



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Misc. Appeal No. 761/2024

State of Rajasthan, the Executive Engineer Public Works
Department Division, Hanumangarh.

----Appellant

Versus

M/s. Leeladhar Devkinandan, through its Proprietor
Mr. Devkinandan son of late Shri Leeladhar Golyan resident of
Sriganganagar Cold Storage Private Limited, Suratgarh Road,
Sriganganagar.

----Respondent



For Appellant(s) : Mr. Ayush Gehlot-AAAG for
Mr. Rajesh Panwar, AAG

For Respondent(s) : Mr. Sheetal Kumbhat
Mr. Naman Maheshwari

**HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE DR. JUSTICE NUPUR BHATI
Order**

16/12/2024

Per, Shree Chandrashekhar, J.

This Civil Miscellaneous Appeal has been filed by the State of Rajasthan through its Executive Engineer to challenge the decision of the Commercial Court passed in Civil Misc. Case No.04/2023 by which the challenge laid to the Arbitral award dated 27th October 2009 has been dismissed.

2. Pursuant to the Agreement No.61/1995-96 executed between the parties for construction of the Police-line at Hanumangarh Jn., the subject work was allotted to M/s. Lila Dhar Devki Nandan (in short, claimant). As per the Agreement, the total contract value was for Rs.2,88,04,833/- and the work under the Agreement was to be completed within two years from issue of the work order no.8024 on 21st March 1996. There were certain disputes that arose between the parties regarding admissibility of



escalation as per the stipulation under Clause 45 of the Agreement which could not be resolved and the matter finally came to the High Court in S.B. Miscellaneous Arbitration Application No.45/2002 seeking appointment of Arbitrator. By an order dated 21st August 2003, the application filed by the claimant was allowed and the Arbitral Tribunal entered the reference on 24th February 2004. The claimant made claims under three separate heads viz. (i) for escalation to the tune of Rs.31,54,223/- (ii) interest for the period between 14th April 2001 to 23rd February 2004 @ 18% per annum over the claim for Rs.31,54,223/- and (iii) interest pendente-lite and future upto the date of payment on Rs.31,54,223/- @ 18% per annum from 24th February 2004; alongwith the tentative cost of arbitration proceedings at Rs.15,000/-. The Arbitral Tribunal held that the claimant is entitled for the sum of Rs.31,54,223/- and granted interest @ 15% per annum both for the period between 14th April 2001 to 23rd February 2004 and interest pendente-lite.

3. The Arbitral Tribunal considered the claim pressed by the claimant for escalation in the following manner:-

"....In the present case the escalation clause no. 45 is applicable as the contract amount is Rs. 2,88,04,833.00 and the contract period is of two years. Moreover, the respondent itself has also made the payment of six price escalation bills, amounting to Rs. 11,15,740/-, which tantamounts to its admission that the escalation clause no. 45 is applicable in this case.

In the written arguments the respondent has stated that according to the Circular no. D-209 dated 19.03.1998 of the Chief Engineer PWD, Rajasthan, Jaipur, the claimant is not entitled to receive from the respondent a sum of Rs. 31,54,223/ for price escalation because the said Circular is issued on 19.03.1998 whereas the agreement was executed in the year 1995-96.

In this regard I find that the claimant has not demanded the price escalation amount on the basis of the Circular dated 19.03.1998 (Ex.-C/9). On the other hand the price escalation is demanded by the claimant under clause 45 of the agreement, the calculation, formula, price index etc. of which are not disputed by



the respondent.

Further I have also consulted the said Circular and I find that the Circular is only the guidelines for deciding the cases of interim/final extension in the completion period which is the internal matter of the department with a view to adopt a uniform policy and the amount of the price escalation should be paid as per the clause 45 of the agreement.

In the written arguments the respondent has further stated that escalation after the stipulated date of the completion is not admissible because the time extension up to the actual date of completion has been sanctioned with 1/2% compensation, vide letter no. F.1(1)PW/AS/96 dated 29.11.2000 of the Additional Secretary, PWD Rajasthan, Jaipur.

In the written arguments the respondent has further argued that the claimant cannot raise the contention that the Additional Secretary is not the authorised person to levy the compensation under clause 2 of the agreement and at the same relies upon the time extension made by the same authority.

