(2018) 05 DEL CK 0421

In the Delhi High Court

Case No : FAO 183 OF 2016 & C.M.No.15366 OF 2016

UNION OF INDIA APPELLANT

Vs

RK JAIN RESPONDENT

Date of Decision : 29-05-2018

Acts Referred:

Citation : (2018) 05 DEL CK 0421

Hon'ble Judges : Najmi Waziri, J

Bench : Single Bench

Advocate : Geetanjali Mohan, Faiyaz Hasan

Final Decision : Dismissed

Judgement

It is the appellantâ??s case that the impugned order dated 23.01.2016 and the arbitral Award have erred insofar as the respondent had been awarded

an amount beyond the terms of the Contract. As per Clause 7.3 of the contract, the respondent-supplier of Elastic Rail Clip (ERC) was to be given a

difference in the MODVAT of steel, if it was more than the quantum of steel input in the MODVAT amount of Rs.2.74 which figure was allowed to

be retained by the respondent on the ERC at the time of awarding the Tender. The latter amount had been quoted by the respondent. The Clause 7.3

reads as under:-

The MODVAT benefits as available on the Inputs as on date of opening of tender, which has been indicated as Rs. 2.74 for each ERC Mk-III, will

be retained by supplier. Any variations in the benefits under MODVAT on steel rods used as raw material that accrues after the date of opening of

tender shall be to purchaser's account.

According to the appellant, what the aforesaid Clause envisages is that the respondent-supplier would be allowed a MODVAT benefit of Rs.2.74 for

each ERC, however, MODVAT on steel rods increased, then corresponding amount would be adjustable/payable to the supplier.

It is argued that the Award has erred in granting MODVAT amount on the ERC-the finished product, instead of only on the steel rod input. The

Award has dealt with the issue as under:-

â??29. There is specific provision in the contract for MODVAT benefits i.e Para 7.3 of the contract which is reproduced as under:-

â??The MODVAT benefits as available on the inputs on dale of opening of the tender, which has been indicted as Rs.2.74 for each ERC MK-III,

will be retained by the supplier. Any variations in the benefits under MODVAT on steel rods used as raw material that accrues after date of opening

of tender shall be to purchaser's account.

The perusal of the aforesaid para makes it clear that a sum of Rs.2.74 for each ERC MK-III has been fixed as MODVAT benefits which is to be

retained by the supplier i.e. firm/concern of the Claimant. Any downward and upward variation in MODVAT benefits will not affect the fixed amount

and any variation will be Respondent's account after date of opening of tender. It is also not in dispute between the parties that as per clause 3 of the

Indian Railway Standard Specification for Elastic Rail Clips Serial No. T-31-1992 the raw material will be ""Spring steel rounds"" only. Admittedly, the

Claimant has already availed the MODVAT benefit @ Rs. 2.184 per piece of ERC MK-III in purchase of raw material from 'Rashtriya Ispath Nigam

Ltd. It is also not in dispute that the Claimant has also been paid the MODVAT benefit @ Rs. 0.34 per piece of ERC MK-III by the Respondent

against Bill Nos. 16 Ex. CW-XVII and 17 Ex. CW-XVIII. In this way, the Claimant has received MODVAT benefits to the extent of Rs.2.52 per

piece of ERC MK-III out of Rs. 2.74. The Claimant has thus, not received balance payments of Rs.0.22 per piece of ERC MKIII. This downward

variation of Rs.0.22 per piece of ERC MK-III is to be made good by the Respondent to the Claimant There is no dispute that the Claimant has

supplied 6,66,000 ERC MK-III to the Respondent Therefore, the Claimant is entitled to recover a sum of Rs.l,46,520/-(6,66000 x Rs.0.22=1,46,520/-)

besides Excise Duty @ 16% amounting to Rs.23,443.02 and Central Sales Tax @ 4% amounting to Rs.6,798.53 in all Rs. 1,76,761.73 against Bill Nos.

16A Ex. CW-XVllA and 17A Ex. CW-XVIIIA.

In view of my above findings in favour of Claimant, the Respondent is not entitled to Rs. 2,73,176.80 as claimed in Counter Claim.

Issue No.l is accordingly decided in favor of Claimant and against the Respondent.

The impugned order has dealt with it as under:-

â??18.2 The Ld. Arbitrator also considered the second contention regarding clause 7.3 of the purchase order/contract. It has appreciated whether the

word 'Supplier' used in clause 7.3 means the 'Rashtriya Ispath Nigam Ltd' (RINL). After having gone through the contract, the Ld. Arbitrator opined

that he did not find any definition of supplier as alleged. It was observed that respondent/petitioner herein was not able to show that in the contract

agreement PSU i.e RINL is the supplier. In arriving at the conclusion, the Ld. Arbitrator gave due weightage to Ex. CW XIV-A to E. The Ld.

