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

+ O.M.P. No.375/2014

% Judgement Reserved on: 10th July, 2014

Judgement pronounced on: 21st July, 2014

UNION OF INDIA Petitioner

**Through: Mr.Kumar Rajesh Singh,
Advocate.**

versus

AGRAWAL WATER SUPPLIERS Respondent

Through: Mr.S.W.Haider, Advocate

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. This is a petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the impugned award dated 31.10.2013 of the sole arbitrator, whereby the learned arbitrator has awarded a sum of Rs.4,50,384/- along with 12% single interest on the amount awarded against claim no.3.

2. An award was passed by the arbitrator on 31.10.2013. The petitioner has assailed the said award on the ground that it has

been passed in mechanical manner and no reason has been given by the arbitrator for arriving at its conclusion. The award is not supported by any evidence. It is further submitted that the award is contrary to the tendered document. Learned arbitrator has also failed to give the reasoning on how it had arrived at the finding that the final bill of Rs.3,75,992/- is due after payment of Rs.1248978/-. It is further submitted that the arbitrator has wrongly awarded the interest on the awarded amount and it is against the clause 16(2) of General Conditions of the Contract (GCC) since the clause stipulates that no interest will be paid on earnest money/security deposit or amount payable to contractor under the contract. It is submitted that the award is contrary to the law laid down by the Supreme Court in ***AIR 1997 SC 980*** titled as ***The New India Civil Erectors (P) Ltd. vs. Oil & Natural Gas Corporation*** and judgment of Gauhati High Court in Arbitration Appeal No.4/2001 (DB) titled as ***Union of India vs. Major V.Nijhawan (Retd)*** which was upheld by the Supreme Court in SLP (C) bearing no.14749/2002. Reliance is placed on

the findings of the Supreme Court in **2003 (5) SCC 705** titled as ***ONGC vs. Saw Pipes Ltd.*** It is prayed that the award dated 31.10.2013 be set aside.

3. The notice was issued to the respondent. They have not filed any reply. However, the arguments have been addressed and a document has also been filed.

4. Arguments of both the parties have been heard at length. I have also gone through the case laws relied upon by both the parties.

5. The admitted facts of the case are that the petitioner had been awarded work of “Leading of P Way Material i.e. Rail Sleeper and other miscellaneous material from Shakurbasti and other locations in the section of ADEN/Ghaziabad” on 15.10.2003 and the scheduled date of completion was fixed as 14.04.2004. The total amount of the work was Rs.12,63,562/-. A detailed letter of acceptance was issued on 6.12.2003 after the respondent had furnished the requisite earnest money/security deposit of Rs.26,665/- vide FDR No.475014 dated 15.11.2003 for

the agreement of work being No.08/GZB/03-04 Nov.2003. The work commenced from 15.10.2003 with completion period of 06 months i.e. 14.04.2004. The respondent, however, failed to complete the work in stipulated period of time and the extension for completion of the project was given on three occasions to the respondents on their request and the period was extended upto 30th June, 2005. The following bills were raised by the respondent alongwith their details as under:

S.N.	Bill No.	Amount Paid
1	CC-I	Rs.197136/-
2	CC-II	Rs.96035/-
3.	CC-III	Rs.429186/-
4.	CC-IV	Rs.426621/-

6. All these bills were duly paid to the respondent and a total sum of Rs.1248978/- was paid to the respondent. The final bill submitted by the respondent was withheld by petitioner on the grounds that the metal quantity was not as per the specifications in the agreement and the respondent had failed to complete the work order within the stipulated period of time and it had caused

financial loss to the petitioner. Since the dispute had arisen between the parties, the respondent in terms of clause 64 of GCC, invoked the arbitration clause and filed the Arbitral Petition No.470/2007 before this court and the directions were issued by the court to General Manager, Northern Railway to appoint the Arbitrator for initiating the arbitral proceedings vide its order dated 5.3.2008.

7. The petitioner has challenged the award of Rs.3,75,992/- raised by respondent as final bill. It is contended that learned arbitrator has not given any cogent reason while awarding the said amount to the respondent which was beyond the contractual amount of Rs.12,63,562.50. In all these cases relied upon by petitioner it has clearly been observed that the learned arbitrator cannot go against the specific stipulations/conditions contained in the agreement between the parties and that the awarded can be set aside if it is contrary to substantive provisions of law or provisions of the Arbitration and Conciliation Act or against the term of contract. From the careful perusal of the award it is

apparent that the learned Arbitrator has duly considered all the facts and circumstances of the case and the evidences on record while arriving to the conclusion that the respondent was entitled to a sum of Rs.3,75,992/-. Findings of the learned Arbitrator is based on a bill which was lying unpaid with the petitioner and which clearly shows that the bill has been raised by the respondent for the work done by it.

