

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

50.

+ O.M.P. 474/2003

M/S. TOCO ENGINEERING CO. Petitioner
Through Mr. B. Mohan, Advocate

versus

POWER GRID CORPORATION
OF INDIA LTD. Respondents
Through: Mr. Pawan Upadhyay with
Mr. Puneet Parihar, Advocates

AND

52.

+ CS(OS) 35/2004

M/S. TOCO ENGINEERING CO. Petitioner
Through Mr. B. Mohan, Advocate

versus

POWER GRID CORPORATION
OF INDIA LTD. Respondents
Through: Mr. Pawan Upadhyay with
Mr. Puneet Parihar, Advocates

AND

53.

+ CS(OS) 1350A/2004

M/S. TOCO ENGINEERING CO. Petitioner
Through Mr. B. Mohan, Advocate

versus

POWER GRID CORPORATION
OF INDIA LTD. Respondents
Through: Mr. Pawan Upadhyay with
Mr. Puneet Parihar, Advocates

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Date of Decision : MAY 06, 2010

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment?No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest?No.

J U D G M E N T

MANMOHAN, J (ORAL)

1. By this common order, I shall dispose of the present batch of three petitions.

2. Power Grid Corporation of India Ltd. (in short “PGCIL”) has filed the petition bearing O.M.P. No. 474/2003 under Sections 30 and 33 of Arbitration Act, 1940 (hereinafter referred to as “Act, 1940”) challenging the arbitral Award dated 22nd October, 2003 passed by Mr. Justice (Retd.) S.C. Agrawal, Sole Arbitrator.

3. PGCIL impugns the Award in so far as it awards Claims No. 5, 6 and 11. The rate of interest is also challenged as being usurious and excessive.

4. I may mention that before the Arbitrator, M/s. Toco Engineering Company (in short “TEC”) had filed 18 claims but the Arbitrator had only awarded 3 claims and rejected the balance 15 claims. Primarily

the Arbitrator has awarded escalation charges and refund of retention money as well as two bank guarantees which had been encashed.

5. Having heard the parties I am of the view that scope of interference by this Court with an arbitral award rendered under Act, 1940 is limited. The Supreme Court in ***Arosan Enterprises Ltd. Vs. Union of India & Another*** reported in (1999) 9 SCC 449 has clearly outlined the scope of interference by this Court in objections filed under Sections 30 and 33 of the Act, 1940. The relevant observations of the Supreme Court in the said judgment are reproduced hereinbelow :-

“36. Be it noted that by reason of a long catena of cases, it is now a well-settled principle of law that reappraisal of evidence by the court is not permissible and as a matter of fact exercise of power by the court to reappraise the evidence is unknown to proceedings under Section 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award.

37. The common phraseology “error apparent on the face of the record” does not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record. The court as a matter of fact, cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the arbitrator is a possible view the award or the reasoning contained therein cannot be examined.

(emphasis supplied)

6. Moreover, it is settled law that Arbitrator is the master of facts

and law, and the Courts should not interfere with the award of the Arbitrator until and unless there is an error apparent on the face of the record. Also, reasonableness of reasons given by the Arbitrator cannot be challenged and even appraisal of evidence is never a matter which the Court questions or considers. When the parties select their own forum to decide the disputes, that forum must be conceded the power to appraise the evidence as well as quality and quantity of the same.

7. Keeping in view the aforesaid parameters, I am of the opinion that impugned Award requires no interference except with regard to the rate of interest.

8. As far as Claims 5 and 6 are concerned, I find that the Arbitrator after appreciation of facts has reached the conclusion that PGCIL was responsible for delay in execution of the contract and further that the contract had been terminated illegally. Consequently, TEC is entitled for refund of retention money as well as the two bank guarantees which had been encashed by the PGCIL.

9. As far as the Award of escalation is concerned, I find that the Arbitrator has awarded the same after calculating it on the actual date of execution. In my opinion, since the contract was extended by TEC without levy of liquidated damages, TEC would be entitled to price escalation. I may mention that there is no provision in the clause which

prohibits award of price escalation. By incorporating in the formula the actual date of execution, the Arbitrator has only acted reasonably and fairly. Consequently, the said claim calls for no interference in Section 34 proceedings.

10. However, as far as the award of interest is concerned, I deem it appropriate to reduce the rate of interest. The Supreme Court in ***Rajendra Construction Co. Vs. Maharashtra Housing & Area Development Authority and Ors.*** reported in (2005) 6 SCC 678; ***McDermott International Inc. Vs. Burn Standard Co. Ltd. & Ors.*** reported in (2007) 8 SCC 466 and ***Rajasthan State Road Transport Corporation Vs. Indag Rubber Ltd.*** reported in (2006) 7 SCC 700 has reduced the rate of interest. In fact, in ***Krishna Bhagya Jala Nigam Ltd. vs. G. Harischandra Reddy & Anr.*** reported in (2007) 2 SCC 720 the Supreme Court has held as under :-

“11. here also we may add that we do not wish to interfere with the award except to say that after economic reforms in our country the interest regime has changed and the rates have substantially reduced and, therefore, we are of the view that the interest awarded by the arbitrator at 18% for the pre-arbitration period, for the pendente lite period and future interest be reduced to 9%.”

11. Consequently, keeping in view the aforesaid judgments and the current rate of interest, I reduce the rate of interest to 9% per annum simple interest for the period mentioned in the Award as well as till the date of payment.

12. With the aforesaid modifications in the rate of interest, the

impugned Award dated 22nd October, 2003 is made rule of the Court and Registry is directed to prepare a decree in terms thereof. Accordingly, petitions stand disposed of.

MANMOHAN,J

MAY 06, 2010
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