In this regard I have carefully examined the facts and the relevant clauses of the agreement and I find that the compensation imposed by the respondent is made under clause 2 which falls under the "EXCEPTED MATTER" and is out of the purview of the jurisdiction of the arbitrator.

I find that the only authority competent to levy compensation under clause 2 of the Agreement is "..... the Chief Engineer or his authorised Engineer....." and no one else.

Similarly with regard to "extension of time for completion of the work" the competent authority as per agreement clause 5 is "..... the Chief Engineer or other duly authorised Engineer....." and no one else.

Further I also find that the compensation of Rs. 1,44,024/- imposed by the respondent under clause of the agreement has also been challenged by the claimant in the competent court and the court has decided that the said compensation was wrongly imposed against the law and the same was not justified. The appeal made by the respondent against the said order dated 29.09.2005 of the District Judge (Ex.C/16) pending in the Hon'ble Rajasthan High Court at Jodhpur but the Hon'ble High Court has directed the respondent vide its order dated 26.02.2007 (Ex.C/17) to deposit the entire decretal amount to be disbursed to the claimant. The compliance of the said order has been made and the payment of the entire decretal amount has been disbursed to the claimant.

I have carefully examined the rival contentions of the parties on this claim. I have consulted the clause 45 of the agreement as well as the following case laws, including related documents and correspondence produced before me by the parties, and I am of the opinion that since the Additional Secretary has imposed upon the claimant compensation of 1/2% against 10% which could have been imposed under clause 2 of the agreement, if the claimant was adjudged to be fully responsible for the delay in the completion of the work, and, therefore, virtually the claimant has been held responsible only for 5% delay, the same percentage of the amount deserves to be reduced from the claim of Rs. 31,54,223/- and that works out to Rs. 1,57,711.15 i.e. say Rs. 1,57,711/-:-



1. 1996(Suppl.) Arbitration Law Reporter Page 128(Para 38)

2. 1997(2) Arbitration Law Reporter Page 417

Consequently, I hold and decide that the claimant is entitled to receive from the respondent under this claim a sum of Rs. 29,96,512/-. His claim of the remaining amount of Rs. 1,57,711/- is rejected....."

Accordingly, I conclude that the arguments of the claimant are bearing more merits on points of facts as well as law.

As per the clause no.45 of the contract agreement the escalation clause is made applicable on fulfilling the following two conditions, namely,

- (1) That the contract amount is more than Rs.10.00 Lakh, and
- (2) That the contract period is more than twelve months

In the present case the escalation clause no.45 is applicable as the contract amount is Rs.2,88,04,833.00 and the contract period is of two years. Moreover, the respondent itself has also made the payment of six price escalation bills, amounting to Rs.11,15,740/-, which tantamount to its admission that the escalation clause no.45 is applicable in this case....

That I have carefully gone through the total pleadings, evidences, both documentary and oral including written arguments and oral arguments heard on 28.05.2009 and have also gone through the cited case laws as relied by both the parties and produced in the proceeding....."

4. The Arbitral award made on 27th October 2009 by the Arbitral Tribunal has been affirmed by the Commercial Court in Misc. Civil Case No.04/2023 holding as under:-

"In the light of the arguments made by both the parties and taking into consideration the judicial precedents passed by the honourable Constitutional Courts, relied upon by the non-applicant, it would be appropriate to mention the following points here first for disposal of the applicant's application:-

- (a) The proceedings of the Arbitral Tribunal are meant to be a centre for alternative dispute resolution, which needs to be respected.
- (b) The Court is not empowered to form its own opinion contrary to the factual discussion and analysis done by the Arbitral Tribunal.
- (c) If the Arbitral Tribunal has passed the award on the basis of its ability, skill and mental consciousness and the laws prevalent in India as well as the public policy have not been violated, then in such circumstances the court cannot interfere in the award of the Arbitral Tribunal.
- (d) The court does not have the powers of an Appellate Court while disposing of an application presented under the provisions of Section 34 of the Arbitration and Conciliation Act in respect of an award passed



by an Arbitral Tribunal, i.e., while disposing of an application under Section 34 of the Arbitration and Conciliation Act, the court cannot re-examine and analyse the facts as an Appellate Court.

