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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO No.672/2003

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27th September, 2011

UNION OF INDIA

..... Appellant

Through: Mr. A.S.Singh, Adv.

VERSUS

M/S. ARCTIC INDIA & ANR.

..... Respondents

Through: Mr. Vivek Srivastava, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this First Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 is to the impugned judgment of the Court below dated 22.2.2003, and by which judgment the Court below dismissed the objections of the appellant under Section 34 of the Act.

2. The facts of the case are that a contract for operation and maintenance of Chilled Water Plant in DIPAC area of Delhi Cantt was awarded to the respondent for the period from 16.12.1996 till 15.12.1997 and this period was extended on two occasions for two months each ending on 31.4.1998. After the completion of the period of the contract,

the respondent/contractor submitted his final bill for Rs.4,74,028.38, which was however not paid by the appellant resulting in the arbitration proceedings. The Arbitrator allowed the Claim Petition of the respondent and awarded the amount for the work done under the contract of Rs.4,74,028.38 along with interest at 12% per annum till the date of Award and 15% per annum thereafter if the payment is not made within 90 days. The Arbitrator dismissed the counter claim of the appellant for Rs.18,30,000/- which was made on the ground that the respondent was guilty in causing damage to the machinery during the period of the maintenance and therefore the said machinery was got rectified at the risk and cost of the respondent/contractor.

3. Before the Arbitrator, reliance was basically placed upon Clause 25(d) of the Contract as also a report dated 27.11.1997 of CWE (Utilities) forwarded to the appellant with the letter dated 28.4.1998 to argue that the respondent was responsible for the damage to the equipment.

4. The respondent contested the counter claim as per the following main defences:-

- i) No letter was addressed to the respondent during the entire period of the contract except during the last extension from February, 1998 to April, 1998 of the alleged lack of due care in servicing of the machinery.

ii) The liability could have been at the best for the rectification of the machinery and not for the new machinery which was actually purchased under the risk and cost clause.

iii) The report dated 27.11.1997 was an ex parte report which saw the light of the day only after the conclusion of the contract because the same was forwarded to the appellant by the letter dated 28.4.1998.

5. The Arbitrator held that so far as the case with respect to supply of defective compressor under another contract is concerned, there was already an Award against the appellant which became final and in which it was held that the compressor supplied by the respondent was not defective. The Arbitrator further held that there was no question of any malpractice or negligence on behalf of the respondent/contractor because if that was so there would have been really no question of grant of two extensions to the respondent/contractor. Finally the Arbitrator held that the so-called rectification of defects which were got rectified were not covered under the scope of the contract as new equipments/parts were purchased although the same should have only been got repaired.

6. Learned counsel for the appellant argues that the appellant had written various letters to the respondent/contractor to rectify the defects and these letters are dated 2.4.1998, 20.4.1998, 30.4.1998, 6.5.1998, 9.6.1998, 10/11.6.1998, 7.7.1998 and 13.7.1998, but the contractor failed to respond to these notices. I may note that except the first three letters, rest of the letters have been written after the expiry of

the period of the service contract. It is therefore necessary only to refer to the first three letters dated 2.4.1998, 20.4.1998 and 30.4.1998. It is to be seen whether these three letters mention as to any neglect or malpractice of the respondent/contractor to hold him liable. For the facility of the reference, I am reproducing the said three letters below:-

Letter dated: 2.4.1998

"Delhi Tele: 5691185

REGISTERED ACK DUE
GARRISON ENGINEER
WATER SUPPLY
DELHI CANTT-10
02 APR' 98

8402/14/105/EB
M/S ARCTIC INDIA
20, RAJPUR ROAD
DELHI-110054

CA NO. CWE(U)/D-14/96-97: PROVN OF
OPERATION AND MAINT. OF CENTRAL AC PLANT
AT DIPAC

Dear Sir,

1. Reference your letter No.AI/WO/326/727/97 dt.27.12.97 and AI/W.O.326/753/98 dt.7.1.98.

2. It is intimated that out of two screw type compressor once compressor has become non functional since '30 Mar' 98. It is requested to depute skilled manpower immediately with technical know how to repair/rectify the fault. Treat matter most urgent.

