
(2014) 09 DEL CK 0404
In the Delhi High Court
Case No : OMP No. 1113/2014

MTNL

APPELLANT

Vs

Ralhan Construction Company

RESPONDENT

Date of Decision : 30-09-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 28, 31(7), 34, 34(2)

Citation : (2014) 09 DEL CK 0404

Hon'ble Judges : Deepa Sharma, J

Bench : Single Bench

Advocate : Neha Bhatnagar, Advocates for the Appellant

Judgement

Deepa Sharma, J.—Vide this petition, the petitioner has challenged the award dated 21.05.2014 passed by the sole Arbitrator. The facts of the case are that the petitioner-MTNL had floated a tender inviting bids for construction of telephone exchange building at M-Block, Sarita Vihar, New Delhi for an estimated cost of Rs. 3,56,82,251.00/-. On 22.06.2007, the respondent tendered their bids and the tender was awarded to respondent for a negotiated amount of Rs. 5,31,88,852.12 on 26.06.2007. In its letter dated 18.07.2007, the respondent had informed the petitioner that the service tax at that time was 2% which was payable to the Government. This fact was again reiterated by the respondent in its letter dated 10.10.2007. The validity of the tender was extended on 20.10.2007. On 27.11.2007, the respondent submitted Performance Guarantee and entered into a formal agreement and from 07.12.2007 the execution of the work was allowed which was to be completed within 12 months. The agreement to this effect was signed on 07.12.2007 and the date of completion was 06.12.2008. The respondent raised certain disputes which were ultimately referred to the learned Arbitrator. The learned Arbitrator gave its award. It is submitted that the findings of the learned Arbitrator on the claim Nos. 1,3,4,8 and 10 are wrong because the learned Arbitrator has not correctly interpreted the various clauses of the agreement. The petitioner has challenged the findings

of the learned Arbitrator on the said following claims:-

Claim No. 1 Whether the claimant is entitled for reimbursement for the amount of service tax being paid by agency beyond 2% to 4%.

Claim No. 3: Whether the claimant is entitled for reimbursement for the payment on account of increased difference of labour wages paid extra as per increased minimum wages during execution.

Claim No. 4: Whether the claimant is entitled for reimbursement for the payment on account of less payment made in the agreement item No. 7(a) Sub-Head 3 R.C.C.C. M-25 instead of M-20 for deviated quantities.

Claim No. 8: Whether the claimant is entitled for reimbursement for the payment on account of interest @ 16% on since due amount and service tax due up to 18 R/A bill:

Claim No. 10 Whether the claimant is entitled for reimbursement for the payment in respect of following items when the quantity deviated beyond the deviation limit of the agreement.

(a) "Sub-Head 3, item No. 2(b) i.e. Centering and shuttering in walls:

Rs. 8,689.10 (original) Rs. No Change (revised)

(b) Sub-Head 3, item No. 3 i.e. Extra for additional height in centering;

Rs. 45,698.71 (original) Rs. No change (revised)

(c) Sub-Head 9, item No. 3(a) i.e. 6 mm thick cement plaster 1:3:

Rs. 7,393.54 (original) Rs. No change (revised)

(d) Sub-Head 10, item No. 12(a) i.e. Wall painting and plastic emulsion:

Rs. 7,380.50 (original) Rs. No change (revised)

(e) Sub-Head 15, item No. 2(a) i.e., providing and fixing G.I. Pipe 50 mm:

Rs. 202.41 (original) Rs. No change (revised) "

2. The sole ground for challenge to the findings of the learned Arbitration is that the learned Arbitrator has not correctly interpreted the clauses of the agreement and has used the wrong clauses while giving its finding that the respondent was entitled for reimbursement of the service tax which was paid by him at the rate of 4%; that he was also entitled for the escalation/increase in the minimum wages of the labour and that the learned Arbitrator has reached to a wrong conclusion while holding that the agreement rate should be paid for the deviated quantity.

3. At the onset, let me examine, the extent of challenge available to petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act").

4. It is a well-settled principle of law that an award can be challenged only on the grounds enumerated in Section 34 of the Arbitration and Conciliation Act. It is also a settled principle of law that while considering the challenge of an award under Section 34, the Court does not sit in appeal and determine whether the learned Arbitrator has reached to a correct finding or not.

5. This Court in the case of National Highways Authority of India Vs. Oriental Structural Engineers Pvt. Ltd.-Gammon India Ltd. (JV), has held that the words in Section 34(2) that "An arbitral award may be set aside by the court only if" are imperative and take away the jurisdiction of the court to set aside an award on any ground other than those specified in the Section.

In P.R. Shah, Shares and Stock Broker (P) Ltd. Vs. B.H.H. Securities (P) Ltd. and Others, , the Apex Court has held as under:

"A court does not sit in appeal over the award of an arbitral tribunal by re-assessing or re-appreciating the evidence. An award can be challenged only under the grounds mentioned in section 34(2) of the Act Therefore, in the absence of any ground under section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at."