- (e) *While disposing of an application under Section 34 of the Arbitration and Conciliation Act, the powers of the court are only supervisory. If the application of the applicant is maintainable on any of the grounds mentioned in section 34 Arbitration and Conciliation Act, then only the application of the applicant can be maintainable otherwise the application of the applicant cannot be maintainable at the discretion of the court on any ground other than those mentioned in section 34 Arbitration and Conciliation Act.*
- (f) *If the award of the Arbitral Tribunal appears to affect public policy or attracts other provisions mentioned in the provisions of section 34 Arbitration and Conciliation Act, then only the Arbitral Tribunal's award is interfered with.*
- (g) *The powers of the court are limited while deciding the application of section 34 of the Arbitration and Conciliation Act. The court does not have any power to exercise its discretion."*

5. The Arbitration and Conciliation Act of 1996 (in short, AC Act of 1996) is in substance a replacement for Arbitration Act, 1940, Arbitration (Protocol and Conventions) Act, 1937 and Foreign Awards (Recognition and Enforcement) Act, 1961 which were containing the general laws of arbitration. This is well known that the AC Act of 1996 which was enacted to consolidate and amend the laws relating to Domestic Arbitration and International Commercial Arbitration is largely modeled on the patterns of the Model Law of the United Nations Commission on International Trade Laws ('UNCITRAL'). Section 5 of the AC Act of 1996 limits the intervention by judicial authority except where so provided under Part I of the Act. The central theme of the AC Act of 1996 is that sanctity of an Arbitral award must be preserved. The expressions "only by" in sub-section (1) and "only if" in sub-section (2) to section 34 leave no scope for any judicial interference with an Arbitral award except on the specified



grounds mentioned under sub-section (2) of section 34. No doubt if it appears on the face of the Arbitral award that the Arbitrator proceeded illegally or made a serious error which is apparent on the face of the records, that is to say, admitting an inadmissible evidence or adopting a principle of construction which in law cannot be countenanced, the same can be a ground for setting-aside the Arbitral award. But this is not the situation here in this case and the judgments cited on behalf of the appellant are not applicable to the fact-situation of the present case.

6. Mr. Ayush Gehlot, the learned Assistant to Additional Advocate General for the appellant/State of Rajasthan referred to Clause 45 of the Agreement and the decisions rendered in *Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corporation Limited & Anr.*: 2023 INSC 850, *Food Corporation of India v. Chandu Construction & Anr.*: (2007) 4 SCC 697, *Indian Oil Corporation Limited v. M/s. Shree Ganesh Petroleum Rajgurunagar: Special Leave Petition (Civil) Nos.35970-71 of 2016*, decided on 1st February 2022 to submit that the Arbitral award made by the Arbitral Tribunal was against the express stipulation under the Agreement and therefore is liable to be set aside under Section 34 of the AC Act of 1996. Mr. Ayush Gehlot further submits that on a plain reading of Clause 45 of the Agreement it becomes more than clear that the stipulation for escalation was not at all applicable in the present case but the learned Arbitrator misinterpreted the said provision and proceeded to allow the claim for escalation on a wrong premise.

7. Clause 45 of the Conditions of Contract is reproduced as under:-



".....**Clause: 45** If during the progress of the contract of value exceeding Rs. 10.00 Laks and where stipulated completion period is more than 12 months, the price of any materials incorporated in the works (not being materials supplied from the Department) and or wages of labour increases or decreases as compared to the price and/or wages prevailing at the date of opening of tender for the work, the amount payable to contractors for the work shall be adjusted for increase or decrease in the rates of labour and materials excepting those materials suplyed by the Department on the basis of following formula:

Increase or decrease in the cost due to labour shall be calculated quarterly in accordance with the following formula:

$$V_L = \frac{0.75 P_L X_R (I_{L1}-I_{L0})}{100 I_{L0}}$$

V_L = Increase or decrease in the cost of work during the quarter under consideration due to change in rates of labour.

R = The value of the work done in Rupees during the quarter under consideration, including the the cost of materials supplied by the department.