Arbitrator thereafter also analyzed about the claim amount regarding the difference in the MODVAT amount. It concluded that R.R. Industries is the

supplier as per clause 7.3 of the contract. The Ld. Arbitrator also considered the evidence before him and clause 7.3 of the contract and opined that a

sum of Rs. 2.74 for each ERC MK III has been fixed as MODVAT benefits to be retained by the supplier/claimant. He opined that any downward

and upward variation in MODVAT benefits will not affect the fixed amount and any variation will be the respondent's account after date of opening

of tender. He opined that admittedly the claimant has already availed the MODVAT benefit at the rate of Rs.2.184 per piece in purchase of raw

material from RINL. He observed that nobody disputed that the claimant has been also paid the MODVAT benefit at the rate of Rs.0.34 per piece by

the respondent against bills no.16 & 17 i.e Ex.CW XVII & EXCWXVIII. Thus, there is a well reasoned conclusion that the claimant/respondent

herein had not received balance payment of Rs.0.22 per piece which was to be made good by the respondent/petitioner herein to the claimant. As a

matter of fact, there is no dispute regarding supply of 6,66,000/- ERC MK 111 piecs. The issue no. 1 was therefore, decided in claimant's favour.

19 So far as the issue no.2 is concerned, the Id. Arbitrator has given reasons so far as the interest component is concerned. The necessary corollary

on the decision of the is.sue could only have been to dismiss the counterclaim which has been accordingly done.

19.1.The above analysis of the arbitral award clearly reveal that the Id. Arbitrator has never dealt with any such dispute which was not contemplated

by or did not fall within the terms of the statement to the arbitration or that the award contained decision on any matter beyond the scope of the

statement to the arbitration. This Court has already pointed out that the judicial scope has always been that a Court cannot sit in appeal over the views

of arbitral tribunal and that the objections to the legality of the award has to be apparent on the face of it. Reference may be had to the case of Laxmi

Mathur's case (Supra) and Parmar Construction's case (Supra). No misconduct is pleaded or shown from the award and hence this Court can not go

into this aspect. Reference can be had to the case of Union of India v Ramesh Lalwani's case iSupra). Since the question pertains to the contract, this

Court can not loose sight of the fact that interpretation of the contract is a matter for the arbitrator on which Court can not substitute its own decision.

Reference is made to the case of NTPC (Supra). So far as reasonableness of the claim of interest is concerned, the Court is not to go into the

reasonable of the reasons given by the Arbitrator. Reference is drawn to Shiv Kumar Wasal's case (Supra). It is also found that the ld. Arbitrator has

given detailed reasons although it is not so required to him. It is settled law that Court can not look into the sufficiency of the reasons and arbitrator is

well within his power to award interest to from the date of award to the date of decree or realisation of the amount whichever is earlier. Reference in

this respect is drawn to M.A Construction Company's case (Supra).

20. The contention of the petitioner that the respondent failed to indicate the amount of MOD VAT benefit availed on steel rods on the date of

opening of tender has been well answered by the Ld. Arbitrator while appreciating the claim of the respondent qua the MODVAT benefit of Rs.2.74

per piece. It is in respect of the raw material including steel rods. Thus, this contention of the petitioner is not found to be sustainable. For the

aforesaid reasons and the law on the point discussed above, I find that the reliance placed by the petitioner on the cases of New India Civil Erectors

Pvt Ltd (supra) and that of Bharat Cooking Coal Ltd (supra) shall have no application to the facts before me.

20.1.This now brings me to the other ground of assail i.e award is in conflict with the public policy of India. This appears to have been raised merely as a general ground and it is not specified in the objections as to how it is against the public policy. The law in this respect has been already cited

above and in particular, the judgment in ONGC's case (Supra). The explanation of Section 34 of the Act has not been specifically invoked by the

petitioner and no plea of inducement has been raised. Likewise, there is no plea that the claimant/respondent herein exercised fraud upon the Ld.

Arbitral tribunal. There is nothing that the award is vitiated for the reason of corruption. Moreover, there is no averment anywhere that the award is in

conflict with the public policy of India being in violation of either Section 75 of the Act or for that matter Section 81 of the Act. Applying the ratio of

ONGC's case (Supra), it is imperative for the applicant/petitioner/objector to satisfy the conscience of this Court that the arbitral award is against the

(a) the fundamental policy of Indian law, (b) the interest of India, (c) Justice of morality and (d) patently illegal and that it can be challenged as

provided under Section 35 and Section 16 of the Act. This is not the case before this Court.â??

The learned counsel for the respondent has relied upon the judgment of this Court in FAO No.179/2012, titled as â??Union of India through Ministry of

Railway vs. Kalimata Ispat India (P) Ltd.â?? decided on 03.02.2014, to contend that the issue in that case too was about payment of Rs.2.74 as

MODVAT benefit on each ERC Mark-III i.e. the product as well as the quantum of MODVAT was identical as in this case. This Court upheld the

arbitral Award. The Railway filed a Review Petition seeking identical relief, as in this case. The Petition was found without basis, hence, it was

dismissed. The Court is informed by the learned counsel for the respondent that the Special Leave Petition preferred by the Railways against the said

orders, too has been dismissed. In effect, the Railway is bound to pay Rs.2.74 as the MODVAT, which was agreed in terms of the approved Tender.

Since the Railways have already accepted the position regarding payment of Rs.2.74 in Kalimata Ispat India (P) Ltd.â??s case (supra), they cannot

have a different stand in the present case.

In view of the above, there is no merit in the appeal. It, alongwith pending application, stands dismissed.

Since the appeal stands dismissed, the amount deposited by the appellant towards satisfaction of the Award shall be released to the respondent alongwith interest accrued thereon, upon an application being so made before the Registrar General.

