IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2021

CORAM :

The Hon'ble Mr.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A.No.270 of 2020
and C.M.P.No.13352 of 2020

Hindustan Petroleum Corporation Ltd.,
Rep. by its Senior Manager-Retail Upgradation
South Zone, 4th Floor, Thalamuthu Natarajan
Building, Gandhi Irwin Road, Egmore,
Chennai 600 008. .. Appellant

-vs-

1.Banu Constructions,
Civil & Electrical Engineeering Contractors
No.4 (Old No.44) 3rd Street,
Thiruvalluvar Nagar, Alandur,
Chennai 600 016.

2.A.M.Atri
Sole Arbitrator .. Respondents
(Second respondent stand deleted
as per order dated 3.8.2020)

Appeal filed under Order XXXVI Rule 9 of O.S. Rules read with Clause 15 of Amended Letters Patent 1865 and Section 37 of the Arbitration and Conciliation Act, 1996, against the order dated 03.08.2020 passed in O.P.No.57 of 2015 on the file of this Court.

For Appellant : Mr.O.R.Santhana Krishnan

For Respondents : Mr.R.Thiagarajan
on Caveat
for 1st respondent

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

The argument on behalf of the appellant is short and sweet: that the first principles of arbitration law do not permit an unreasoned order to be justified by supplementing reasons therefor upon looking into the evidence or records pertaining to the arbitral reference.

2. This is a classic example of what cannot be done by an Arbitration Court when in receipt of a petition for setting aside an arbitral award. The primary ground of challenge before the Arbitration Court was that the award was unreasoned. As if in agreement with such principal contention, some 30 pages have been expended in constructing an order that seeks to give reasons and legal crutches to a completely unreasoned award.

3. It is elementary that when parties to an agreement carry their disputes to a consensual forum in preference to the usual forum of a civil Court, the Court will be slow in entertaining a challenge that either party may come up with on being dissatisfied with the resultant award. The Court will hold the parties to their bargain and require them to abide by the decision of their consensual tribunal. This principle is subject to certain exceptions. The exceptions have been statutorily recognized in Section 34 of the Arbitration and Conciliation Act, 1996. It may only be said that, in essence, Section 34 of the Act provides for a supervisory jurisdiction to correct manifest errors and to ensure that there is no grave miscarriage of justice. However, by no stretch of imagination does Section 34 of the Act confer appellate authority on the Arbitration Court in seizin of a petition to set aside the award.

4. In a regular appeal, it is open to the Court to embark on a fact-finding exercise, to re-read and re-appraise the evidence, to interpret the documents afresh and to do all things de novo that the Court of original jurisdiction could have done. Such expansive authority is not available to an Arbitration Court while dealing with a

petition for setting aside an award. The Court has to yield to the arbitrator's assessment as to the quality and the quantity of the evidence, the arbitrator's interpretation of the agreement between the parties, unless such interpretation is patently unreasonable or absurd to the meanest mind or is opposed to public policy. Even errors of law committed by arbitrators are not amenable to correction unless such errors lead to manifest miscarriage of justice.

5. It is now appropriate that the award be seen in its entirety and for whatever it may be worth. The award has been incorporated in the appeal papers and begins at page 110 with the cause-title to the arbitral reference and concludes half-way at page 120 of the papers. For the first 9 pages of the 11-page award, the Arbitrator refers to the nature of the contract, sets out the table indicating the heads of claim, records the preliminary objections made by the respondent in the reference, notes the parawise reply to the claim statement as furnished by the respondent Corporation, refers to the counter-claim of the respondent in the reference and its prayer, paraphrases the prayers made by the claimant and the response thereto of the respondent. In covering all such matters, it comes to three-quarters of

the page down at page 118 of the appeal papers. Thereafter begins a section intituled as 'Findings' and the same reads as follows:

> "**Findings:**
>
> I have gone through the Statement of Claim of Claimant's application filed by the Claimant and Reply/counter claim, rejoinder and sur-rejoinder filed by both the parties under Section 17 of Arbitration & Conciliation Act, 1996, I have also given full opportunity to both the parties to make their arguments during the last arbitration hearing held where both the parties made their very elaborate and detailed arguments and confirmed that they have nothing more to argue.
>
> As stated, I have heard both the parties in detail and at length in the arbitration hearing held, wherein, both the parties have argued elaborately their respective issues in the case."

6. The award dated September 10, 2014, immediately runs into the business end at pages 119 and 120 of the appeal papers where the quantum in respect of various heads, whether allowed or disallowed, are indicated except for 6 or 7 lines by way of an excuse for reasons while dealing with the third head of claim. It is tempting to set out what appears at pages 119 and 120 of the appeal papers except that it

may not be worth the paper it is printed on for its abject lack of reasons.

7. Any fundamental process of adjudication in civil matters, particularly in the adversarial set-up that is followed here, involves at least two sets of parties and the process of adjudication is the charting of the course beginning with a claim, its defence, the evidence in support of either, the consideration of such matter by the Adjudicator and the conclusion thereupon. It is imperative – as has been statutorily mandated by the Act of 1996 – that reasons be furnished in support of an award unless the parties dispense therewith by agreement. Reasons indicate the application of the mind to the matters in issue and the consideration given by the Adjudicator to the facts against the milieu of the applicable law to arrive at the findings rendered at the culmination of the journey of adjudication.

