
(2013) 01 BOM CK 0167
In the Bombay High Court
Case No : Arbitration Petition No. 835 of 2012

Hindustan Petroleum Corporation Ltd.	APPELLANT
Vs	
Associated Constructions	RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2013) 01 BOM CK 0167

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Minoo Siodia assisted with Mr. Kaushik Naresh Singh and Ms. Jenita Lele instructed by Rustamji and Ginwala, for the Appellant; Rafeeq Permoideen a/w Ms. Anshula Grover instructed by y M/s. Vidhii Partners, for the Respondent

Judgement

Anoop V. Mohta, J.—The Petitioner has challenged impugned award dated 9 April 2012, u/s 34 of the Arbitration and Conciliation Act, 1996 (for short, the Arbitration Act), whereby the learned Arbitrator has passed the award in the following terms:-

OPERATIVE PART OF AWARD:-

Accordingly the abstract of Award is as under:-

INTEREST AWARDED

I. On Amount of Part A @ 10% from 1 November 1996 till the date of Award.

II. Post Award Interest shall be payable on total Amount of Award inclusive of interest at (I) above as per Arbitration and Conciliation Act, 1996 from date of Award till date of actual payment.

COST

Considering the circumstances leading to and during Arbitration Proceedings, parties are directed to bear their own cost.

In nutshell, the Petitioner's case is as under:-

On 25 May 1991, the Respondent submitted bid for filling and site grading works for new ATF Hydrant System at Santacruz. On 22. August 1991, a purchase order issued for total value of Rs. 27.66 lakhs. The completion period of 16 weeks was from 1 September 1991 i.e. 21 December 1991. The Respondent alleged to have abandoned the work some time in May 1992.

On 24 June 1992, the contract was terminated and the claim was made on 17 July 1996 without joint measurements i.e. after about 4 years. On 8 October 1997, the Respondent invoked arbitration when the final payment was made on 25 July 1992 i.e. after about 5 years. On 3 January 1997, the Petitioners reiterated that they have made all payments for the work executed as per joint measurements on 25 July 1992.

On 26 November 2011 the sole Arbitrator was appointed. On 12 August 2009 the arguments on plea of limitation took place. On 2 October 2010 by rejecting the plea of limitation without any reason and requested to proceed with claims.

2. The case was fixed on 3 December 2010; the claimant-Respondent argued the matter but the matter could not be heard fully as alleged. There is nothing to oppose the averments made by the Petitioner and the submission so raised that the hearing was not given on 3 December 2012; the matter was closed thereafter for order without any date. Admittedly, on 9 April 2012 after more than 1 1/2 years, the learned Arbitrator has passed the award by dealing with the claim, as well as, the counter-claim of the parties.

3. Without going further into the merits of the matter and after considering the submission so raised by the learned counsel appearing for the Petitioner referring to the chronology and dates of events as noted above, I am inclined to remand the matter in the interest of justice. This Court, after considering the submission so raised by order dated 21 August 2012 directed the learned Arbitrator who is not party to the proceedings to file the record of the proceedings. There is no dispute that the Arbitrator has provided the copies of the documents to the Petitioners. Both the parties have gone through the same and so also the Court. The written statement/reply filed by the Petitioner-original Respondent is not available in the record of the Arbitrator. The learned counsel has pointed out that the copy of the reply is served to the Respondent. The copy of the Respondent may be the copy which the Petitioner-original Claimant might have served before filing. The learned Arbitrator has passed the award on merits based upon the material on record. Admittedly no oral evidence was led by the parties.

4. The basic requirement of Arbitration proceeding is equal and fair opportunity to the parties. In view of admitted position on record, I am inclined to observe that all these basic principles are not considered before passing the final award. The reason so given in any way deal and/or cover the facet of delay in passing the impugned award; and the reason or no details provided about the hearing given to the Petitioner on 3 December 2012 and/or at any point of time

thereafter.

5. Section 34 of the Arbitration Act, as already observed, empowered the court to remand the matter if the case is made out. In this case on the above grounds itself and in the interest of justice, matter needs to be remanded for a fresh hearing on all points. There is no question of starting the Arbitration afresh as it would delay the further proceedings and/or affect rights of the parties. However, based upon the same material available on record, the Arbitral Tribunal, after giving opportunity to both the parties, re-hear the matter and dispose of the same as expeditiously as possible. The learned Arbitrator has given reasons on merits of the claim, as well as, the counter claim as recorded above, without hearing and/or giving necessary opportunity to the Petitioners. The liberty is granted to the parties to apply for appropriate relief and/or direction including filing of additional documents, if any.

6. This is one of those cases where the learned Arbitrator failed to maintain the complete record and proceeded, therefore, the Court u/s 34 has no choice but to accept the contention so raised by the learned counsel appearing for the Petitioner with regard to the breach of principle of natural justice, fair-play and equity. The other side has also for want of clear arbitration proceedings, unable to oppose the submissions. The proper recording of the minutes in the Arbitration proceedings therefore, is required to be maintained to avoid such situation; it is very important aspect/factor of Arbitration proceedings to avoid further delay and/or complications in the matter. Resultantly, the following order:-

- a) The impugned award dated 9 April 2012, is quashed and set aside.
- b) The matter is remanded for fresh hearing on all points.
- c) The learned Arbitrator to re-consider the matter afresh after giving opportunity to both the parties and dispose of the matter as expeditiously as possible.
- d) All points are kept open.
- e) The Petition is accordingly disposed of.
- f) There shall be no order as to costs.