

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 26.03.2009
Date of Order: 01st April, 2009

OMP No.323/2006

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01.04.2009

M/s. N.P.A.Engineers & Contractors ... Petitioner

Through: Mr.G.Lal, Adv.

Versus

Government of India & Ors. ... Respondents

Through: Mr. V.K. Tandon, Adv.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

Order

1. By this petition under Section 34 of Arbitration and Conciliation Act, the petitioner has assailed an award dated 9th May, 2006 passed by the Arbitrator whereby the Arbitrator allowed part of the claim of the petitioner and disallowed part of the claim.

2. The petitioner filed these objections to the award claim-wise. Regarding claim no.2, petitioner has stated that the Arbitrator did not apply his mind to the facts admitted by the respondent regarding delay. There was admitted delay of 348 days as recorded by the Arbitrator. The Arbitrator while dealing claim no. 1 considered this delay but while partly disallowing claim no. 2

observed that out of this delay of 348 days 180 days delay was because of the petitioner. It is stated that this was an obvious contradiction to the observation made by the Arbitrator in claim no. 1 and the Arbitrator wrongly considered that 180 days' delay was on the part of the petitioner. The other ground taken by the petitioner is that the Arbitrator wrongly took into consideration the income tax return of the petitioner to assess the profitability of the petitioner.

3. The petitioner is also aggrieved that the Arbitrator did not allow his claim no. 3 for Rs.2,83,000/- on account of expenses incurred by the petitioner on maintaining necessary staff during extended period of contract. The claim was of Rs.2,83,000/- whereas the Arbitrator allowed only Rs.35,000/-. Similarly, petitioner is aggrieved by rejection of claim no. 4. A claim of Rs.5,10,000/- was made by the petitioner for deploying men & machines etc. during the period of work. The petitioner claimed this amount because the duration of the work got prolonged. The contention of the petitioner is that the Arbitrator wrongly rejected the claim holding that the petitioner had not deputed Engineers, etc. during the entire period since work stood standstill for quite a long time. The petitioner has also assailed awarding of 6% interest against 18% interest claimed by the petitioner and awarding of only proportionate costs.

4. I have heard counsel for the parties. It is settled law that this Court while considering challenge to an award under

Section 34 does not act as a Court of appeal and cannot re-appreciate the evidence and arrive at an independent conclusion as to what would have been a just decision. Under Section 34, an award can be challenged only on limited grounds as enumerated therein. The petitioner has not assailed the award on any of the grounds as enumerated under Section 34. The sole contention of the petitioner during entire arguments was that there were contradictions in the award and the learned Arbitrator has wrongly held that part of the delay, i.e. 180 days was due to the petitioner.

5. A perusal of award would show that the learned Arbitrator has given reasons for allowing only a part of the claims and rejecting rest of the claims made by the petitioner. The Arbitrator has also considered the delay in execution of the work and who was responsible for the delay. There was an admission on the part of the petitioner as recorded by the Arbitrator that the labour of the petitioner had gone to their respective villages during harvesting season. Part of the work could not be carried out during rainy season and due to flood in Yamuna. The delay attributed to the respondent has been found 53 days plus 13 days delay in obtaining permission and 26 days delay for tree felling as recorded by the Arbitrator. The Arbitrator has specifically observed that respondent could not be held responsible for 180 days delay when contractor's labour was not available or there was flood in river Yamuna etc. Beside that 39 days' delay was treated by both the

parties as *dies non*. Thus, no fault can be found with the award on this count.

6. This Court cannot re-consider the evidence and arrive at a different conclusion from what has been arrived at by the Arbitrator, neither this Court can sit in appeal over the decision of the Arbitrator. I find that there is no infirmity in the award. The objections raised by the petitioner to the award must fail. The petition is hereby dismissed.

April 01, 2009
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SHIV NARAYAN DHINGRA, J.