

Reserved on 11.12.2023

Delivered on 14.12.2023

Court No. - 40

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 878 of 2023

Appellant :- Union Of India And 2 Others

Respondent :- M/S Ajit Prasad Jain And Co.

Counsel for Appellant :- Vivek Kumar Singh

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard Sri Vivek Kumar Singh, Advocate assisted by Ms. Sayujya Singh, learned counsel for the appellants.
2. The appellant entered into an agreement with the respondent for 'Provn of OTM Accn for Field Regt (Phase-II) at Meerut' and a contract was executed between the parties. At the end of contract the respondent claims that he had carried out some additional work on the directions of the appellant for which payments have not been made. There was a dispute between the parties in respect of work and payment in pursuance of the contract agreement.
3. After the dispute was raised by the respondent, the appellant as per the contract, appointed a sole arbitrator vide its letter dated 07.05.2009 to adjudicate the dispute between the parties.
4. The respondent filed statement of claim primarily on the ground of delay and handing over of buildings for dismantling/demolition, delay in removal of trees and shifting of water supply line, delay in finalization of layout of buildings/services, non-availability of site for road/electrification/security wall/ fencing, delay in placing add back DOs, stoppage of work in respect of religious institute and exorbitant increase in prices of cement and steel.
5. In reply to the statement of claim filed by the respondent, the appellant filed a statement of defence.
6. After adducing evidence and hearing the parties the arbitrator passed an award on 20.09.2011. The summary of the award is as follows:-

SUMMARY OF CLAIMS M/S AJIT PRASAD JAIN & CO.

Claim No.	Description of Claim	Amount Claimed (Rs)	Finding in Brief	Amount Awarded (Rs)
1 (a)	Provision of column C-1 and plinth	49,960.00	Partly	6,325.00

	beam PB-10 in Stair Hall of Adm & Education Building.		sustained	
1(b)	Provision of columns C-1: Nos with footing type F-5 in back wing of Ration Store etc of Adm & Education Building	25,666.00	Partly sustained	6,269.00
1 (c)	Provision of footing Type F-4 for 2 Nos for circular column C-8 at lawn of Officers Mess & Club Building.	6,466.00	Not sustained	Nil
1 (d)	Provision of footing reinforcement to block of three open garage for Officeres Mess.	3,317.00	Partly sustained	2,094.00
1(e)	Provision of roof slab RS-2 in load bearing portion at back side of JCOs Mess & Club Building.	25,015.00	Partly sustained	4,666.00
1(f)	Provision of roof beam RB-5 at crumple joint in intelligence/Map Room, roof beam of stair case Type 'A' & roof beam at verandah crumple joint of Education Bldg.	24,500.00	Partly sustained	12,493.00
1(g)	Excn and earth work in hard soil met with at site of Adm & Education and other Buildings, in lieu of soft/loose soil.	29,800.00	Sustained	29,800.00
1(h)	Provision of Platforms in Front of CO office and Religious Institute.	21,151.00	Sustained	21,151.00
1(j)	Provision of glass show case fancy type in Ante Room of Officers Mess.	Nil	Withdrawn	Nil
1(k)	Provision of PCC floor under peragolas in Guard House	15,950.00	Sustained	15,950.00
1(l)	Provision of Kota stone floor under Paragola with increased width of Verandah Unit Shop.	8,130.00	Sustained	8,130.00
1(m)	Provision of fancy glass in lieu of ordinary glass in Religious Institute Bldg.	12,800.00	Sustained	12,800.00
1(n)	Provision of Aluminium fittings in lieu of MS black fittings	Nil	Withdrawn	Nil
1(o)	Provision of Plastic emulsion paint in lieu of oil bound distemper in Bar, Mess Hall, CO Room, Conference Room and Guest Room of Officers Mess & Adm & Education Bldgs.	13,200.00	Partly sustained	13,136.00
1 (p)	Excavation and removal of soil filled under floor up to GL of old existing buildings.	2,07,826.00	Sustained	2,07,826.00
1(q)	Provision of additional reinforcement	Nil	Withdrawn	Nil

