(2010) 03 DEL CK 0004

In the Delhi High Court

Case No : O.M.P. 44 of 2003

State Trading Corporation (India) Ltd. — APPELLANT

Vs

Khushi Ram Behari Lal and Another — RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 30, 33, 34, 34(2)

Citation : (2010) 03 DEL CK 0004

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Rakesh Tiku, for the Appellant; Shekhar Vyas, Jeevesh Mehta and Arun Pathak, for the Respondent

Judgement

Manmohan, J.—Present petition has been filed u/s 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Act, 1996") challenging the Arbitral Award dated 06th June, 2002 read with the order dated 07th September, 2002.

2. Briefly stated the facts of the present case are that on 01st February, 1995, a contract was executed between the petitioner-objector and Ministry of Food, Government of Bangladesh whereunder petitioner-objector agreed to supply/ export 25,000 metric tonnes plus/minus 5% Indian Non-Basmati Par Boiled rice.

3. On 21st February, 1995, a domestic contract was executed between petitioner-objector and respondent-claimant for taking delivery, loading, unloading, storing and rebagging of rice. In pursuance to the said contract dated 21st February, 1995, respondent-claimant took various steps and incurred expenditure under various heads.

4. However, the main agreement between petitioner-objector and Bangladesh Government got frustrated due to non-adherence to the time schedule by the petitioner-objector for the supply of rice. Since in the meantime, disputes arose between the parties, respondent-claimant invoked the arbitration clause in the

domestic agreement.

5. In the arbitration, respondent-claimant claimed reimbursement of expenses on account of transportation, storage, insurance, bank charges as well as wages paid to labourers. The Arbitral Tribunal after hearing the parties at length, passed the impugned Award as well as the order dated 07th September, 2002.

6. Mr. Rakesh Tiku, learned Counsel for petitioner-objector submits that the impugned Award is bad in law insofar as it awards Claim Nos. 1 and 2. He submits that the said claims were awarded purely on guess work. He points out that the petitioner-objector was willing to pay the respondent-claimant a sum of Rs. 1,75,944/- against the said claims. He further points out that Arbitral Tribunal has awarded under Claim No. 3 an average of respondent-claimant''s claim and the amount which petitioner-objector was ready to pay to petitioner-objector. He submits that the same was impermissible in law.

7. Mr. Tiku further submits that the rate of interest awarded by the Arbitral Tribunal is usurious and is contrary to law inasmuch as interest on interest has been awarded.

8. Having heard the parties, I am of the view that the scope of interference by this Court with an arbitral award u/s 34(2) of Act, 1996 is extremely limited. Supreme Court in Delhi Development Authority Vs. R.S. Sharma and Co., New Delhi, after referring to a catena of judgments including Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., has held that an arbitral award is open to interference by a court u/s 34(2) of the Act, 1996 if it is contrary to either the substantive provisions of law or the contractual provisions and/or is opposed to public policy.

9. In fact, the Supreme Court in McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others, has succinctly summed up the scope of interference by this Court by stating "the 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc...."

10. In the present case, the claims ultimately awarded by the Arbitral Tribunal were initially agreed to be partly paid by the petitioner-objector itself. A chart indicating the claims raised by the respondent-claimant and the amount agreed to be paid by petitioner-objector as well as the amount ultimately awarded under the arbitral Award are reproduced hereinbelow:

-- Issue Amount Amount Amount Claimed by Accepted by Awarded by the Claimant STC Arbitrators

-- Issue No. 2 Claim Rs. 17,85,875/- Rs. 1,75,944/- Rs. 8 lacs No.5-7 relate to labour and wages paid to them

--- Issue No. 3 Rs. 8,19,458/- Rs. 7,14,971/- Rs. 7,67,215/- Transportation charges --- Issue No. 4 relate to Rs. 9,53,870/- Rs. 9,53,870/- Rs. 9,53,870/- storage charges --- Issue No. 5 Misc. Rs. 3,72,882/- Rs. 1,58,527/- Rs. 2 lacs Expenses --- Issue No. 7 & 9 Rs. 73,591/- and Rs. 73,591/- Rs. 73,591/- Insurance Charges Rs. 2,13,238 Rs. 2,13,238/- & Bank Charges --- Issue No. 8 Relate to The claimants STC also Arbitrators Claim of Interest claimed interest claimed have awarded @ 14% for pre- @24% in 14% interest for reference and their counter pre-reference 24% towards claim period and for interest interest pendentelite pendentelite and future and future interest @18%.

