(1993) 05 DEL CK 0073

In the Delhi High Court

Case No : Regular First (OS) Appeal No. 31 of 1979

Rashtriya Metal Industries APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 28-05-1993

Acts Referred:

Citation : (1993) 3 AD 343 : (1993) 2 BC 323 : (1993) 51 DLT 417

Hon'ble Judges : C.L. Choudhary, J;Arun Madan, J

Bench : Division Bench

Advocate : A.K. Dutta, for the Appellant;

Judgement

Arun Madan, J.

(1) This appeal is directed against the Judgment of the learned Single Judge dated 29/03/1979 whereby the suit of the plaintiff was partly decreed.

(2) The learned Single Judge after carefully examining the rival contentions of the parties and issues involved did not allow the claim of the plaintiff with regard to first item i.e. alleged deduction by respondent/defendant No. 2 vide amendment letter dated 11-6-1968 amounting to rs. 31,716.00, while the learned Single Judge decreed the suit of the plaintiff with regard to other two items as claimed in the plaint which were to the following effect as stated in paragraph 17 of the plaint :

BALANCE due on account of difference in the price of Antimony. Rs. 10,175.19 5% value relating to the supply of 228,31Kilograms Antifriction Bearing Alloy under R/R No. 960668 dated 5/6-9-1968and Inspection Note No. NI/1928/ NF-19(Part) dated 24-8-1966. Rs. 3,303.99Interest @ 6% per annum on Rs. 54.195.18Pfor 31 months I.e., from 1-6-1969 to31-12-1971. Rs. 7,005.22

(3) The Union of India in its written statement admitted the execution of the agreement/contract No. SR-5/5042/148-A/11/7112 dated 3-3-1965marked as Ex. P-8, which was duly entered and acted upon between the parties .In its

written statement, the respondent however, denied its liability to pay any of the four amounts totalling Rs. 52,200.40.

(4) On the pleadings of the parties, the following issues were framed by the learned Single Judge :-

1. Whether the plaintiff is entitled to recover the sum of Rs. 45,195.18p. on account of the items alleged in para 17 of the plaint ? OPP2. If issue No. 1 is found in favor of the plaintiff whether the plaintiffs entitled to any interest on the said amount ? If so at what rate and for what period ? OPP3. Relief.

(5) With regard to issue No. 1 which included three items of the claim i.e. Rs. 31,716.00, Rs. 10,175.19 and Rs. 303.99, the main contest between the parties was with respect to first item of the claim i.e. Rs. 31,716.00.The plaintiff contended that the contract between the parties was for supply of 264 M/Tons of Antifriction Bearing Alloy Ingot grade 5 of I.S. 25/61for Rs. 6,98,240.00 F.O.R. Bombay. It was further contended before the learned Single Judge that there was a firm price contract and that price could not be altered on account of any change in the price of the raw materials utilised for manufacture of the alloy. With regard to this contention, the learned Single Judge opined that the said contention of the plaintiff was not supported by the terms of the contract, and Therefore, disallowed the same on the ground that the price variation could be on account of new levies ,fluctuation in statutory rules of foreign exchange etc.

(6) The parties did not dispute that four elements, namely, Tin, Copper ,Lead and Antimony were to be used for the manufacture of the alloy .The parties further did Rot dispute that the said components required for the manufacture of alloy had to be imported and in this regard the plaintiff/appellant was to be assisted by the defendant/respondent in obtaining the necessary import license and the foreign exchange for importing the aforesaid three components. The parties did not dispute that Antimony although an imported item was to be purchased by the plaintiff/appellant from an Indian Seller, namely, M/s. Star Metals Refinery (P) Ltd.

(7) The tender was submitted by the appellant with the respondent-Union of India for 603.4 M/Tons whereas the Respondent confined and accepted the offer for 264 M/Tons only and in lieu there of issued an advance acceptance on 12/2/1965 which confirmed on 3-3-1965.Thus the duly concluded contract came into existence between the parties.

(8) The appellant provided the respondent with the required percentage of each of the four components as referred to above for preparing the alloy .The appellant also quoted the then prevailing c.i.f. value of each component .It was also settled between the parties that any fluctuations in the c.i.f. value would be to the buyer''s account. The appellant, however, did not agree to Clause 6 of D.G.S & D Form 100-C, Ex. D-8, which reads as under:-Clause 6 :

"TRANSIT Insurance The purchaser will not pay separately for transit insurance and the supplier will be responsible till the entire stores contracted for service in good condition at destination. The consignee will, as soon as possible but not later than 30days of the date of arrival of stores at destination, notify the contractor of any loss or damage to the stores that may have occurred during transit.Tenders /quotations in which transit insurance cost has been claimed as an extra may not be considered."