	at ridges of roofs.			
1(r)	Provision of two mirrors of size 6'x3' in toilet of Officers Mess Bldg and two gates at Captain Qrs Verandah.	5,336.00	Partly sustained	5,313.00
1(s)	Provision of 600mm extra width of plinth protection than that shown on drawing at certain places in Adm & Education Bldg.	10,129.00	Sustained	10,129.00
2.	Loss/Damages suffered due to non-handing over of existing Single Man Barrack Bldgs. Bearing No.E-71, E-72 & e-73 earmarked for demolition/dismantling with proviso that dismantled materials shall become contractor's properly.	5,59,700.00	Sustained	5,59,700.00
3(a)	Change in depth of combined footing CF-1 to 1200mm in lieu of 4800mm in Family Welfare Centre.	7,311.03	Sustained	7,311.03
3(b)	Omission of Ventilators PV-15, PV-12, PV-9 & PV-6 due to Non-availability of requisite space (600mm) between LB-3 and FB-14 in Adm & Education Building (D/S) including Storage Accn.	30,095.38	Sustained	30,095.38
3 (c)	Omission of hard standing in front of Officers Mess.	25,000.00	Sustained	25,000.00
3 (d)	Minus price adjustment of steel procured from secondary producers in lieu of main producer.	59,553.50	Not Sustained	Nil
3(e)	Provision of certain changes in Porch Slab & Beams of Adm & Education Bldgs.	Nil	Withdrawn	Nil
3(f)	Conversion of Block of Servant Qrs to single Officers Qrs.	Nil	Withdrawn	Nil
4.	Reimbursement of escalation in wages of labour, materials and fuel due in respect of claims no.1 & 3 above.	92,227.00	Partly sustained	61,415.00
5.	Extra expenditure incurred due to exorbitant increase in procurement price of cement and steel than those prevailing on the date of submission of tender based on which the lump sum was quoted/accepted within was not covered/could not be compensated by reimbursement/refund formula catered in CA based on whole sale price indices for all commodities	Nil	Withdrawn	Nil

	published by the Economic Advisor to Govt. of India.			
6 (a)	Loss of productivity including payment of final bill and damages.	32,51,670.00 1,15,664.00 75,000.00	Partly sustained	1,69,670.00
6(b)	Loss on overheads.	15,53,109.00	Not sustained	Nil
6 (c)	Loss due to un-contractual & illegal freezing of value of W1.	2,94,198.00	Sustained	2,94,198.00
7(a)	Reimbursement of recoveries stated to have been made due to technical examines observations, other recoveries and alleged non-testing of materials at our (claimant) Site Lab though factually carried out at site lab.	15,670.00	Partly sustained	11,250.00
7(b)	Refund of recovery of Rs.13,260.00 against testing of materials (aggregate, coarse sand, bricks etc.) and of Rs.11,520.00 (Penal recovery at 03 times of test expenditure of Rs.3,480.00) for alleged deleterious materials.	24,780.00	Partly sustained	7,680.00
7 (c)	Release of BGB No.6/2004 dated 08 Nov 2004 for Rs.5.00 lacs furnished against retention money.	BGB to be released	Sustained	BGB to be released
8.	Refund of recoveries effected, if any, by the Deptt from undisputed part of final bill (Part 'A') after its signing.	Nil	Withdrawn	Nil
9.	Payment of interest from the date dues not paid by the department till the date of actual payment @ 18% per annum.	Interest @ 18% p.a.		@10% &12%
10.	Cost of arbitration.	1,00,000.00	Not sustained	Nil

The arbitrator had further awarded interest at the rate of 10% prior to entering on the reference of arbitration, and awarded interest at the rate of 12% for pendente lite and future.

7. This award was challenged by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "Arbitration Act"). The Commercial Court, Meerut dealt with the claim in detail and after hearing the parties rejected the application filed under Section 34 of Arbitration Act vide order dated 14.07.2023. The Commercial Court while rejecting the claim has held that the award was passed in accordance with law after giving due opportunity of hearing to the parties. The Court further held that each

and every claim is well reasoned and the Court had lacked power of reviewing the same.

8. Aggrieved by the order of the Commercial Court, Meerut, the appellant had preferred the instant Arbitration Appeal under Section 37 of Arbitration Act.

9. Learned counsel for the appellant, Sri Vivek Kumar Singh assisted by Ms. Sayujya Singh has vehemently argued the matter and submitted that the learned Arbitrator has acted beyond its jurisdiction and no reason has been assigned as to how the award has been arrived at.

10. He further submitted that the award so passed was patently illegal and submitted that the interest awarded by the arbitrator was on higher side.

11. Both these arguments raised by learned counsel for the appellants are not correct as the award is speaking one and each claim has been considered separately and on the basis of evidences available on record and on merits, the same has been passed. Even the simple interest of 12% per annum awarded, cannot be said to be excessive.