8. In a claim as in the present case, particularly relating to works contracts, every head of claim has to be dealt with in principle and the quantum awarded or declined has next to be justified. It will not do for merely head of claim to be explained and the quantum awarded in

respect thereof not to be. Both must have reasons in support of the conclusion and, in the absence of either, the award becomes vulnerable.

9. There is not an alphabet expended by way of reasons in respect of the first and second heads of claim. The quantums awarded are Rs.3,13,819.32 and Rs.4,18,981.44, respectively. While these may appear to be meagre amounts, the complete lack of reasons robs the figures and the heads in respect of such figures of any value. In respect of the third head of claim, the Arbitrator noted that the defence raised was that the bills were not submitted in line with the terms of the purchase order. The Arbitrator then went on to suggest that even though there had been considerable delay on the part of the claimant in claiming the amount, merely such delay would not defeat the claim. At the highest, the justification for the submission of the claim may have been provided by the Arbitrator. The reasoning furnished does not even indicate how any money was due from the respondent in the reference to the claimant on account of such claim. In any event there is nothing to suggest how the quantum of the claim was arrived at except that the quantum awarded matched the amount

claimed.

10. While it is not necessary for an arbitral award to justify every paisa or a rupee awarded to the claimant, the broad premise on which the quantum is founded has to be discernible from award itself for the award to be meaningful or even intelligible in legal terms. In short, the award impugned before the Arbitration Court in this case was the classical example of what an arbitral award could never be.

11. Towards the end of page 119 and over the page, the operative part of the award is repeated. If one searched such segment with the most powerful of magnifying glasses, the only reasons that appear in the award are contained in the solitary line preceding the operative part:

> "In consideration of the above analysis/documents & pleadings on record ..."

12. The Arbitrator speaks of a consideration, but does not demonstrate how he considered the matter by indicating any reasons to show what impelled him to allow the several heads or the various

quantums under such heads. As to the use of the word 'analysis' it appears to be a figment of the Arbitrator's imagination as there is no element of analysis evident from the award.

13. In the operative part of the award, the Arbitrator deals with all three heads on which he has awarded and says that the standing order in respect of each was 'admitted'. If there was any admission, it was the bounden duty of the Arbitrator to demonstrate how the admission had been made. Indeed, in the few lines that the Arbitrator has used in dealing with the third head of claim, the Arbitrator has indicated that the respondent in the reference had denied the claim but had done no more. Thus, the use of the similar expressions "is admitted" or "is also admitted", as found in the operative part of the award pertaining to the three heads of claim, have to be read in the context of the four or five lines by way of reasons appended to the third head of claim at page 119 of the papers. Nothing appears to have been admitted by the respondent in the reference and, if there was any admission, it may have been only the relevant standing orders. However, as to how the standing orders justify the heads of claim or the amounts awarded thereunder, there is no indication or

any suggestion in such regard in the rather unfortunate award.

14. In dealing with the challenge, that must have been squarely founded on the award being non-speaking in nature, the Arbitration Court assigns the following reasons:

> "19.This takes us to the last plea pertaining to non-speaking award. A perusal of award reveals that it does give reasons. It does refer to clause 6 of the STC, which deals with escalation/de-escalation and then finds for the contractor. That the impugned award is epigrammatic by itself does not become a ground to dislodge it as long as it is not laconic as case on hand is one where impugned award proceeds on admission."

15. The award has been described in its entirety in this order. No page thereof has been left out or ignored, lest it does injustice to the Arbitrator and the party which was the beneficiary of the award. In the light of what appears clearly from the face of the award, the above observation of the Arbitration Court is exceptionable and not acceptable. The complete lack of reasons cannot be glossed over in the manner it has been in the judgment and order impugned. The exercise undertaken to rewrite the arbitration award by ascribing

reasons in support of the claims allowed and quantum awarded is not the business of the Arbitration Court and such an exercise could not have been undertaken in this jurisdiction or within the limited arena of operation permitted by Section 34 of the Act of 1996. The judgment and order impugned go against the most rudimentary tenets of the governing law and the jurisprudential philosophy established in this branch over the years.

16. As a consequence, the judgment and order impugned herein dated August 3, 2020, stand set aside in entirety. The award impugned by way of the petition under Section 34 of the Act of 1996, dated September 10, 2014, is set aside. The petition under Section 34 of the Act stands allowed. In view of the dignified and fair stand taken on behalf of the award-holder and the fact that it may, in the ultimate analysis, be the award-holder who has suffered the maximum prejudice as a consequence of the Arbitrator not furnishing any reasons, no costs are awarded against the erstwhile award-holder.

17. The parties have agreed that this Court may name an Arbitrator who will take up the reference as expeditiously as possible

and conclude the same in accordance with law by rendering a reasoned award without undue delay. In view of such agreement between the parties and the matter being left to the Court, this Court appoints Mr.C.Manickam, retired District Judge, as the Arbitrator to take up the reference on the basis of the statement of claim and statement of defence and counter-claim as already filed in course of the previous reference. The parties will be entitled to lead evidence and the Arbitrator will be entirely free to decide on the future course of action in the reference.

18. It is needless to say that the present order should be confined to the matters that arose for consideration and the Arbitrator will be completely uninfluenced by anything recorded here that may appear to be prejudicial to either side.

O.S.A.No.270 of 2020 stands allowed. Consequently, C.M.P.No.13352 of 2020 is closed.

(S.B., CJ.) (S.K.R., J.)
09.02.2021

Index : Yes
sra

The Hon'ble Chief Justice
and
Senthilkumar Ramamoorthy, J.

(sra)

O.S.A.No.270 of 2020

09.02.2021