

(2000) 04 BOM CK 0031
In the Bombay High Court
Case No : Arbitration Petition No. 46 of 2000

Laxmi Mathur

APPELLANT

Vs

The Chief General Manager, MTNL, Mumbai

RESPONDENT

Date of Decision : 17-04-2000

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 13, 16, 34(1), 34(2)

Citation : (2000) 4 BomCR 89 : (2000) 3 BOMLR 344 : (2000) 3 MhLj 841

Hon'ble Judges : Vijay Daga, J

Bench : Single Bench

Advocate : Hemant Dandekar, for the Appellant; S.R. Rajguru, for the Respondent

Judgement

Vijay Daga, J.—The petition is directed against an award dated 3-11-1999 delivered by the Arbitrator Shri Sunil K. Garg, Deputy General Manager, Mahanagar Telephone Nigam Ltd., Mumbai, who had been appointed as sole Arbitrator as per order of this Court dated 12-2-1999 in Arbitration Petition No. 430 of 1998 to decide the dispute between the parties, arising out of the an agreement dated 24-10-1995.

2. The question sought to be canvassed before me is that the impugned award passed by the learned Arbitrator, referred to hereinabove is not legal and valid as the Arbitrator has recorded findings and failed to appreciate the facts and circumstances brought on record of the arbitration proceeding. In the submissions of the petitioner, the impugned award is therefore, liable to be set aside in exercise of the powers u/s 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act for short).

3. In the light of the above submissions, the question which arises for my consideration is an to whether the impugned award needs to be set aside u/s 34 of the Act ?

4. It would be most appropriate at this stage to take note of the facts resulting in

the dispute between the parties. The petitioner is a contractor carrying on labour work of trenching, cable laying, pulling of cables through Ducts etc. The respondents have awarded its underground cable laying work to the petitioner under an agreement dated 24-10-1995. After completion of the work awarded to the petitioner by the respondents, dispute arose between the parties relating to the extra work done by the petitioner, which led to the appointment of arbitrator.

5. The petitioner filed his statement of claims before the Arbitrator claiming an amount in the sum of Rs. 3,94,461.62. The said claims, set up by the petitioner, were resisted by the respondents by filling their reply to the statement of claims.

6. The main issues fell for consideration were as under:

(i) Whether the petitioner was entitled to charge de-water cleaning of manhole charges for more than one time? In other words, whether he was entitled to claim charges as per actual number of time the cleaning has been performed?

(ii) Whether the rates specified in the contract were to be charged as per the actual work performed by the petitioner?

(iii) Whether the petitioner was entitled to prepare the bill as per the entry entered in the measurement book?

The learned Arbitrator after hearing parties to the dispute delivered his award and directed the respondents to pay difference in the amount relating to Bill Nos. 374 and 375 within 3 weeks from the date of receipt of the award.

7. The petitioner not being satisfied with the aforesaid small relief awarded in the award preferred the present petition and invoked powers of this Court u/s 34 of the Act to get the said award set aside.

8. Let us examine the powers of the Court u/s 34 of the Act. Section 34(1) of the Act provides that arbitral award may be set aside by the Court on application for setting aside the same being made on any grounds specified in the sub-section (2) and within the time prescribed. Sub-section 2(a) thereof further provides that party making such application shall furnish proof to the Court in support of such application. The Court is entitled to set aside the award only, if grounds mentioned in sub-section (2) of section 34 read with grounds stated in section 13 and section 16 of the Act are proved to its satisfaction by the party making application for setting aside the award and too if satisfy the Court that the allegations are true. The onus to prove that the grounds as per sub-sections (2) of sections 34 of the Act exists and that award is liable to be set aside, lies on the party making application.

9. Arbitral award is not invalid merely because on the basis of some inferences and some arguments it may be alleged that Arbitral Tribunal has committed some mistake in arriving at its conclusion on merits of the dispute referred to it for adjudication.

10. When the Court is called upon to decide the objections raised by a party

against the arbitral award, the jurisdiction of the Court is limited, as expressly indicated in section 34 of the Act and it has no jurisdictions to sit in appeal and to examine the correctness of the award on merits with reference to the material produced before the Arbitral Tribunal. The Court cannot sit in appeal over the views of the Arbitral Tribunal by re-examining and reappreciating the material.

11. Once the aforesaid parameters to challenge the arbitral award are fixed then in that event, one has to turn to the challenges set up in the petition to challenge the arbitral award. If one turns to the present petition; challenges to the award are mainly set out on the following two grounds:

(i) The Arbitrator was bias against petitioner while rejecting his bona fide claims and has drawn his own inconsistent conclusions while recording findings.

(ii) The Arbitrator has failed to appreciate the oral and documentary evidence brought on record in the arbitral proceedings.

12. The arbitral award is not open to challenge on the ground that the Arbitral Tribunal has reached to a wrong conclusion or has failed to appreciate the facts and evidence. It is well settled that the parties constitute the Arbitral Tribunal as the sole and final Judge of the disputes arising between them and they bind themselves as a rule to accept the arbitral award as final and conclusive. The arbitral award is not liable to be set aside on the ground that either on facts or in-law it is erroneous. In the aforesaid backdrop of the challenges set out in the petition to challenge the arbitral award are outside the scope of section 34 of the Act. Therefore, it is not possible to set aside the award on any of the grounds set out in the petition.

In the result, petition is devoid of any substance and the same is, therefore, dismissed in limine with no order as to costs.

13. Petition dismissed.