12. In the matter of **M/s L.G. Electronics India (P) Ltd. vs. Dinesh Kalra**¹ the Hon'ble Court has held that the position of law stands crystallised to the effect that findings of fact as well as of law, of the Arbitrator/ Arbitral Tribunal are ordinarily not amenable to interference either under Sections 34 or Section 37 of the Act. The scope of interference is only where the finding of the tribunal is either contrary to the terms of the contract between the parties or ex facie, perverse that interference by this Court, is absolutely necessary. The Arbitrator/Tribunal is the final arbiter on facts as well as in law, and even errors, factual or legal, which stop short of perversity, do not merit interference under Sections 34 or 37 of the Act.

13. The scope of interference in appeal under Section 37 of the Act is very limited. In the matter of **Punjab State Civil Supplies Corporation Limited and another vs. M/s Ramesh Kumar and Company & Others**² decided on November, 13, 2021, the Hon'ble Supreme Court has held that while considering a petition under Section 34 of the 1996 Act, it is well-settled that the court does not act as an appellate forum. The grounds on which interference with an arbitral award is contemplated are structured by the provisions of Section 34 and these provisions shall be strictly followed. It has been repeatedly held that while entertaining appeals under Section 37 of the Act, the Court will not sit as a Court of Appeal over the award of the Arbitral Tribunal and, therefore, the Court would not re-appreciate or re-assess the evidence.

¹ 2018 SCC Online Delhi 8367

² Civil Appeal No.6832 of 2021 (Arising out of SLP(C) No.10179 of 2017

14. The Hon'ble Supreme Court in the matter of **Oil & Natural Gas Corporation Ltd vs Saw Pipes Ltd**³ held that a court can set aside an award under Section 34(2)(b)(ii) of the Act, as being in conflict with the public policy of India, if it is (a) contrary to the fundamental policy of Indian law; or (b) contrary to the interests of India; or (c) contrary to justice or morality; or (d) patently illegal. It was held that to hold an award to be opposed to public policy, the patent illegality should go to the very root of the matter and not a trivial illegality. It was also observed that an award could be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court, as then it would be opposed to public policy.

15. As laid down by the Supreme Court in **Mcdermott International Inc vs Burn Standard Co. Ltd. & Ors.**⁴ the supervisory role of the Court in arbitration proceedings has been kept at a minimum level and this is because the parties to the agreement make a conscious decision to exclude the courts' jurisdiction by opting for arbitration as the parties prefer the expediency and finality offered by it.

16. In the matter of **Ssangyong Engineering and Construction Company Pvt. Ltd. v. National Highways Authority of India**⁵, the Hon'ble Supreme Court has clarified that, under no circumstances, can any court interfere with an arbitral tribunal on the ground that justice has not been done in the opinion of the Court. This would amount to, entering into the merits of the dispute, which is contrary to the ethos of Section 34 of the Act.

17. The law is settled that, where the Arbitrator has assessed the material and evidence placed before him in detail, the court while considering the objections under Section 34 of the Act does not sit as a court of appeal and is not expected to re-appreciate the entire evidence and reassess the case of the parties. The jurisdiction under Section 34 of the Act is not appellate in nature and an award passed by an Arbitrator cannot be set aside on the ground that it was erroneous. It is not open to the Court to interfere with the award merely because in the opinion of the Court, another view is possible. The duty of the Court in these circumstances is to see whether the view taken by the Arbitrator is a plausible view on the fact, pleadings and evidence before the Arbitrator.

18. In the matter of **Haryana Tourism Ltd. v. M/s Kandhari Beverages Ltd**⁶ the Hon'ble Supreme Court has held that in an appeal under Section 37 of the Act, the Court cannot enter into merits of the claim, as it is a settled

3 (2003) 5 SCC 750

4 (2006) 11SCC 181

5 (2019) 15 SCC 131

6 (2022) 3 SCC 237

proposition of law that an award can only be set aside under Section 34/37 only if the award is found to be contrary to (a) Fundamental Policy of Indian Law, (b) Interest of India (C) Justice and Morality, if it is patently illegal.

19. Arbitration is a form of alternate dispute resolution, running parallel to the judicial system, attempts to avoid the prolix and lengthy process of the courts and presupposes parties consciously agreeing to submit a potential dispute to arbitration with the object of actively avoiding a confrontation in the precincts of the judicial system. If a Court is allowed to review the decision of the arbitral tribunal on the law or on the merit, the speed and, above all, the efficacy of the arbitral process is lost.

20. In the instant case none of the aforesaid exceptions are attracted.

21. In view of the aforesaid propositions of law, the law is well-settled that the scope of interference under Section 37 of the Act is very narrow and this is not a case which calls for an interference and hence, the instant appeal is devoid of merits and is, accordingly, *dismissed*.

Order Date :-14.12.2023

S.P.