
(2015) 05 MP CK 0042
In the Madhya Pradesh High Court
Case No : AA-37-2011

R.B. Singh

APPELLANT

Vs

Vindhyachal Super Power Thermal Project

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 34(2)(a), 34(2)(b)(ii), 37

Citation : (2015) 05 MP CK 0042

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Alok Aradhe, J.—In this appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (in short "the Act") the appellants have assailed the validity of the order dated 2.9.2011 passed by the trial Court by which the objections preferred by the appellant under Section 34 of the Act have been rejected. In order to appreciate the petitioners' challenge to the impugned order few facts need mention which are stated infra.

2. The appellants were awarded a contract by the respondent for construction of sewerage and drainage system in National Thermal Power Corporation Colony, Vindhya Nagar on 15.5.1985. Admittedly, the agreement executed between the parties contains an arbitration clause which provides that the General Manager of the respondent shall be the sole arbitrator to adjudicate the dispute between the parties arising of or under the agreement. The arbitrator passed the award on 30.10.1992 and sent the same for making it the rule of Court. The appellant thereafter submitted objections. The objections preferred by the appellants were rejected by the trial Court vide order dated 15.5.1998 inter alia on the ground that the same have been preferred beyond the period of limitation. "The trial Court directed that the award dated 30.10.1992 be made the rule of court and a sum of Rs. 1,99,320 be paid to the appellants. Being aggrieved by the aforesaid order, the appellants preferred M.A. No. 1072/1998 which was decided by

Division Bench of this Court vide order dated 8.12.2005 and it was inter alia held that the objections preferred by the appellants were within limitation and the trial Court was directed to decide the objections preferred by the appellants.

3. The appellants had preferred the following objections before the trial Court:

- (i) The dispute between the parties was not adjudicated by the arbitrator as per the general terms and conditions of the contract and as per GCC and DSR Rules;
- (ii) the mode of measurement of work was not correct;
- (iii) the additional work was not properly measured;
- (iv) the payment of idle charges to the tune of Rs. 5,70,000/- was wrongly not awarded in favour of the appellants;
- (v) on account of delay in payment of bills, the appellants suffered loss of Rs. 1 Lac and they are entitled to receive the same;
- (vi) the appellants suffered loss of Rs. 5 Lacs on account of delay in allotment of site;
- (vii) the escalation price was not included in the amount which was awarded to the appellants and the appellants are entitled to receive the escalation loss at the rate of 12.5% along with interest.
- (viii) the appellant was entitled to security amount.

4. The trial Court vide order dated 2.9.2011 inter alia held that from perusal of the award it is evident that the claim of the appellants has been adjudicated and in respect of claim numbers 1 and 2, the amount of Rs. 1,36,789/- and Rs. 62,531.43/-, respectively, has been granted. It was further held that the objections preferred by the appellant do not fall within the purview of Section 34 of the Act and accordingly, the same were rejected.

5. Learned counsel for the appellants submitted that the trial Court grossly erred in rejecting the objections preferred by the appellants and it has not passed a speaking order. It is further submitted that the trial Court ought to have appreciated that proper mode of measurement of work performed by the petitioner has not been adopted by the respondent.

6. I have considered the submissions made by learned counsel for the parties and have perused the record. The Supreme Court in *McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others*, (2006) 2 ARBLR 498 : (2007) 3 CompLJ 213 : (2006) 11 JT 376 : (2006) 6 SCALE 220 : (2006) 11 SCC 181 : (2006) 2 SCR 409 Supp while taking note of the decision rendered by it in *Renusagar Power Co. Ltd. Vs. General Electric Co.*, AIR 1994 SC 860 : (1994) 2 ARBLR 405 : (1994) 81 CompCas 171 : (1993) 4 SCALE 44 : (1994) 1 SCC 644 Supp : (1993) 3 SCR 22 Supp held that an arbitral award can be set aside if it is contrary to fundamental policy of Indian law; the interests of India; or justice or morality. However, subsequently, in the case of *Oil and Natural Gas Corporation*

Ltd. Vs. SAW Pipes Ltd., AIR 2003 SC 2629 : (2003) 2 ARBLR 5 : (2003) 3 CompLJ 1 : (2003) 4 JT 171 : (2003) 4 SCALE 92 : (2003) 5 SCC 705 : (2003) 44 SCL 89 : (2003) 3 SCR 691 : (2003) 2 UJ 1035 , the Supreme Court added another ground for exercise of courts" jurisdiction for setting aside the award i.e. if it is patently arbitrary. In Centrotrade Minerals and Metal Inc. Vs. Hindustan Copper Limited, (2006) 3 ARBLR 201 : (2006) 5 JT 507 : (2006) 5 SCALE 535 : (2006) 11 SCC 245 : (2006) 2 SCR 146 Supp it was held by the Supreme Court that if an award suffers from patent illegality which goes to the root of the matter, the court can interfere with the award passed by the arbitrator. Thereafter in a recent decision in the case of Associate Builders Vs. Delhi Development Authority, (2015) 124 CLA 318 : (2015) 1 SCJ 42 , the Supreme Court after taking note of various previous judgments rendered by it with regard to scope of interference with the arbitral award held that none of the grounds contained in Section 34(2)(a) of the Act deals with the merits of the decision rendered by an arbitrator. It is only when the award is in conflict with the public policy of India as prescribed in Section 34(2)(b)(ii) of the Act that the merits of an arbitral award are to be looked into under certain specified circumstances. It was further held that the Court would interfere with an award passed by an arbitrator if it is in violation of statute, interest of India, justice or morality, patent illegality, contravention of the Act or terms of the contract. It was also held that the court hearing an appeal does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus, an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.

7. In the backdrop of the aforesaid well settled legal principles, the facts of the case may be seen. The objections raised by the appellants with regard to award, as have been reproduced in the preceding paragraph, do not fall under any of the categories which are mentioned by the Supreme Court to enable the Court to interfere with the award passed by an arbitrator. From perusal of the award, it is evident that each and every claim of the appellants has been adjudicated by the arbitrator and the arbitrator has assigned reasons while dealing with each of the claims of the appellant. This Court cannot sit in appeal over the award passed by the arbitrator. The objections raised by the appellants does not fall under the purview of Section 34 of the Act. The order passed by the trial Court rejecting the objections preferred by the appellants does not suffer from any infirmity or illegality warranting interference by this Court in exercise of appellate jurisdiction.

8. For the aforementioned reasons, I do not find any merit in this appeal. The same fails and is hereby dismissed.