8. The payment of the said bill had also been acknowledged by the petitioner for the execution of the work for which the measurement had already been recorded. It is also admitted case of the parties that the terms of the contract were extended from time to time and several bills had been raised by the respondent during extended period, which were duly paid by the petitioner. Learned Arbitrator has observed that the respondent had admitted the execution of the work for which the measurement had been duly recorded and bill for an amount of Rs.3,75,992/- had been prepared. Learned arbitrator has also relied on the documents of completion of work and preparation of final bill (FCC-V) entered

in the Measurement Book No.-7/GZB/2000 on 22.9.2005. It is also observed that the bill was prepared by concerned official i.e. DEN/GZB of the respondent and thereafter submitted to Sr.DEN/II/DRM Office, New Delhi on dated 10.10.2005. It, therefore, cannot be said that the findings of the arbitrator on this count are without any evidence or that the arbitrator had travelled beyond the stipulations/conditions of the agreement between the parties.

9. The petitioner has also challenged the grant of interest at the rate of 12% per annum from 22.9.2005 on the amount of Rs.3,75,992/-

10. It is argued on behalf of petitioner that Sub clause (3) of Clause 16 of General Conditions of the Contract prohibits the grant of interest. Reliance is placed on the judgment of Gauhati High Court in *Major V.P. Nijhawan (Retd)* (supra) and the confirmation of said judgment of the Gauhati High Court in an SLP (C) No.14749/2002 by the Supreme Court. The learned counsel for the respondent has argued that in a judgment of this

court in OMP 437/2005 titled as ***Union of India vs. M/s Pradeep Vinod Construction Co.*** this court had discussed the provisions of Clause 16 (3) of General Conditions of Contract and also the judgment of the Gauhati High court ***Major V.P. Nijhawan (Retd)*** (supra) and has given the findings that the arbitrator has jurisdiction to award interest. It is submitted that the said order has been upheld by the Division Bench of this court in FAO (OS) No.187/2006 and C.M.No.4959-54/2006.

11. I have given careful consideration to the rival contentions of the parties and perused the record.

12. From perusal of the record, it is apparent that the petitioner had awarded a contract to the respondent for the work of amount of Rs.12,63,562.50 which was to be completed within a period of six months i.e. by 14.4.2004 but the date of completion of work was extended from time to time and lastly the work was to be completed by 20.9.2005. On completion of the work on 17.9.2005, final bill of amount of Rs.3,75,992/- bearing no. FCC-V dated 22.9.2005 was prepared by concerned official after the

measurement of the work done by the respondent. This payment was therefore over and above the original cost of work. This payment of Rs.3,75,992/- therefore is not the part of the payment of Rs.12,63,562.50 which amount was mentioned in the Contract. The findings of the Gauhati High Court in Arbitration Appeal No.4/2001 (DB) titled as *Union of India vs. Major V.Nijhawan (Retd.)*, which were duly upheld by the Supreme Court in SLP (C) bearing no.14749/2002, to the effect that, in view of the sub clause 3 of clause 16 of the General Conditions of the Contract, the arbitrator does not have any jurisdiction to grant interest to the contractor, therefore, have no bearing on the facts of this case.

13. There is no dispute to the fact that Clause 16 (3) of the General Conditions of the Contract governs the parties. Under this clause, the contractor is not entitled for the interest. This clause has been elaborately discussed by this court in the case OMP 437/2005 titled as *Union of India vs. M/s Pradeep Vinod Construction Co.* This court has distinguished the said findings and has observed as follows:

10. The last aspect urged by learned counsel for the petitioner is that no interest ought to have been awarded in view of there being a specific stipulation to the contrary contained in clause 16 (c). The said clause is as under:

“No interest will be payable upon the earnest money or the security deposit or amounts payable to the contractor under the contract, but government securities deposited in terms of sub clause (1) of the clause will be repayable with interest accrued thereto.”

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12. In my considered view, what is envisaged by the said expression ‘amounts payable to the contractor under the contract’ would mean the amounts which have to be paid in normal course to the contracting party. This expression has to be also read with two other stipulations in respect of earnest money and security deposit. The object is that the earnest money and security deposit are liable to be detained till the completion of the contract. Not only amounts are payable to the contractor at various stages of the contract but there will be differences between the dates when such bills are raised and amounts are paid. It is in respect of these payments on behalf of the petitioner that no interest is payable. It cannot be said that if the petitioner unreasonably detains any amount, no interest would be payable. Similarly if it is found that there are claims arising on account of eventualities like additional work, breach by the petitioner of the terms of the contract, then the arbitrators cannot be said to be devoid of any authority to compensate the suffering

party by grant of interest.”

14. These findings were upheld by the Division Bench of this Court in FAO (OS) No.187/2006.

15. This court has thus clearly held that under Clause 16 (3) of the General Conditions of the Contract the arbitrator is while debarred from granting interest on earnest money/security deposit and any amount payable under the contract to the contractor but not on claims arising out on account of certain eventualities. In this case, the contract was for an amount of Rs.12,63,562.50 which already stood paid to the respondent. The sum of Rs.3,75,992/- had been awarded on account of work done by the respondent and duly measured by the petitioner and bill was duly prepared for this sum. The said claim therefore was not the part of the contracted amount but had become due to some eventualities for which the petitioner had duly done the measurements and verification.

16. Thus, it is clear that the arbitrator’s award does not suffer from any infirmity. There exists no ground to set aside the

findings of the arbitrator.

17. In view of the above discussion, present petition has no merit and the same is dismissed.

**DEEPA SHARMA
(JUDGE)**

JULY 21, 2014
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