6. The Division Bench of this Court in its recent judgment of Delhi Development Authority Vs. Bhardwaj Brothers, , has held as under:-

"of course the said judgment being under the Arbitration Act, 1940 proceeds to hold that an award is bad on the ground of error of law on the face of it. However the legislature while re- enacting the arbitration law has removed the ground of challenge of error of law on the face of the award. In Mc. Dermott International Inc. (supra) also it was held that the parties to the Arbitration Agreement make a conscious decision to exclude the Courts jurisdiction as they prefer the expediency and finality offered by arbitration. We are bound to respect the said change brought about by the legislature and cannot dogmatically review the awards on the grounds of challenge which have been intentionally taken away by the legislature."

This Court in Bhardwaj Brothers (supra) has further held as under:-

"14. Arbitration will not survive, much less flourish, if this core precept is not followed through by the Courts. The integrity and efficacy of arbitration as a parallel dispute resolution system will be subverted if the Courts appear unable or unwilling to restrain themselves from entering into the merits of every arbitral decision that comes before it. The power to intervene must and should only be exercised charily, within the framework of the Arbitration Act. Minimal curial intervention is underpinned by need to recognise the autonomy of the arbitral process by encouraging finality, so that its advantage as an efficient alternative dispute resolution process is not undermined. The parties having opted for arbitration, must be taken to have acknowledged and accepted the attendant risks of having only a very limited right of recourse to the Courts. It would be

neither appropriate nor consonant for the Court to lend assistance to a dissatisfied party by exercising appellate function over arbitral awards, save to the extent statutorily permitted."

Keeping in view this established principle of law, it is apparent that minimal intervention on the part of the Court under Section 34 is expected.

7. In the case of Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., , the Supreme Court has clearly held that award can only be set aside under Section 34 if it is against the public policy, meaning thereby that it is patently illegal and the illegality goes to the root of the award. If the illegality is of trivial nature, the Court should refrain from interfering such an award.

8. From the contentions raised by the petitioner, it is apparent that the challenge to the award is solely on the basis that the learned Arbitrator has reached to a wrong conclusion. The perusal of the award clearly shows that the learned Arbitrator has elaborately discussed all the contentions of the parties and has also referred to the relevant clauses of the agreement binding the parties and has also observed the precedents being followed by parties. The award, therefore, is not based on any conjectures or surmises, but is based on the terms of agreement binding both the parties. The petitioner has also failed to point out that any finding of the learned Arbitrator is contrary to the terms of agreement or the relevant clauses governing the contract/agreement of the parties. The award is well-reasoned. Each and every contention has been taken into consideration. No bias has been attributed to the Arbitrator.

9. In the present case it is not disputed that the respondent was entitled for refund of service tax at the rate, however, whether he was entitled for the refund at the rate of 2% or 4% is the question dealt with by the learned Arbitrator in its finding for claim No. 1 and the learned counsel has failed to point out any illegality in the findings which shakes the conscience of the Court or opposed to the public policy or goes to the root of the matter. As regards claim of respondent regarding reimbursement of the payment made on account of increase/difference of labour wages paid on increase in the minimum wages is concerned, again findings on this claim of the respondent are well-reasoned, supported by the clauses of the agreement and there is nothing on record to show that the findings are patently illegal. Moreover, it is the duty of the employer to pay minimum wages to its employees and this, under the clauses mentioned in the findings by the learned Arbitrator, was refundable to the contractor by the petitioner. Therefore, there is no illegality in the finding.

10. As regards the claim of the respondent regarding reimbursement for the payment on account of less payment made in the agreement, item No. 7(a) Sub-Head 3 R.C.C.C. M-25 instead of M-20 for deviated quantity is concerned, again the findings of the learned Arbitrator are well-reasoned and based on the clauses of the agreement governing the parties and ultimately the findings also show that the Arbitrator has only awarded the agreement rate to the respondent.

Again, the learned counsel for the petitioner has failed to point out any illegality in the findings which can be said to go to the root of the matter.

11. As regards the claim of the respondent for grant of interest is concerned, it is apparent that the Arbitrator is empowered under Section 31(7) of the Act to award interest and, therefore, it cannot be said that the findings suffer from any illegality. As regards the claim of the respondent regarding reimbursement for payment in respect of certain articles shown as (a) to (e) on page 10 of the award is concerned, it is apparent that the learned Arbitrator has ordered the payment as per the agreement rate and, therefore, there is apparently no illegality in the findings of the learned Arbitrator.

12. It is a reasoned award. There is no violation of Section 28 of the Act. Also, there is no procedural violation. All the contentions raised before this Court while challenging the award, are the same which were the ground of challenge to the claims of respondents and all the contentions have been dealt with by the Arbitrator in detail. The petitioner is re-agitating the same contentions before this Court. This shows that the petitioner wants this Court to sit in appeal and to judge that the findings of Arbitrator on all these contentions of facts which includes interpretation of terms of contract is wrong. This certainly is not the scope of Section 34 of the Act.

13. This Court in National Highways Authority of India Vs. ITD Cementation India Ltd., has clearly observed that simply because the interpretation placed by the arbitrators has not favored one or the other party can be no reason for the Court to interfere under Section 34 of the Act. It is also a settled principle of law that the interpretation of a contract is a matter for the Arbitrator and the Court cannot substitute its decision on such interpretation. (Reliance placed on Sudarsan Trading Co. Vs. Government of Kerala and Another, .

For the reasons discussed above, the petition has no merit and is dismissed in limine.