
(2011) 01 BOM CK 0038
In the Bombay High Court
Case No : Arbitration Petition No. 203 of 2007

Union of India (UOI)	Vs	APPELLANT
Jay Construction		RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Citation : (2011) 3 BomCR 113

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Suresh Kumar, for the Appellant; U.S. Samudrala, for the Respondent

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.—Heard finally.

2. The Petitioner has challenged the award dated 20th February, 2007, passed by the Arbitral Tribunal appointed under the terms and conditions, and as there arose disputes in the matter of contract dated 22/09/1997 for the work of replacement of existing 90 lbs Turnouts with 1st Class Wooden sleepers in Kalyan passenger yard under

3. By this award the Tribunal has directed the Petitioner to pay the net amount of Rs. 75,000/towards the full and final settlement of all the claims referred for the adjudication. Out of 8 claims so raised, the Arbitral Tribunal has awarded this amount basically towards the claim of "Extra overhead expenses". The counterclaim of the Petitioner was also rejected.

4. The learned Counsel appearing for the Petitioner has strongly relied on the facts and circumstances of the case read with the necessary conditions of the contract. The work was commenced in September, 1997, but for various reasons it could not be proceeded to the fullest extent. The time was extended and ultimately till February, 2000, only 3 turnouts out of 12, could be laid by the claimants for want of wooden sleepers. The Petitioner finally agreed to short

close the contract on the existing status after taking due decision in the prearbitration meeting held on 24/10/2000. Admittedly, the final bill and the security deposit were released by the Petitioner. The Arbitral Tribunal however, granted a compensation of Rs. 3,000/per month for 25 months by observing that the Respondent (claimant) had to 3 arbp203.07.sxw ssm maintain a certain minimum establishment, awaiting supply of Railway sleepers, through out the extended period with the intention to complete the work, though observed that the contractor started the work late and might have utilized their staff establishment on other work sites, in absence of work not being available on the site.

5. Clause 17 of the contract deals with the time limitation and effect of extension of time on Railway account. It is specifically agreed through Clause 17(3) that the delay by the Railway/Petitioner on any count shall not affect or vitiate the contract and/or entitle the contractor to damages or compensation, except extension, which in the present case had been granted.

6. Furthermore, Clause 61 which deals with a right to determine the Railway to the contract and payment of determination of such contract. Admittedly, the contract was terminated after due deliberation of both the parties and therefore, as agreed, the Respondent had received the requisite amount towards the work done and the security deposit. Therefore, having once accepted this amount, in my view, the contractor/Respondent has no right to claim any further compensation, "which he might have derived from the 4 arbp203.07.sxw ssm execution of work in full but which he had not derived in consequence of determination of contract in question" as observed by the Arbitrator. The Apex Court has already elaborated that the Arbitral Tribunal cannot go beyond the terms of the contract. In the present case, to award such amount towards the Extra overhead expenses, for loss suffered due to extended period of work, therefore, was uncalled for. As noted, the Respondent had already received final bill and security deposit in view of the decision taken in the prearbitration meeting held on 24/10/2000. Therefore, to grant such Extra overhead expenses in the present facts and circumstances, in my view, is contrary to the terms and conditions which is impermissible. General Manager Northern Railways and Another Vs. Sarvesh Chopra, and Ramnath International Construction Pvt. Ltd. Vs. Union of India (UOI) and Another,

7. Resultantly, the award is set aside so far as the Extra overhead expenses, as awarded (Claim No. 3). There is no other counter challenge raised. Rest of the award is maintained. The Petition is accordingly allowed. No costs.