
(2019) 02 GAU CK 0048
In the Gauhati High Court
Case No : Arb.A. 7 Of 2009

Union Of India

APPELLANT

Vs

Arunoday Construction P Ltd

RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 34

Citation : (2019) 02 GAU CK 0048

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : A. Barkataki, G. Rahul

Final Decision : Partly Allowed

Judgement

Suman Shyam, J

1. Heard Mr. A. Barkataki, learned counsel for the appellant. I have also heard Mr. G. Rahul, learned counsel appearing for the respondent.

2. The judgement and order dated 29/01/2008 passed by the learned District Judge, Kamrup (Metro) at Guwahati in Misc. (Arb) Case No. 29/2005, whereby the arbitral award dated 06/10/2005 had been set aside and the claim of the respondent/claimant has been awarded by the learned District Judge, is under challenge in the present proceeding.

3. The facts of the case, as apparent on the face of the record, are that on 25/07/1989, a contract agreement was executed by and between the appellant and the respondent for manufacture and supply of 2,50,000 nos. of Monoblock Concrete Sleepers, required for the purpose of conversion of Guwahati - Dibrugarh Meter Gauge to Broad Gauge line. It appears that during the course of execution of the contract, a decision was taken by the Railway authorities to change the nature and scope of the work and the respondent was asked to supply B.G. Mono Block Concrete Sleepers only instead of MG Sleepers. Accordingly, there was a re-negotiation of the rates between the parties,

pursuant whereeto, the respondent had made an offer revising the rates, which was allegedly accepted by the N.F. Railway Authority. Thereafter, a final agreement dated 19/12/1994 was executed by and between the parties for manufacture and supply of 90,000 B.G. Mono Block Concrete Sleepers @ Rs. 527/- per sleepers.

4. According to the respondent/claimant, Clause 12 of the contract agreement provide for price escalation of raw materials whereas the clause 13 deals with escalation of wages and, therefore, it was entitled to price escalation.

5. In the mean time, the Railway Board had informed the Zonal Railways that it had revised the norms for various inputs (materials, labour etc.) used in the manufacturing of concrete sleepers and accordingly, discussions were held between the N.F. railway and the respondent for re-negotiation of the revised offer. The respondent was thereafter directed to submit its revised offer based on the new norms proposed by the Railway Board. On 14/11/1995, the respondent submitted its revised offer agreeing to manufacture and supply of B.C. Mono Block Concrete Sleepers @ Rs. 615/- per sleeper but despite receipt of the offer, no decision in the matter was communicated by the Railway Authority for a period of more than a year, as a result of which, the respondent had withdrawn the offer.

6. On 02/04/1997, the Railway Board had fixed the rate per sleeper at Rs. 614.04, which according to the respondent /contractor, was in violation of the terms of the contract agreement. When the claim of the respondent for payment of a sum of Rs. 9,13,511/- being the amount claimed on account of escalation of price in connection with manufacturing and supply of B.G. Mono Block Sleepers was rejected by the Railway Authorities and since there was an arbitration agreement covering the dispute, a request was made to refer the dispute for adjudication by an Arbitral Tribunal. Accordingly, Hon'ble Mr. Justice D. N. Choudhury (retired) was appointed as the sole Arbitrator to enter into a reference with regard to the dispute.

7. The respondent as claimant had filed its claim whereas the appellant had filed its counter claim before the Sole Arbitrator. After considering the materials on record and on hearing the parties, the learned Sole Arbitrator had passed the award dated 06/10/2005 rejecting the claim of the respondent as well as the counter claim of the appellant.

8. Aggrieved thereby, the respondent/contractor had filed an application under Section 34 of the Arbitration and Conciliation Act, 1996, for setting aside the arbitral award which was allowed by the learned District Judge by the impugned judgement and order dated 29/01/2008.

9. As noted above, by the impugned judgement and order dated 29/01/2008, the learned District Judge had not only set aside the Arbitral Award dated 06/10/2005 but had also awarded the claim of the claimant/respondent. Therefore, the basic contention of the learned counsel for the appellant is to the

effect that even if the arbitral award is set aside, even in that case the learned District Judge, in exercise of power under Section 34 of the Act of 1996, did not have the jurisdiction to allow the claim of the respondent/claimant in the manner that has been done in the present case. Mr. Rahul has also not disputed the said contention of the appellant's counsel.

10. Taking note of the arguments of the learned counsel for both parties, this Court had made a query as to whether the parties would still be open to referring the dispute for adjudication afresh by an Arbitral Tribunal. In response to the said query, Mr. Barkataki has produced a copy of the written instruction dated 03/01/2019 issued by the Dy. CE/TR for General Manager (Works), NF Railway, which reads as follows :-

"Dear Sir,

In terms of GM (Law) /Maligaon letter cited under reference and discussion with you on 02/01/2-19, it is to inform that we have no objection, if the Hon'ble Court decides to redirect the matter to Hon'ble Sole Arbitrator [D.N. Choudhury, Justice (Retd.) of Gauhati High Court at Guwahati] for his reconsideration.

Further, it is also to inform that the matter may please be dealt with as deem fit for the greater interest of Railways.

Yours faithfully,

Sd/- Illegible (03/01/2019)

(Ravindra Kumar)

Dy. CE/TR

For General Manager (Works)".

Mr. Barkakati submits that his client would have no objection if the appeal is disposed of by setting aside the impugned judgement and order dated 29/01/2008 and granting leave to the parties to go for fresh arbitration with regard to the dispute involved in this proceeding.

11. Mr. G. Rahul, learned counsel for the respondent also submits on instruction that his client would have no objection if the appeal is disposed of by granting leave to both parties to go for fresh arbitration with regard to the dispute in question.

12. In view of the stand taken by the learned counsel for both parties, this Court is of the opinion that the question as to the legality and validity of the impugned judgement and order dated 29/01/2008, in so far as the same interferes with the arbitral award dated 06/10/2005, is concerned, need not be gone into in the present appeal. Since the parties have agreed to go for fresh arbitration with regard to their claim and counter claim touching upon the contract agreement in question, adjudication of the contentious issue pertaining to the validity of the arbitral award also need not detain this Court any further.

13. Coming to the other part of the impugned judgement and order dated 29/01/2008 whereby the learned Court below has awarded the claim of the respondent, I am of the view that such an order was impermissible in the eye of law. In exercise of jurisdiction under Section 34 of the Act of 1996, the learned District Judge had the power only to set aside the arbitral award on any of the grounds mentioned therein. However, section 34, does not confer any jurisdiction upon the District Judge to play the role of an Arbitrator and thereby enter into a reference with regard to the claims and counter claims of the parties nor does it authorize the learned Court to pass any award.

14. For the reasons stated above, the impugned order awarding the claim of the respondent is held to be illegal and therefore, stands set aside.

Parties would be at liberty to initiate fresh process for referring the dispute for settlement by means of Arbitration in accordance with the provision of the Act of 1996.

15. The appeal stands partly allowed.

Copy of the written instruction dated 03/01/2019 be retained on record.

There would be no order as to costs.

Send back the LCR.