

GAHC010181352004



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.A./2/2004

M/S OIL INDIA LTD

VERSUS

M/S BUILWORTH PRIVATE LTD

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocate for the appellant : Mr. A Sarma

Advocate for the respondent : Ms. G Goswami

JUDGMENT & ORDER (ORAL)

18.06.2024

This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, the Act of 1996) challenging the order dated 31.12.2023 passed in Misc.(Arb.) Case No.529/2002 by the Court of the Adhoc Additional District Judge No.2, Guwahati (hereinafter to be referred to as 'the impugned order') had refused to set aside the arbitration award.

2. Taking into account that this Court is taking up the appeal against an order passed under Section 34, it is relevant to note that it is no longer *res integra*, that the scope of interference to an order under Section 34 of the Act of 1996 is far more circumscribed than the jurisdiction under Section 34 of the Act of 1996. (see *UHL Power Company Ltd. Vs. State of Himachal Pradesh*, reported in (2022) 4 SCC 116). Keeping the settled position of law in mind, this Court takes up the instant appeal for disposal.

3. The dispute involved which led to the filing of the instant appeal briefly stated is that in the month of June 1989, a global tender was floated by the Appellant inviting two stage bids for design, fabrication, utilization, supply, installation and commissioning of a phematic, bulk handing plant for converting sack materials e.g. cement, barytes etc. The respondent herein submitted its bid on 02.08.1989 along with others. On 03.08.1989, the technical bids were opened and four offers were found to be technically viable including the offer made by the respondent. The price bid was opened on 20.03.1990. At this stage, it is very pertinent to take note of that in the price bid so submitted by the respondent on 20.03.1990, it was categorically stated that the respondent

had quoted the rate on the basis of benefits, which the respondent expected it would receive under the Deemed Export Benefit Scheme of the Government of India. It was also mentioned that in the circumstance, the Deemed Export Benefit Scheme is withdrawn by the Government of India or the respondent is held not entitled to, than the appellant herein would be liable to reimburse the respondent the difference which the respondent would have otherwise availed if the Deemed Export Benefit Scheme was in existence and the respondent was allowed to avail it. On the basis of the said commercial bids so submitted, the respondent's bid was held to be the lowest @Rs.3,29,10,000/-. Thereupon on 22.09.1990, a purchase order bearing No.135218 was issued to the respondent. It is very pertinent herein to mention that a perusal of the said purchase order, which is enclosed to the additional affidavit filed by the appellant shows that it was issued under the Deemed Export Benefit Scheme. It is the case of the appellant that in the purchase order though it has been mentioned that the said order was placed under the Deemed Export Benefit Scheme, but it included a clause being Clause 25.1, wherein it was categorically mentioned that any terms and conditions which might have been mentioned by the respondent in the quotation but have not been incorporated in the supply order would not be applicable. Be that as it may, the contract which was entered into between the appellant and the respondent was duly implemented in the year 1992 itself. However, subsequent thereto, a dispute arose as regards non-payment of the additional amount which the respondent claimed to be entitled to on the basis of the withdrawal of the Deemed Export Benefit Scheme. Under such circumstances, taking into account the said claim along with others, an arbitration proceedings was initiated. In the instant proceedings, this Court is not concerned with the other claims, taking into account the specific

submissions made by Mr. A Sarma, the learned counsel appearing on behalf of the appellant, the instant appeal is limited to the challenge to the interpretation of the contract by the learned Arbitrator, without taking into account the Clause 25.1 of the purchase order, for which the same suffers from perversity.

4. *Per contra*, it is the specific case of the respondent/claimant that as the bids so submitted by the claimant was specific that the price quoted was on the basis of benefits under the Deemed Export Benefit Scheme and it was categorically mentioned that should the Deemed Export Benefit Scheme be withdrawn or not given the benefit to the respondent, the respondent would be entitled to claim such benefit or for the matter pass on the same to the appellant. The learned Arbitrator held that the said condition put in the price bid submitted by the respondent, who was the claimant in the Arbitration proceedings binded the appellant herein, who was the respondent in those proceedings to make good the deficit amount, which the respondent/claimant had to incur, in view of the withdrawal of the scheme. The learned Arbitrator accepted the contention of the respondent/claimant herein and rejected the contention of the appellant herein in respect to Clause 25.1 of the purchase order dated 22.09.1990. Thereupon, an award was passed on 16.06.2002 in favour of the respondent herein.

