
(2002) 06 JH CK 0012
In the Jharkhand High Court
Case No : M.A. No. 162 of 2000 (R)

Steel Authority of India Ltd.	Vs	APPELLANT
Rungta Project Ltd.		RESPONDENT

Date of Decision : 26-06-2002

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 37

Citation : (2002) 06 JH CK 0012

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : P.K. Sinha and Rajeev Ranjan, for the Appellant; N.K. Prasad and V.K. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Gurusharan Sharma, J.—This appeal has been filed u/s 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"), challenging impugned judgment dated 8.6.2002 passed by First Subordinate Judge, Bokaro at Chas, in Title (Arbitration) Suit No. 7 of 1998, whereby petition u/s 34 of the Act to set aside award dated 10.4.1998 has been rejected.

2. Pursuant to open tender-notice dated 18.9.1993 for handling and removal of sludge from Sludge Compartment No. 2 of Bokaro Steel Plant, M/s. Rungta Project Limited, Ranch!, submitted its tender quotation on 16.10.1993, which was accepted by letter of intent dated 18.12.1993, Exhibit 3 for a total price of Rs. 4,81,60,000/-and thereafter work order. Exhibit 5 was issued on 16.2.1994, which was accepted by the tenderer by their letter dated 10.5.1994. In clause No. 16 of the work order it was mentioned that contract price will remain firm during contract period except labour and diesel price escalation. Thereafter on 7.4.1994 agreement, Exhibit 6 was executed by both parties.

3. The work was completed on 23.6.1996. After seven months of completion of work, M/s. Bokaro Steel Plant intimated the contractor that inclusion of

escalation clause in the work order was a mistake and as such the same was withdrawn on 20.1.1997. Exhibit 14 as per clause 13 of the Special Conditions of Contract, Exhibit 6.

4. On receipt of letter dated 20.1.1997 the contractor in terms of Clause 18.2 of the General Condition of Contract, Exhibit 7 appointed an arbitrator on 22.4.1997, M/s. Bokaro Steel Plant also appointed arbitrator on 19.5.1997. Both arbitrators appointed a presiding arbitrator. Board of arbitrator, started functioning from 19.6.1997. They found that action in deleting vital portion of clause 16 of Exhibit 5 was unilateral, without giving any opportunity to the Contractor of being heard and as such was not justified and contractor's claim was justified. On the basis of work order containing aforesaid escalation clause of sum of Rs. 23,19,542/- for escalation in price of diesel and Rs. 18,92,769/- for increase in the rate of wages as per Government Notification, Exhibit 11 was found payable to the Contractor besides interest and costs of arbitration. By award dated 10.4.1998 M/s. Bokaro Steel Plant was directed to pay a sum of Rs. 63,51,087/- to M/s. Rungta Project Limited. The Steel Authority of India/Bokaro Steel Plant filed application u/s 34 of the Act to set aside the award. Main objection to the award was that clause No. 9 of special condition of contract provides that no claim on account of idle labour and material incurred by contractor for any reason whatsoever, can be entertained. It was mentioned therein that all documents, namely. Agreement, Form of tender. Invitation of tender. Instruction of tenderers. General Condition of Contract, Special condition of contract, Letter of intent shall form part of contract. Work order does not form part of contract in the said clause. The words "except labour and diesel price escalation" was inadvertently added in clause 16 of the work order, which was never the intention of parties. Taking into consideration clause 9 of Special Condition of Contract the contractor had quoted its rates. When the said mistake came to notice. Company issued letter dated 20.1.1997 deleting said exception clause from the work order. The Contractor acted in accordance with the said escalation clause so far as price of diesel is concerned from the very beginning till conclusion of work and it was only when contractor claimed escalation of wages, after completion of work. Company came out with a baseless plea that in the work order aforesaid mistake had occurred. In the agreement entered into between the parties work order was clearly made part of contract. According to Clause 1.1.14 of the General Condition of contract letter of intent or work order means an intimation by a letter to tenderer that tender has been accepted in accordance with the provisions contained in the letter. Dispute arose when the Company denied benefit of escalation clause to the contractor. It is not disputed that work order was part of contract and the Board of Arbitrators on consideration of entire evidence brought on record found that work was started by Contractor on 16.2.1994 and was completed on 23.6.1996, i.e., within the stipulated period of three years. Last bill, Exhibit 18/8 was made after more than four years of completion of work. The amount payable to the Contractor was withheld without any justification from 23.7.1996 to 17.10.1997. The action of

Company in deleting clause 15 was unjustified. The Board of Arbitrators granted interest @ 18% per annum on the withheld amount of Rs. 29,48,886.25 paise from 23.7.1996 to 17.1.1997 as well as on Rs. 23,19,042/- diesel escalation price and Rs. 18,92,769/- escalation of wages from 23.7.1996 to 31.3.1998.

5. According to company due to bonafide mistake of the office of Bokaro Steel Plant escalation of clause 16 in the work order was incorporated. The Board of Arbitrators found that stand of Company that there was bonqfide mistake in incorporating the escalation clause had no base in view of sanction for the same already given by Managing Director, who had recorded it in the concerned file on 15.12.1993. In the award it was observed "that in order to examine the matter widely, in the ends of justice the Arbitrators expressed desire to peruse the relevant file which gave rise to clause 16 of the work order (Ext. 5). The tile was claimed confidential by the respondent, but agreed to make available the file only for the purpose of perusal by the Arbitrators. The file have been looked into by the Arbitrators and I have no hesitation in saying that clause 16 can not be either a case of connivance, or clerical mistake or bonafide mistake. It is because the processing has been done at the level of high officials. It has approved by the Internal Audit and ultimately it has got the approval of the Managing Director.

6. In the faces and circumstances of the case and in view of observations/ findings of Board of Arbitrators in the impugned award, the Court below considered and found that on the basis of clause 16 company allowed escalation of diesel price right from first bill to eighth bill. The company failed to show that the arbitral award in question dealt with a dispute not contemplated by or not falling within the terms of reference to arbitration. The Board of Arbitrators was free to interpret the contract and the award can not be challenged on the ground that Arbitral tribunal acted contrary to the provisions of the contract.

7. It is well settled that u/s 34(2)(a)(iv) of thee Act, an arbitral award can be set aside by Court if the award dealt with a dispute not contemplated by or not falling within the terms of the submission to arbitrator or if it contains a decision on matters beyond the scope of the submission to arbitration. In this regard reference may be made to a decision of Apex Court in Olympus Superstructures Pvt. Ltd. Vs. Meena Vijay Khetan and Others, wherein scope of Court's interference with an arbitral award u/s 34 of the Act was dealt with in detail and was held that interference is permissible by Court only if (i) the subject matter of the dispute is non-capable of settlement by arbitration under the law for the time being in force, or (ii) the arbitral amount is in conflict with the public policy in India. The explanation of the provisions says that without prejudice to the generality of Sub-clause (ii) of Clause (b), it is declared for the avoidance of any doubt, that an award is to be created as in conflict with the public policy of India if the making of the award was induced or affected by fraud, or corruption or was in violation of Section 75 or 81. Section 75 deals with confidentiality while Section 81 deals with admissibility of evidence in other proceedings. It was clarified in the said decision that under the 1996 Act scope for setting aside the

award is far less the same under Sections 30 or 33 of the Arbitration Act of 1940.

8. In the aforesaid circumstances, objection to the impugned award filed u/s 34 of the Act was rightly rejected by the Court below. I find no reason to interfere with the impugned award as well as judgment/order. There is no merit in the appeal. It is, dismissed accordingly.