(9) The other terms and conditions of the tender/quotations are not relevant to be referred here since there is no dispute between the parties with regard to the same.

(10) Immediately on the supply of the alloy by the plaintiff, work analysis of the samples was made by the respondent and it was discovered that the finished alloy contained 5.09% Tin. 0.54% Copper, 14.84% Antimony and 79-53% Lead. On this basis 264 M/Tons of finished alloy containing23.4576 M/Tons of Tin, 1.4256 M/Tons of Copper, 39.1776 M/Tons of Antimony and 209.9592 M/Tons of Lead was prepared. During the course of hearing, the learned Counsel for the appellant had canvassed before us that the findings of the learned Single Judge sustaining the plea of the respondent/defendant for deduction of Rs. 31.716.00 and negativing the claim of the appellant/plaintiff was not justified. It was further contended by the learned Counsel for the appellant that the learned Single Judge construed Note 2 of Clause 20 of the Agreement/Contract which was with regard toc.i.f. price indication subject to fluctuation to the buyer''s account till shipments against license received were finally affected. It was further contended by the learned Counsel for the appellant that the learned Single Judge erred in not carefully analysing Clause 20 Note 2 of the agreement harmoniously with the other terms of the contract. We have carefully considered the contentions raised on behalf of the appellant. We have not been able to persuade ourselves to accept these contentions.

(11) The learned Single Judge has rightly observed that it is the admitted case of the parties that for the import of Tin, Copper and Lead as per c.i.f. value shown in the tender/quotation the import price of the afore-same quantities would total amount to Rs. 6,05,241.00. As against this the actual c.i.f. cost of the aforesaid three components as borne by the appellant was Rs. 5,73,465.00. This clearly shows that there was a fluctuation in C.I.F.value and it was reduced by Rs. 31,7l6.00 than expected. This finding of the learned Single Judge is supported by Note-2, Clause 20 of the contract/agreement wherein the respondents/ defendants claimed reduction in the f.o.rBombay price, Note-2 Clause 20 of the contract/agreement reads as under :-

"THEC.I.F. price indication is subject to fluctuation to buyer''s account till shipment against license received are finally effected."

(11) Thus the C.I.F. value was indicated by the appellant in the tender itself. It will be relevant to mention here that in view of advance acceptance of tender notified vide DGS&D letter No. SR-5/5042/148-A/11/7112 dated 12-2-1965,

special instructions were issued by the respondents of which Clause 19(b) is relevant for the sake of reference, the operative part of it, reads as under : -

"TO enable you to import the goods expeditiously in supply against the contract, an Import Recommendation Certificate is being issued separately .It must be clearly understood that this assistance is purely on ex-gratia basis and Government do not undertake to grant an import license and this assistance rendered to you will not in any way effect the prices and delivery terms of the Contract and is without prejudice to the rights of Government under terms of the contract "

(13) By Clause 20(2) and (3), the respondents further clarified the position with regard to the c.i.f. price as under :-

CLAUSE20(2) & (3)(2) The c.i.f. price indication is subject to fluctuation to buyer''s account till shipment against licenses received are finally effected.(3) Any new levies on the import of raw material and/or finished alloy any increase in existing levies only fluctuation in statutory rates of foreign exchange are to buyer''s account and this is also applicable in case of imports of raw materials for replenishment "

(14) The above instructions formed part and parcel of the schedule to acceptance of tender and on behalf of the respondents these were issued by the Assistant, Director (Supplies) for and on behalf of the President of India on 2-3-1965. The said schedule was duly communicated to the appellant and the appellant did not protest the same during the period of the contract.

(15) The learned Single Judge had examined the matter carefully and had taken into consideration all the relevant documents placed on the record. We find no infirmity in the reasoning given by the learned Single Judge. The learned Single Judge had arrived at a right conclusion which to our mind is justified and for interference. We affirm the findings of the learned Single Judge ,dismiss the appeal. It is relevant to mention here that despite the fact that the appeal remained on the cause list of regular matters for a number of days but none appeared on behalf. of the Union of India. In view of these circumstances we do not want to burden the appellant with costs. We direct the parties to bear their own costs.