5. Being aggrieved, an application was filed under Section 34 of the Act of 1996 for setting aside the award dated 16.06.2002. The said application was rejected by the Court of the learned Adhoc Additional District Judge, Kamrup No.2 at Guwahati holding it that the view taken by the learned Arbitrator was a

reasonable view and accordingly dismissed the application under Section 34 of the Act of 1996 vide the impugned order. It is against that the instant appeal has been preferred.

6. Mr. A Sarma, the learned counsel for the appellant had submitted that the view which has been taken by the learned Arbitrator in respect to the interpretation of the agreement was not a view which can under any circumstances be taken and as such, the learned Arbitrator had committed a patent perversity in arriving at its conclusion. Elaborating further, the learned counsel for the appellant submitted that in pursuance to the notice inviting tender, the respondent herein submitted its technical bid as well as the price bid. In the said price bid, they have duly mentioned that the price so submitted was based upon the Deemed Export Benefit Scheme and it was further mentioned also that in the circumstance, the said scheme is withdrawn by the Government of India, or the respondent becomes dis-entitled to, then the appellant would have to make good the losses so incurred. The learned counsel for the appellant submitted that pursuant thereto, the purchase order was issued on 22.09.1990, wherein it was categorically mentioned in Clause 25.1 that any terms and conditions which might have been mentioned by the respondent in the quotation, but have not been incorporated in the supply order would not be applicable. He, therefore, submitted that the appellant herein was not able to make good the losses so incurred or the expenses so incurred, in view of the withdrawal of the scheme by the Government of India as it was not a term which was included in the purchase order and under such circumstances, the learned Arbitrator committed patent perversity in interpreting the condition that the term which has been mentioned in the price bid by the respondent was

a part of the contract. The learned counsel further submitted that there is no denial to the fact that the purchase order was accepted, *inasmuch as*, in pursuance to the said purchase order, the respondent had duly carried out the implementation of the work. In addition to that, there were five amendments to the purchase order, and the amendments had nothing to do as regards that the appellant has to bear the consequences for withdrawal of the scheme. In that regard, the learned counsel has referred to the judgment of the Supreme Court in the case of Delhi Metro Rail Corporation Ltd. Vs. Delhi Airport Metro Express Pvt. Ltd., reported in 2024 SCC OnLine SC 522 and relied upon the paragraphs 47 to 54.

7. On the other hand, Ms. G Goswami, the learned counsel appearing on behalf of the respondent submitted that the scope of interference in an appeal under Section 37 of the Act of 1996 is more circumscribed than the scope under Section 34 of the Act of 1996. She, therefore, submitted that when the learned Arbitrator had on the basis of the materials on record had come to a finding which may or may not be a correct interpretation, but if it is a reasonable interpretation, then in that regard, the scope of interference to the said interpretation to the contract by the learned Arbitrator cannot be called in question in a proceedings under Section 34 of the Act of 1996 or for that matter in an appeal under Section 37 of the Act of 1996. She, submitted that it is not a case that the interpretation so given by the learned Arbitrator by any means of imagination be an interpretation which is completely contrary to law. She submitted that the respondent herein had submitted the price bid stating categorically that in the circumstance that the price so quoted which was on the basis of the benefit to be accrued under the Deemed Export Benefit Scheme

was not available, the appellant had to make good the losses or additional expenditure. The learned counsel submitted that this aspect of the matter which is stated in the price bid was never denied. On the other hand, the price which was granted to the respondent in terms of the purchase order was on the basis of the Deemed Export Benefit Scheme. She, therefore, submitted that the view which has been taken by the learned Arbitrator after discussing the various authorities is the correct view and as such, the question of interference in a proceedings under Section 34 or under Section 37 of the Act of 1996 does not arise. The learned counsel relied upon the recent judgment of the Supreme Court in the case of *Reliance Infrastructure Ltd. Vs. the State of Goa*, reported in (2024) 1 SCC 479 and more specifically relied upon paragraphs 27, 29, as well as 33.

