

(1993) 02 DEL CK 0024

In the Delhi High Court

Case No : Suit No's. 520A and 929A of 1985 and Interim Application No. 3694 of 1985

Union of India

APPELLANT

Vs

Free India Dry Accumulators Ltd.

RESPONDENT

Date of Decision : 08-02-1993

Acts Referred:

Citation : (1993) 1 ARBLR 418 : (1993) 50 DLT 375 : (1993) 25 DRJ 354 : (1993) RLR 260

Hon'ble Judges : C.L. Choudhary, J

Bench : Single Bench

Advocate : Jyoti Singh and Rajesh Banati, for the Appellant;

Judgement

C.M. Nayar, J.

(1) This is a petition u/s 14 of the Arbitration Act, for directing respondent no.2 to file the Award along with the arbitration proceedings in this Court. Notice was issued to respondent no.2 to file his Award, as well as, the proceedings.

(2) The brief facts of the case are that the petitioner entered into a contract as per A/T No. ME-8/504/08/16t)-036/063-068-632/074/111/F1/921 datcd"31.8.1971 turn supply of 5,165 Nos. Lead Acid storage Cells, 200 Ah. and 12,090 Nos. of 300 Ah. The said contract contained an arbitration clause wherein it was provided that in case of any difference/ disputes arising between the parties under the contract, the same shall be referred to the sole arbitration of an officer of the Ministry of Law, to be appointed by the Director General of Supplies and Disposal.

(3) Certain disputes and differences, having arisen between the parties and on the respondent's moving an application u/s 20 of the Arbitration Act in this Court, an order was made to appoint the arbitrator under the terms and conditions of the contract. The respondent no.2 entered upon the reference and made the Award on 21st February, 1985.

(4) The Award was filed in Court. Petitioner has filed objections against the Award. Respondent no.1 filed reply to the objections. The following issues were framed on July 29, 1986

1. Whether the Award is liable to be set aside on the grounds alleged in the objections?

2. Relief.

(5) Learned counsel for the petitioner as well as for the respondent No. 1 have filed their respective affidavits by way of evidence. I have heard counsel for the petitioner as well as for the respondent.

(6) The claim of the respondent was in respect of increase in Excise duty and also in price. The learned Arbitrator referred to Clause 17-B of the Contract, which states that the price was "inclusive of Excise duty. The said clause may be reproduced as follows:

17(b) The price of the stores as given in the. Acceptance of Tender is subject to escalation clause turn lead and antimony and inclusive of Excise duty.

(7) The Arbitrator concluded that there was no clause stating that the price was firm and final. By amendment letter dated July 13, 1972, all increase in excise duty which takes place after the date of delivery, i.e. April 30, 1972, was not allowed to the respondent. The intention of the parties, according to him, was to allow the statutory increase that takes place within the original delivery period. Therefore, the claim for Rs.53,667.00 was allowed, as an increase in excise duty and the petitioner was directed to pay the same to the respondent.

(8) The counsel for the petitioner has contended that the contract does not provide any increase in the excise duty and the Arbitrator had no jurisdiction to modify the terms of the contract by granting relief to the respondent under this Head. The counsel for the respondent on the contrary, has vehemently argued that there is no infirmity in the findings of the Arbitrator and the statutory increase, in any case, has to be allowed on the basis of the provisions of Section 64-A of the Sale of Goods Act. He has also relied on the judgment of this Court in *Sramajibi Stores Vs. Union of India*, to support his contention that increase or decrease in Excise duty should be taken note of in the case of contracts concluded prior to the increase or decrease. It is further submitted that the Arbitrator has taken a particular view of the contract and the Court has no jurisdiction to substitute its own decision. In this context, he has referred to the judgment of the Hon'ble Supreme Court in *Sudarsan Trading Co. Vs. Government of Kerala and Another*, .

(9) The Arbitrator allowed the increase in Excise Duty on an overall interpretation of the provisions of Clause 17-B of the Contract. He has referred to the amendment letter dated July 13, 1972, wherein it has been mentioned that an increase in Excise Duty, which takes place after the date of delivery i.e. April 30, 1972 is not allowed to the contractor. In view of this, he has held that the

intention of the parties is to allow the statutory increase that takes place in the original delivery period. The Arbitrator, his, Therefore, appraised the evidence on record and has given the finding that the claim of the Contractor for increase in excise duty was justified and there is no infirmity and illegality in this finding. The judgment of this Court in *M/s Sramjibi Stores, Calcutta v. Union of India* (supra) further lays down that the purpose in enacting Section 64A of the Sale of Goods Act, is that increase or decrease in duty should be taken note of in the case of contracts concluded prior to the increase or decrease. There is also force in the contention of the counsel for the respondent that the arbitrator, in the present case, has interpreted the contract, by taking a particular view of the contract and it is not open for this Court to substitute its own decision. The law as laid down in *M/S Sudarsan Trading Co. vs. The Govt. of Kerala* and another (supra) supports this contention. Therefore, I do not find any illegality in the finding of the arbitrator in allowing the claim in respect of increase in Excise duty in favor of the respondent.

(10) The next claim relates to the price escalation of lead and antimony, in which the arbitrator has awarded an amount of Rs.2,34,930.75. The Arbitrator found, as of fact, that the contract was silent on the firms on whose price, the raw material prices are to be based. He has referred to letter dated January 7, 1974, (inadvertently mentioned as January 7, 1984 in the Award) of the contractor and "the reply of the Union of India dated February 26, 1974, wherein parties agreed to base its price on the price of Mmtc and Star Metal Refinery. The relevant paragraphs of letter dated January 7, 1974 reads as follows:

"WE confirm that it will be in order for you to finalise the aforesaid quarters basing on the Mmtc lead price and Star Metal price for the antimony even though our actual average purchase price of lead and antimony for the above quarters was much higher."

The relevant part of letter dated 26.2.1974 reads as follows: "Please refer to your letter under reference and intimate the M.M.T.C. & Star Metal Refinery prices for Lead and Antimony and your final prices based on them as you proposed to be finalised along with the full calculations covering the original delivery period of the A/T."

(11) A reading of the above two letters leave no manner of doubt that the petitioner at all times, agreed to base the prices of raw materials on the M.M.T.C. and Star Metal Refinery prices. The claim of the respondent was rightly allowed by the Arbitrator and there is no illegality in the same, which calls for interference in the present proceedings.

(12) The last point, which has been argued by the learned counsel for the petitioner is that the respondent having accepted full and final payment, was estopped to make any further claim. Reference is made in this regard to the communication dated September 11, 1973, wherein the respondent had stated that he had no other claim, what so ever, in connection with the subject contract,

except regularisation of delivery date. This letter is of no assistance as the balance payment of 5% was still withheld by the petitioner. Further-more, the petitioner had itself wrote a letter on a later date i.e. on February 26, 1974, making reference to the prices on the basis of M.M.T.C. and Star Metal Refinery. Therefore, there was no final settlement of the bill between the parties as on September 11-, 1973. The Authorities cited by Learned counsel for the petitioner in MI.-; Bansal construction Co. v. I.O.C. Limited 1992(4) Del Law 344 and Hindustan Steel Limited, Bhilai Vs. M/s Ramdayal Dau and Co., Durg, are accordingly of no assistance.

(13) The objections,being 1.A,No. 3694/85, filed by the petitioner are dismissed. The Award dated February 21, 1985 is made Rule of the Court and decree in terms of the same is passed. Award shall form part of the decree. The respondent shall also be entitled to interest at the rate of 12 per cent per annum from the date of the Award till realisation. No order as to costs.