I_{10} The average consumer price index for industrial workers (whole sale price) for the quarter in which tender were opend (as published in Reserve Bank of India Journal Labour Bureau Simla, for the area.

I_{L1} = The average consumer price Index for industrial workers (wholesale prices) for the quarter of calender year under consideration (as published) in the Reserve Bank of India Journal/Labour Bureau Simla, for the area.

P_L = Percentage of labour components.

The increase or decrease in cost of materials shall be calculated quarterly in accordance with the following formula:

$$V m = \frac{0.75 P_m X_{m1} - I_{mo}}{100 I_{mo}}$$

V = Increase or decrease in the cost of work during the quarter under consideration due to change in the rates of material.

R = The value of the work done in rupees during the quarter under consideration. including the cost of matorials suplyid by the department.

I_{mo} = The average wholesale price index (all commodities) for the quarter in which tenders were opened (as published in reserve bank of India Journal/Economic Advisor to Govt of India, ministry of Industries, For the Area.

I_{m1} = The average wholesale price index (all commodities) for the quarter under consideration (as



published in Reserve Bank of India Journal/Economic Advisor to Govt of India Ministry of Industries for the Area.

P_m = Percentage of material component excluding material supplied by the department at fixed rates.

The first statement of escalation shall be prepared at the end of three months excluding the month in which the work was awarded and the work done from the date of start to the end of this period shall be taken into account. For subsequent statement, cost of work done during every quarter shall be taken into account. At the completion of work, the work done during the last quarter of fraction thereof shall be taken into account.

For the purpose of reckoning the work done during any period the bills prepared during the period shall be considered. The dates of Preparation of Bill as entered in the M.B. by the Assistant Engineer shall be the guiding factor to decide the bills relevant to any period. The date of completion as finally recorded by the competent authority in the M.B. Shall be the criterion. The index relevant to any quarter for which such compensation is paid, shall be the arithmetical average of the indices relevant to the calendar month.

Price adjustment clause shall be applicable only for the work that is carried out within the stipulated time or extension thereof as are not attributable to the contractor.

If during the progress in respect of contract work stipulated to done exceeds Rs. 10.00 lakh escalation would be payable in respect of value of work in excess over Rs. 10.00 lakh and where originally stipulated period is 12 months or less but actual period of execution exceeds beyond 12 months on account of reasons not attributable to contractor, escalation amount would be payable only in respect of extended period.

No claims for price adjustment other than those provided herein. shall be entertained.....”

8. On a careful reading of the provisions under Clause 45 of the Agreement, we gather this impression that the Arbitral Tribunal proceeded in the matter on a premise that the Contractor can be entitled for escalation if the cause of delay was not attributable on his part. In our opinion, the interpretation of Clause 45 by the Arbitral Tribunal is a plausible view of the provision under Clause 45. As we have noticed, there were sufficient materials laid before



the Arbitral Tribunal to demonstrate that there was representation by the claimant seeking extension of time and there was a decision of the Civil Court before the Arbitral Tribunal that imposition of compensation/penalty @ ½% of the work value was not justified. In this state of affairs, we are of the opinion that the Arbitral Tribunal rightly proceeded to accept the claim for escalation as the findings recorded by the Civil Court shall be binding on the Arbitral Tribunal. This is a well settled law that the interpretation of the clause of Agreement by the Arbitrator shall not be open to judicial interference unless it is demonstrated before the Court that the interpretation put by the Arbitral Tribunal was perverse. This is also well settled that if the view taken by the Arbitrator is logical and acceptable merely because two views are possible the Court in exercise of its supervisory jurisdiction shall not interfere with the Arbitral award. In "*U.P. SEB v. Searsole Chemicals Ltd.*" (2001) 3 SCC 397, the Hon'ble Supreme Court held that the Court will refrain itself from interfering with an Arbitral award if it is demonstrated that the view of the Arbitrator is a plausible one. A glance at section 34 of the AC Act of 1996 does not leave any manner of doubt that the judicial interference with the Arbitral award would be on very limited grounds and, that too, within the four corners of the provisions under sub-section (2) and sub-section (2A) after the amendment Act 3 of 2016. Just for the sake of clarity, we indicate that the amended provisions as contained under Explanation I and Explanation II to sub-section (2), and sub-section (2A) shall not be applicable in the present case as the Arbitral award was made way back in the year 2009.





