

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

+ **FAO(OS) 116/2009**

Reserved on: January 28th, 2010

Decided on: February 19th, 2010

M/S SACHDEVA INDUSTRIES

Through its Partner,

Sh. Om Prakash Sachdev,

S/o late Sh. M.R. Sachdev,

Having its office at

401, Arunachal Building,

19th Barakhamba Road,

New Delhi-110 001.

..... Appellant

Through: Mr. Digvijay Rai, Advocate.

versus

1. **UNION OF INDIA**

Through the Secretary,

Ministry of Communications,

Department of Telecommunications,

Government of India, Sanchal Bhawan,

1, Ashoka Road, New Delhi-110 001.

2. **SH. T.K. SIL,**

Ex-Director Computer & Sole Arbitrator,

Calcutta Telephones,

Office of the General Manager (HQ),

Dept. of Telecom,

P-10, New CIT Road,

Calcutta-700 073.

..... Respondents

Through: Ms. Preeti Dalal and Ms. Manisha Dhir,
Advocates.

Coram:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MUKTA GUPTA

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

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MUKTA GUPTA, J.

1. The Appellant on 3rd June, 1988 was awarded a tender by Respondent No. 1 for supply of PV-Drop-Wire-0.91 mm. Vide letter dated 2nd September, 1988 the Appellant expressed his willingness to commence supply of 20,000 KMs Drop Wire within a week after the receipt of the confirmed and complete order. On 11th January, 1989 the purchase order No. C-89/D. Wire/6073/2 was placed on the Appellant. Clause 16 of the said purchase order is relevant and reproduced as under:

“16. Special instruction

1) Supply is to commence @ 3,000 Kms. per month after 2 months from the date of issue of this P.O. and be completed by 10.12.89.

2) TAC. No. TDBG/18/2/4191 dt. 22.5.86 valid upto 21.5.89.”

2. The Appellant expressed his willingness to deliver the goods on 11th January, 1989 itself. To this, the Respondent No. 1 vide its letter dated 12th January, 1989 duly informed the Appellant that he was permitted to go ahead with the production of drop wire in proportion to the monthly capacity mentioned in the tender offer even during the lead period, however, no supply and test call to QA would be accepted before 27th January, 1989. Thus, in clear terms the Appellant was informed not to supply before 27th January, 1989, though the Appellant through senior officers of the Respondent also tried to persuade that the supplies be taken earlier.

3. Pursuant to the supplies, the Appellant raised a bill applying the price variation formula as per the price of the raw material prevailing thirty days before 11th January, 1989 and the interest thereon in terms of clause 14.4, as according to the Appellant he offered the same on the said date. Clause 14.4 stipulates:

“14.4 For applying price variation formula indicated in Annexure ‘B’ the price of the raw material prevailing as on 30 days before date of offer of stores to the Inspecting Authority will be taken into account. Necessary documentary evidence from the concerned authority has to be produced along with the bills preferred for payment in support of claim.”

4. On this, a dispute arose and besides other claims these two claims with regard to the date of applicability of the price variation formula and the

interest thereon were also referred. The Arbitrator decided the above said claims No. 1 and 2 against the Appellant and held that the price on the basis of rate prevailing thirty days prior to 27th January, 1989 has to be calculated.

5. The Appellant filed objections against the arbitral award dated 4th June, 1996 of the Respondent No.2 under the Arbitration Act, 1940. The learned Single Judge of this Court after hearing the parties, vide its order dated 5th November, 2008 dismissed the objections of the Appellant and the award was made rule of the Court. This judgment dated 5th November, 2008 is impugned before us in the present appeal.

6. The short issue for determination is whether by granting the price variation thirty days prior to 27th January, 1989 and the interest thereon, instead of thirty days prior to 11th January, 1989, and the interest thereon whether the Arbitrator has misconducted in any manner or there is an error on the face of the Award or that the same is contrary to the law or public policy.

7. Learned counsel for the Appellant in support of his contention relies on the repeated communications addressed by the Additional Secretary of the Respondent No. 1 to the General Manager, Telecom Stores on the representations made by the Appellant, advising him that no embargo of supplies before 27th January, 1989 could be placed.

8. In *Steel Authority of India v. Gupta Brother Steel Tubes, 2009 (12)*

Scale 393 the Hon'ble Supreme Court summarized the legal position as under:

“26. It is not necessary to multiply the references. Suffice it to say that the legal position that emerges from the decisions of this Court can be summarised thus:

(i) In a case where an arbitrator travels beyond the contract, the award would be without jurisdiction and would amount to legal misconduct and because of which the award would become amenable for being set aside by a Court.

(ii) An error relatable to interpretation of the contract by an arbitrator is an error within his jurisdiction and such error is not amenable to correction by Courts as such error is not an error on the face of the award.

(iii) If a specific question of law is submitted to the arbitrator and he answers it, the fact that the answer involves an erroneous decision in point of law does not make the award bad on its face.

(iv) An award contrary to substantive provision of law or against the terms of contract would be patently illegal.

(v) Where the parties have deliberately specified the amount of compensation in express terms, the party who has suffered by such breach can only claim the sum specified in the contract and not in excess thereof. In other words, no award of compensation in case of breach of contract, if named or specified in the contract, could be awarded in excess thereof.

(vi) If the conclusion of the arbitrator is based on a possible view of the matter, the court should not interfere with the award.

(vii) It is not permissible to a court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings.

Propositions (ii), (vi) and (vii) are relevant for the decision in the present case. The Appellant's contention at best, being an error relatable to the interpretation of the contract by the Arbitrator, is an error within his jurisdiction and thus such an error is not amenable to correction by Courts as the same is not an error on the face of the Award. Moreover, if two possible views of interpreting the terms of the contract are plausible, it is not permissible for the Court to interfere with the Award nor sit in appeal over its findings.

9. On facts also we find that there is no error in the award of the Arbitrator in applying the price variation thirty days prior to 27th January, 1989 and the interest thereon, instead of the price variation thirty days prior to 11th January and the interest thereon. Undoubtedly, the lead period of two months is given to the supplier to ensure the supplies to be ready with the consignment and ensure the supplies at the right time. However, this time is also given to the concerned consignees to be able to accept the order and utilize it/store it effectively. Merely because the Appellant was ready with the supplies on 11th January, 1989 he could not force the Respondent No. 1 to have accepted it on the same date and the Respondents were entitled to receive it at the right time as fixed. On his offer for delivery of goods on 11th January, 1989 itself he was clearly informed that the delivery will not be accepted before 27th

January, 1989. The Appellant could not have unilaterally fixed the date as per his choice.

10. This being the only issue urged before us, we find no infirmity either in the Arbitration Award or the order of the learned Single Judge.

11. The appeal is dismissed. No order as to costs.

(MUKTA GUPTA)
JUDGE

(MADAN B. LOKUR)
ACTING CHIEF JUSTICE

FEBRUARY 19, 2010

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