Yours faithfully

Copy to:- (Sanjay Ekbote)
RE
Garrison Engineer
CME (U) : for information and na.
Delhi Cantt-10

AGE ACR –II : To lailee with contractor to rectify the defect immediately."

Letter dated 20.4.1998

"8402/14/109/E8
M/s ARCTIC INDIA
20 RAJPUR ROAD
DELHI-110054

CA NO.CWE(U)/D-14/96-97: PROVN OF OPERATION
AND MAINT OF CENTRAL AC PLANT AT DIPAC/

Dear Sir.

1. Reference this office letter No.8402/14/105/EB dt 02 Apr 98.
2. It is noticed that acrew type sealed compressor become off read since 30 Mar' 98 has still not been made serviceable till date. You are therefore requested to rectify the defects of said compressor on priority.

Yours faithfully
(Sanjay Ekbata)
AE
Garrison Engineer"

Letter dated 30.4.1998

"8402/14/113/E8
M/s ARCTIC INDIA
20 RAJPUR ROAD
DELHI-110054

CA NC CWE(U) D-14/96-97:PROVN OF OPERATION
AND MAINT OF CERTAIN AC PLANT AT DIPAC/

Dear Sir,

1. Reference further to this office letter No.8402/14/105/E8 dt. 02 Apr 98, 8402/14/109/E8 dt 20-4-98 and 8402/14/112/E8 dt 28-4-98.
2. Inspite of our repeated requested both the screw type compressors have still not been made functional. It has been pointed out that both the screw type compressors were handed over to you in complete working condition on 16 Dec'96. Both these compressors developed fault by 29 May 97. After some rectificatic carried out by you the compressors were made serviceable. However, the same could not be tested on load due to winter season.
3. On onset of summers, both these compressors have failed within short span after being put on tests.

4. As on date, both the sealed screw compressor units are off rod and the A/C plant is totally non operational this has created serious operational problem in a very critical defence installator .

5. You are, therefore, requested to attend to the fault rectification so that the A/C plant is made functional before completion of above mentioned contract.

(Sanjay Ekbota)

EE

Garrison Engineer"

7. A reference to the aforesaid letters shows that these letters do not at all mention that there is any malpractice or negligence on behalf of the respondent/contractor. These letters only talk of non-functioning of the compressor and the requirement to make the same functional.

8. So far as the alleged report dated 27.11.1997 is concerned, admittedly it was an ex parte report and it was never brought to the notice of the respondent/contractor during the period of operation of the contract inasmuch as the relevant department of the appellant itself came to know of this report only on 28.4.1998. In this regard, the Arbitrator has observed that if there were really any defects, then the contractor would not have been granted the two extensions.

9. A Court which hears objections to an Award does not sit as a Court of appeal. Merely because two views are possible, a Court which hears objections to an Award is not bound to set it aside. Once two views are possible and the Arbitrator takes one plausible and possible view it cannot be said that the Arbitrator has mis-conducted himself and/or the proceedings. A reference to the aforesaid facts show that except at the fag end of the contract no letters were written to the

respondent/contractor, and when the letters were written, these letters did not attribute any malpractice or negligence to the respondent/contractor. Once the scope of hearing objections to an Award is limited, then the scope of an appeal against an order dismissing the objections has necessarily to be further limited. Unless there is gross illegality or gross perversity, an Appellate Court would not interfere. The Court below has observed that the Award discusses the respective contentions of the parties and thereafter arrives at a finding, and the Court hearing objections cannot sit as an Appellate Court over such findings. Accordingly, the Court below dismissed the objections as the Award was a reasoned Award and reasonableness of the reasons has not to be examined by the Court hearing objections.

10. In my opinion, the aforesaid facts do not show any gross perversity or gross illegality for this Court to interfere in appeal. Merely because an additional/alternative view is possible, cannot mean that the Arbitrator can be said to have mis-conducted himself and/or the proceedings.

11. The appeal, therefore being without merits, is accordingly dismissed, leaving the parties to bear their own costs.

SEPTEMBER 27, 2011
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VALMIKI J. MEHTA, J.