9. In "McDermott International Inc. v. Burn Standard Co. Ltd." (2006) 11 SCC 181 the Hon'ble Supreme Court has observed as under:

".....52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it....."

10. The contention raised on behalf of the appellant/State of Rajasthan that the Arbitral award is in conflict with the public policy of India because the Arbitral Tribunal ignored the express terms under Clause 45 of the Agreement is liable to be rejected. The Arbitral Tribunal has taken note of various correspondences between the parties, such as, the letters dated 1st May 2000 (Exhibit-C/3), 11th May 2000 (Exhibit-C/4), 16th May 2000 (Exhibit-C/5), 18th May 2000 (Exhibit-C/6), 27th May 2000 (Exhibit-C/7) seeking extension of time. This is also a matter of record that the State of Rajasthan through Deputy Secretary (Works) granted extension of time vide order dated 29th November, 2000 whereunder he has recorded that the reasons pleaded by the claimant seeking extension of time was not 'fully convincing' and the contractor was "partly" held responsible for the delays, such as, (1) delay in taking possession of land (2) Delay in supply of drawing & design.(3) non-availability of required Budged Credit Limit.(4) change in specification of Roof treatment. (5) delay in change in specification of joinery work. (6) delay in sanction of extra-item Slip and (7) excess work executed



over agreement. This is also not disputed that Suit No.04/2023 was instituted by the claimant against imposition and recovery of Rs.1,44,024/- which was imposed by way of penalty for delay in execution of work vide order dated 29th November 2000 and the suit was decreed by judgment dated 29th September 2005 vide Exhibit-16.

11. Mr. Ayush Gehlot, the learned Assistant to Additional Advocate General however endeavors to submit that the extension order dated 29th November 2000 is confined to and was necessitated only due to the final running bill submitted by the claimant and there was no application seeking extension of time moved by the claimant. However, we observe that the Arbitral Tribunal took note of the letters dated 1st May 2000 (Exhibit-C/3), 11th May 2000 (Exhibit-C/4), 16th May 2000 (Exhibit-C/5), 18th May 2000 (Exhibit-C/6), 27th May 2000 (Exhibit-C/7) and the previous six orders granting escalation to the claimant. We also observe that on the application dated 01st May 2000 there is a remark made by the Assistant Engineer to the effect that the reasons given by the Contractor for the delay are reasonable. May be the order dated 29th November 2000 relates to the final running bill submitted by the claimant, the fact remains that the authorised officer of the State of Rajasthan himself has recorded in the said order that the Contractor was 'partly' responsible for the delay. Moreover, the delay caused in taking possession of land, supply of drawing and design, non-availability of budget credit limit, change in specification of Roof treatment sanction of extra-item Slip etc. cannot be attributed to any default on the part of the claimant.



12. As regards grant of interest, we may observe that the Arbitral Tribunal has ample powers to grant interest. This power of the Arbitrator to award interest has been recognized under sub-section (a) to section 31(7) of the AC Act of 1996 which provides that unless otherwise agreed by the parties where and insofar as an Arbitral award is for the payment of money, the Arbitrator may include the sum for which the Arbitral award is made interest at such rate as it deems reasonable, on the whole or any part of the money, or for the whole or any part of the period between the date on which the cause of action arose and the date on which the Arbitral award is made. The expression "cause of action arose" leaves little doubt to the power of the Arbitrator to award interest from the date the arbitration clause was invoked. In "Delhi Airport Metro Express (P) Ltd. v. DMRC" (2022) 9 SCC 286 the Hon'ble Supreme Court has held that in the absence of an agreement between the parties the Arbitrator would have a discretion to exercise its powers under clause (a) of sub-section (7) of section 31 and such discretion is wide enough.

13. For the foregoing reasons, we do not find any reason to interfere in this matter and therefore the present Civil Miscellaneous Appeal is dismissed.

(DR. NUPUR BHATI),J **(SHREE CHANDRASHEKHAR),J**

8-amit/pradeep-

Whether fit for reporting:- Yes/No