
(2006) 03 DEL CK 0171
In the Delhi High Court
Case No : OMP No. 322 of 2003

Mahanagar Telephone Nigam Limited	APPELLANT
Vs	
Jason Links (India) Pvt. Ltd. and Another	RESPONDENT

Date of Decision : 29-03-2006

Acts Referred:

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

Citation : (2006) 03 DEL CK 0171

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Ravi Sikri, for the Appellant; S.P. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The parties have placed on record the award of the Arbitrator dated 26.3.2002.

2. The petitioner, MTNL has filed the present petition u/s 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act) aggrieved by the award of Shri Bipin Chand, Superintending Engineer, CPWD. The Arbitrator was appointed in pursuance to order dated 31.8.1999 in OMP No. 130/1995.

3. A reading of the grounds set out by the petitioner show that the petitioner seeks from this Court what is impermissible within the parameters of Section 34 of the said Act. The grounds are really like an appeal for an original decree requiring this Court to analyze whether the Arbitrator has correctly appreciated the evidence on record. This is certainly not the scope of jurisdiction of this Court.

4. An award is liable to be interfered with u/s 34 of the said Act only if one of the conditions provided for under Sub-Section 2 of Section 34 of the said Act as enunciated by the Apex Court in Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., is satisfied.

5. Learned counsel for the petitioner contends that the award is opposed to

public policy and is contrary to substantive provisions of law.

6. In my considered view the allegation of an award being made which is opposed to public policy cannot be used as a mantra and it must be pointed out as to what part of the award is contrary to the provisions of law so as to liable to be opposed to public policy. The allegations in the grounds are that the Arbitrator has failed to appreciate the evidence or that the respondent has failed to lead cogent evidence, whether testing has been properly done or not, whether there was true appreciation of material on record, whether the respondent was responsible for the prolongation of the Contract, whether the delays have been wrongly attributed to the petitioner and so on. These allegations have only been reproduced illustratively in the absence of any material plea under Sub-Section 2 of Section 34 of the said Act.

7. Learned counsel for the petitioner also contends that claim No.8 has been allowed on account of payments of statutory increases by the Government merely on newspaper reports. The Arbitrator while considering this claim has relied upon the admission of the petitioner that escalation under Clause 70 read with Price Adjustment Formula is payable and is being paid to the respondent. The contract price was firm up to a period of 20 months beyond which the formula was required to be applied. The petitioner during the proceedings had promised to the Arbitrator that this figure would be worked out and intimated to the respondent and Arbitrator but failed to do so.

8. In view of the aforesaid position, the Arbitrator considered the fact that the work had been done to the tune of Rs.38.73 lakh in the period beyond 20 months. Since there was absence of co-efficient as applicable for working out escalation under Contract, the Arbitrator deemed it appropriate to assess such escalation at 5 per cent of the total quantum of work done for the period beyond 20 months up to the date of completion. The application of this 5 per cent formula cannot be said to be opposed to public policy so as to fall within the mischief of Sub-Section 2 of Section 34 of the said Act specially when the petitioner failed to produce relevant material despite assurance.

9. Learned counsel for the petitioner contends by reference to claim No.23 that interest has been awarded on the higher side at 12 per cent simple interest and the date from which the interest is commenced is also not correctly taken. I am unable to persuade myself to agree with the submission as simple interest @ 12 per cent can hardly be said to be on the higher side specially for the relevant period. The interest has been awarded w.e.f 23.3.1991 on the basis that the recorded date of completion is 23.9.1990 and a six month period should suffice for finalising of accounts of the respondents. If the petitioner today is being burdened with the total interest amounting to even more than the principal amount, the petitioner must blame itself for such a situation having failed to settle the bonafide claim of the respondent within time and having chosen to contest the matter without due appreciation of the fact that when such claim would be awarded, the respondent would be liable to be compensated with

interest on such amount.

10. I find no merit in the objections.

11. Dismissed.