8. I have heard the learned counsels appearing on behalf of the parties and have given due anxious consideration to the respective submissions.

9. The issue involved in the instant appeal is as to whether the learned Arbitrator had taken a plausible view to the interpretation of the contract *inasmuch as*, if the interpretation of the contract is a possible view, the question of interference does not arise, either under Section 34 of the Act of 1996 and within the limited powers under Section 37 of the Act of 1996. From a perusal of the award so passed by the learned Arbitrator on 16.06.2002 and, more particularly, the portion of the award wherein the learned Arbitrator had dealt with the interpretation of the contract and it was observed that at the time of the contract coming into being, the Deemed Export Benefit Scheme was in force. However, during the pendency of the contract, the Deemed Export Benefit Scheme was withdrawn by the Government of India. The learned Arbitrator had duly taken note of the price bid so submitted, wherein it was clearly and unambiguously stated by the respondent/claimant that in the circumstance the Deemed Export Benefit Scheme is withdrawn or the respondent/claimant is disentitled to avail the benefits, the appellant herein would be liable to make good the amount which the respondent/claimant would have to incur in view of not getting the benefit under the Deemed Export Benefit Scheme. It is also noticed that the learned Arbitrator had duly taken note of that the purchase order which was issued on 22.09.1990 categorically mentioned that the purchase order was issued under the Deemed Export Benefit Scheme, as per the Government guidelines and without allowing any price preference. This Court has also taken note of the purchase order which has been enclosed to the additional affidavit filed by the appellant. There is no specific mention as to what amount the appellant would pay, if the Deemed Export Benefit Scheme was not granted, *inasmuch as*, the purchase order categorically only stated that the order was placed under the said scheme. There is no denial in the purchase

order that the purchase order would become *non est* in the circumstance that the Deemed Export Benefit Scheme is withdrawn. There is also no denial in the purchase order categorically that their conditional price bid was not accepted. Be that as it may, Clause 25.1 only stated that any terms and conditions which might have been mentioned by the respondent in the quotation, but have not been incorporated in the supply order would not be applicable. This Clause 25.1 in the opinion of this Court cannot disentitle the respondent to the benefit in the circumstance, the Deemed Export Benefit Scheme was withdrawn and the learned Arbitrator had also duly taken note of the said aspect of the matter in the award, while interpreting the contract. Under such circumstances, in the opinion of this Court the question of interference on the interpretation so given by the learned Arbitrator to the contract cannot be said to be suffering from patent perversity.

10. This Court finds it relevant to take note of the judgment of the Supreme Court in the case of Associate Builders Vs. Delhi Development Authority reported in (2015) 3 SCC 49 wherein the Supreme Court observed that an award to be rendered perverse or irrational would be when the findings are based on no evidence or based on irrelevant materials or when the learned Arbitrator had ignored vital evidence. In the recent judgment of the Supreme Court in the case of Delhi Airport Metro Express (*supra*), the Supreme Court had categorically observed that when an interpretation of the contract is so unreasonable, such that no person of ordinary prudence would take it or for that matter, the interpretation of the terms of the contract as adopted by the Arbitral Tribunal was not even a possible view than an award would be perverse.

11. In a much recent judgment of the Supreme Court in the case of Reliance Infrastructure Ltd. (supra), the Supreme Court not only dealt with the more circumscribed powers under Section 37 of the Act of 1996, but also observed relying on the judgment in the case of Delhi Airport Metro Express (supra) that there is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. It was observed that this approach would lead to corrosion of the object of the Act of 1996 and the endeavours should be made to preserve this object, which is minimal judicial interference with arbitral awards.

12. In the backdrop of the above, this Court having already dealt with the facts and the law so laid down is of the opinion that the interpretation so given by the learned Arbitrator cannot be said to be an interpretation, which is not reasoned or even not plausible. Under such circumstances, this Court finds no ground to interfere with the impugned award dated 16.06.2002 passed by the learned Arbitrator or for that matter, the impugned order dated 31.12.2003 passed in Misc.(Arb.) Case No.529/2002.

13. Accordingly, the instant appeal stands dismissed.

14. However, there shall be no order as to costs.

15. Registry to send back the LCR.

JUDGE

Comparing Assistant