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11. From the aforesaid chart, it is apparent that respondent-claimant''s claims were neither frivolous nor baseless as petitioner-objector had found substance in them and had agreed to pay some amount under most of the claims. In fact, from a perusal of the chart, it is apparent that petitioner-objector had agreed to pay a sum of Rs. 22,90,141/-, whereas the Arbitral Tribunal has awarded a sum of Rs. 30,07,914/- along with pre-reference, interest pendente lite as well as post award and future interest. Moreover, on perusal of the impugned Award, I find that Arbitral Tribunal has given cogent reasons for award of amounts against the said claims. For instance, the reasoning with regard to Claim Nos. 1 and 2 is reproduced hereinbelow:

36. Though we reject the case of the claimants as sought to be established before us about the visits of their representatives to various stations of Punjab as also about despatch of labour from Delhi to Kandla, we must find that the claimants did involve themselves in the inspection and sampling of rice in the second week of February 1995 and that they did engage some labour in handling the cargo at Kandla during the period 4th March, 1995 onwards.

37. Taking an over all view of the evidence before us in the course of the arbitration proceedings, we are inclined to record our conclusions as under:

i) The claimants, in the company of surveyors of Bangladesh Government did visit the godowns of FCI at various stations in Punjab for selection and sampling of rice lying in such godowns and that this exercise had been undertaken some time during the week commencing on 8th February, 1995.

ii) No representative of the claimants was involved in arranging railway wagon or loading of rice at Ferozepur since it was the obligation of FCI alone and otherwise also because the claimants who were to be delivered the rice cargo only from the FCI godowns at Gandhi Dham had no locus-standi to handle the cargo in any manner at Ferozepur.

iii) No labourer or other person as alleged by the claimants, much less 485 labourers, were sent by the claimants from Delhi to Kandla by railway.

iv) The claimants did engage enough labour at Kandla to handle the rice cargo delivered to them by the FCI from time to time with effect from 4th March, 1995.

38. The claimants did incur some expense in connection with their visits to the FCI godowns at various stations of Punjab as also on deployment of labour at Kandla for handling the total rice cargo of above 15000 MT of rice out of which 11852.697 MT was transported to various godowns arranged at Gandhi Dham for storage thereof, as also on the requisite supervisory staff. The exact amount of such expenses, however, has not been made available to us for obvious reasons.

39. In such circumstances, it would be unfair to disallow such expenses. We must therefore, rely on a guess work. Taking into consideration all the pros and cons of the case, we would fix the expenses covered by these issues as Rs. eight lacs.

12. It is further settled law that there is bound to be some estimation even in reasoned awards. In this connection, I may refer to the observation of this Court in following judgments:

A) Kochhar Construction Works Vs. Delhi Development Authority and Another, 118 wherein this Court has held as under:

13.7. It is evident from the foregoing that while it may not be necessary to give the actual calculations but the reasons must disclose the thought process indicating nexus between the material on record and the conclusions arrived at. However there is bound to be some estimation even in cases of reasoned award based on the experience and qualification of the Arbitrator especially the technically qualified Arbitrators....

B) Bhai Sardar Singh & Sons v. Delhi Development Authority reported in 102 (2003) DLT 33 wherein this Court held as under:

9. The law is well-settled that the Courts while considering objections against an Award under Sections 30 and 33 of the Act do not exercise appellate jurisdiction so as to re-appreciate and re-assess the evidence and material on record. The Courts must not substitute their own view in place of the view taken by the Arbitrator unless the view taken by the Arbitrator is found to be wholly capricious. In State of Rajasthan Vs. Puri Construction Co. Ltd. and Another, , and Indu Engineering and Textiles Ltd. Vs. Delhi Development Authority, , the Apex Court in no uncertain terms held that the Court''s endeavour should be to preserve the Awards as far as possible and a close scrutiny of the findings of the Arbitrator is not permissible. It was held that even in a case of misconstruction or misappreciation of the material on record, the award may not be interfered with. In Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar and Another,

also the Apex Court held that the Arbitrator is the sole Judge of the quality as well as quantity of evidence and even where the Court feels that it could have arrived at a different conclusion on the basis of the evidence on record, it should not disturb the findings of an Arbitrator. In Kochhar Construction Works Vs. Delhi Development Authority and Another, (Delhi), it was held that Courts should not unnecessarily try to find faults with the Award and it was not necessary for the Arbitrator to give detailed reasons or conclusions in support of his conclusions. It was also held that some estimation was also bound to be there based on the experience and qualifications of an Arbitrator if he is a technical man.

13. Consequently, in my opinion, the principal amount determined by the Arbitral Tribunal cannot be said to be speculative or without any foundation.

14. As far as the issue of rate of interest is concerned, Mr. Shekhar Vyas, learned Counsel for respondent-claimant has left it to be determined by this Court.

15. Keeping in view the prevalent rate of interest as well as the judgments of the Supreme Court in State of Haryana and Others Vs. S.L. Arora and Company, and Krishna Bhagya Jala Nigam Ltd. Vs. G. Harischandra Reddy and Another, I reduce the rate of interest for all the periods i.e. pre-reference, pendente lite, post award and future interest to uniform simple interest at the rate of 9% per annum on the principal awarded sum. However, it is made clear that in case, the awarded sum is not paid within a period of three months from today, petitioner-objector would be liable to pay simple interest @ 18% per annum on the principal awarded sum. With the aforesaid observations, present objection petition is disposed of but with no order as to costs.

