rs. 5,08,033/- by a figure of 10, inasmuch as the aforesaid payment of 5,08,033/- has been awarded for 10 months, the monthly charges will come to only Rs. 50,833/- per month. The evidence to determine the amount payable for transportation of Gas in the slab of 21000 M3 to 28000 M3 was however available to the Arbitrator and the Arbitrator is not permitted to ignore the admitted facts so as to arrive at a totally arbitrary figure. The evidence is the Agreement dated 11.6.1996, which shows that when the supply of Gas was 28,000 CUM per day, then transportation charges were fixed at Rs. 2,03,837/- per month. A reference to the earlier Agreements also show that the payment for transportation for Gas is slab wise and there is a geometrical progression of increase of transportation charges and it is not an arithmetical progression. The slab of supply for transportation is the same between 21,000 M3 to 28,000 M3 per day. We therefore have to take the figure of Rs. 2,03,837 (payable under Agreement dated 11.6.1996) because

charges for supply of 25,000 CUM per day would come to the figure of charges payable for the slab of supply of gas between 21,000 CUM per day to 28,000 CUM per day. Since the admitted evidence in the form of the Supplementary Agreement dated 11.6.1996 was before the Arbitrator, the transportation charges should have been atleast Rs. 2,03,837 per month considering that those were the charges in 1996 and the disputed period in the present case is from March, 1999 to December 1999 and which evidence has been illegally ignored by the Arbitrator making the Award perverse which shocks the judicial conscience. Accordingly, I hold that instead of Rs. 50,08,33/- per month as awarded by the Arbitrator, the petitioner was entitled to charges of Rs. 2,03,837/- per month.

6. The counsel for the petitioner had also sought to contend that the Arbitrator and the Directors of the respondent were common directors in a company known as Asian Hotels Ltd., however, in view of my findings above, I need not go into this aspect because nothing will turn upon the same.

7. u/s 34 of the Arbitration and Conciliation Act, 1996, once the Award is perverse and against the provisions of the law of the land, a court is entitled to, and in fact duty bound to interfere with the Award. In this regard the following judgments are relevant which are as under:

In ONGC Ltd. Vs. Garware Shipping Corpn. Ltd., the Supreme Court has laid down in paragraph 30 of the judgment that there is no such provision that Courts have to be slow in interfering with the Arbitrator's Award even if the conclusions are perverse and the very basis of the Award is wrong. In The Security Printing and Minting Corporation of India Limited and Another Vs. Gandhi Industrial Corporation, it has been held by the Supreme Court that even though the courts are slow in interfering with the Award it does not mean that if the Award is perverse the Courts are powerless to interfere in the matter.

In the present case, the Award is wholly violative of the provisions of Sections 70 and 73 of the Contract Act, 1872 because it ignores the admitted breach. The Award is wholly perverse which shocks the judicial conscience because the Arbitrator has ignored the evidence in the form of the admitted Supplementary Agreement showing a slab for payment from 21,000 to 28,000 CUM per day at Rs. 2,03,837 per month. The present is therefore a fit case for interfering and setting aside the Award.

8. Accordingly, objections to the impugned Award dated 17.2.2003 are accepted and it is held that the petitioner herein is entitled to the transportation charges from 1.3.1999 to 31.12.1999 at the rate of Rs. 2,03,837/- per month. With the aforesaid observations, the objection petition is allowed to the extent as stated above. Since the respondent has not appeared, the petition is disposed of leaving the parties to bear their own costs.