

(2013) 08 DEL CK 0291
In the Delhi High Court
Case No : FAO (OS) 366 of 2013

M/s. National Highways Authority of India	APPELLANT
Vs	
M/s. Gammon-Atlanta (JV)	RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Act, 1996 — Section 62

Citation : (2013) 4 ARBLR 61

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : Ravi Gupta, Ms. Tanu Priya and Ms. Meenakshi Sood, for the Appellant; Amit George, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.

Caveat No. 691/2013

Learned counsel for the caveator has put in appearance. Accordingly caveat stands discharged.

CM No. 12395/2013 (exemption)

Allowed, subject to all just exceptions.

Application stands disposed off.

FAO(OS) No. 366/2013 & CM Nos. 12393/2013 (for stay), 12394/2013 (for condonation of delay)

1. The present appeal has been filed against the judgment/order of the learned Single Judge dated 17th July, 2012, rejecting the present appellant's (NHAI's) objections u/s 34 of the Arbitration and Conciliation Act, 1996. The Award dated

20th February, 2012 in this case is pursuant to the invitation of bids and in respect of a contract of 20th December, 2000 (Contract Package No. OR-1) relating to the work of the widening to 4/6 lanes and strengthening of existing two-lane carriage way of NH-5 in Orissa. The NHAI had challenged the Award alleging that the respondent's claim Nos. 1, 2, 3, 5, 6 and 8 were unmerited and ought to have rejected.

2. It is contended by Mr. Ravi Gupta, learned Senior Counsel for the appellant that the Single Judge fell into an error in not interfering with the direction in the Award to refund the liquidated damages amounting to Rs. 6,53,29,160/- with interest. It is further contended that if the respondent/claimant had any grievance with regard to the extension of time and the condition for charging of liquidated damages, it was free to withdraw from the contract at that stage but having applied and accepted the extension plan it could not complain about the levy of the compensation/damages.

3. This Court notices that the learned Single Judge had while relying upon the judgment, i.e. National Highways Authority of India vs. M/s. GS Engineering and Construction Corporation, decided by a Division Bench in FAO(OS) No. 562/2011, held that the question of law of extension of time was a pure question of fact, which ought not to be interfered with u/s 34. This Court is bound by precedent; there is no ground to differ from the previous rulings of the Division Bench.

4. So far as the challenge to the Award of 10% with interest is concerned, the Court notices that the Award had relied upon expressed terms of contract between the parties, i.e. Clause 60.8 read with Appendix to Bid (COPA) page 25 of BD-1, part 1 to the Claimant from the respondent, both pendente lite and on future Claim Nos. 1, 2, 3 & 6. The Court also does not find it substantial and reasonable to interfere with the Award of 10% compound interest in the said amount.

5. The next question sought to be urged on behalf of the NHAI was the claim No. 2, i.e. recovery of Rs. 3,30,225/- plus interest from NHAI on account of building and payment made to the Construction Workers' Welfare Cess. Learned counsel has endeavoured to rely upon the decision of a Division Bench of this Court in Delhi Metro Rail Corporation Limited Vs. Simplex Infrastructures Limited, to suggest that the Act had in fact come into force on 1st March, 1996 and the Rules had come into effect sometime in the year 1998. It is, therefore, submitted that this burden had to be borne by the contractor by virtue of Delhi Metro Rail Corporation Ltd. vs. Simplex Infrastructures Ltd. (supra). It was, therefore, urged that this amount could not have been awarded to the respondent. Mr. Amit George, counsel for the claimant/respondent, who is present on caveat, argues that the Arbitral Tribunal's decisions as well as that of the learned Single Judge in the impugned order, cannot be interfered with and cites a subsequent judgment of the Supreme Court reported as Dewan Chand Builders and Contractors Vs. Union of India (UOI) and Others, wherein inter alia it was held as follows:

18. Although both the statutes were enacted in 1996, the Central Government in exercise of its powers u/s 62 of the BOCW Act notified the Delhi Building and Other Construction Workers" (Regulation of Employment and Conditions of Service) Rules, 2002 (for short "the Delhi Rules") vide Notification No. DLC/CLA/BCW/01/19 dated 10.1.2002. Accordingly, the Government of NCT of Delhi constituted the Delhi Building and Other Construction Workers" Welfare Board vide Notification No. DLC/CLA/BCW/02/596 dated (sic).9.2002. Thus, the Cess Act and the Cess Rules are operative in the whole of NCT of Delhi w.e.f. January, 2002.

6. It is evident from a reading of Simplex Infrastructures Limited (supra) that the Division Bench was of the opinion that the burden had to be borne by the contractors to make payment in the funds since the enactments and rules had come into force in 1998. However, in respect of identical facts and work contract, the Supreme Court, by a decision in Dewan Chand Builders & Contractors (supra) held that the enactments came into force when rules in question were notified in Delhi i.e. in January, 2002. In the present case, the bids were made in 2000 and the notification in question was issued in 2008. Consequently, the interpretation based upon Clause 10.8 in the instant case by the Arbitral Tribunal cannot be faulted. The appellant's arguments on this scope are rejected.

7. So far as the other claims are concerned, the Court notices that the impugned judgment had relied upon previous rulings of the Division Bench of this Court in M/s. National Highways Authority of India vs. M/s. PCL Suncon (JV), which this Court finds no reason to differ from. Likewise there is no inherent or cogent unreasonableness in the findings of the learned Single Judge as regards the other claims i.e. No. 3, 5 and 6, all of which have rejected the objection which is put up as a challenge to the Award. In view of the above discussion, the appeal and pending applications are unmerited and are, therefore, dismissed.