

(2012) 10 BOM CK 0152
In the Bombay High Court
Case No : Arbitration Petition No. 366 of 2009

Union of India

APPELLANT

Vs

A.K. Construction Co. and Shri A.P. Joshi, Arbitrator

RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2012) 10 BOM CK 0152

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : G. Hariharan instructed by Mr. Pankaj Kapoor, for the Appellant; Ajit S. Karwande, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—The Petitioner/Union of India has challenged the Award u/s 34 of the Arbitration and Conciliation Act, 1996 (for short, Arbitration Act) basically Claim Nos. 4, 69 only. There is no specific challenge to the other claims. The Respondent/contractor has not challenged the rest of the Award. The basic submissions of the learned counsel for the Petitioner revolve around Clause 12 of the Central Conditions of Contract for Central P.W.D. Works, 2008 which permits in case of deviation of extra items and substituted items, pricing part to be adjudicated by the concerned Engineer. This itself means, there is no bar that in case of deviation and/or substitution, the contractor, subject to the decision by the concerned Authority is entitled to claim for extra items. Admittedly, there was deviation in the work referring to design also. The decision so given by the Engineer, so far as the work as liable and the deviated and/or directed to be completed. There is no dispute that the contractor completed the work as directed from time to time. The time was extended for about 4 years. There was no restricted terms and/or conditions for such extension.

2. The learned Arbitrator, therefore, considering the nature of various civil and construction work and as there arose dispute between the parties, granted the

claims which are under challenge.

3. So far as Claim No. 4 is concerned, which are towards the balance of payment that substituted items and for extra items of work, there is no serious dispute with regard to the material placed on record in support of the claim. The learned Arbitrator, therefore, in view of above by giving sufficient reason and also by recording the fact that the work was done as per the direction, awarded the claim at the rate of 980 per square meter as for similarly placed contractor, the work in adjacent building, during the same period, the Department accepted and made the payment accordingly.

4. So far as the claim No. 6 is concerned, based upon the statement of claim and the material placed on record and after considering the rival contention of the Petitioner again by noting that there was no denial to the extra work done by the contractor, granted the claim as prayed. The reason so given in this regard also is well within the frame work of law and the record and needs no interference.

5. So far as claim No. 9 is concerned, the claim was made by the Respondent/ contractor for more than Rs. 38 lacs with losses suffered into various defaults including prolongation of Respondent's overhead tools and plants and direct labour. The learned Arbitrator, however, in view of the admitted position on record that the contract was extended without any restricted terms and conditions awarded only Rs. 3,36,029/- towards prolonging of overhead. The reason so given in view of the admitted position and even considering the provisions of the law and referring to the judgments of Bombay High Court as well as Supreme Court cannot be stated to be perverse, contrary to the record.

6. The Arbitrator, though interest was claimed at the rate of 21% per annum, awarded only 8% per annum on the with effect from 20.11.2006 which is the date of demand for the substituted and extra items of the work including the prolongation of overheads. I see there is no case made out in this background to interfere with the impugned award. Resultantly, as the Award is well within the frame work of law and there is no perversity, no case is made out to interfere with the impugned Award. The Petition is accordingly dismissed. There shall be no order as to costs.