

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.1632 OF 2014

Lt.Col. Madan M. Verma	...Petitioner
V/s.	
Bharat Petroleum Corporation Limited	...Respondent

Mr.Y.C. Naidu for the Petitioner.

Mr.Bhalwal i/b Vyas & Bhalwal for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 11TH MARCH, 2015.

P.C. :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996 (for short "the said Act") the petitioner has impugned the arbitral award dated 4th July, 2014, allowing the claims made by the petitioner and rejecting the counter-claim made by the respondent.

2. A perusal of the award indicates that the petitioner herein had entered into a labour contract on 22nd October, 2003 with the respondent for operating COCO retail outlet of M/s.BP-Greater Noida on the terms and conditions stipulated therein. The petitioner was required to remit the payments and/or settle the account of the

respondent from time to time and was required to furnish the bank guarantees of Rs.5.00 lakhs during the existence of the said agreement.

3. On 17th September, 2004 the parties settled the accounts in the meeting held. The petitioner agreed to the outstanding amount of Rs.2,19,584.54 ps. and agreed to deposit the said amount on or before 31st August, 2014. The petitioner also agreed to pay Rs.2500/- on account of recovery of cheque dishonour and a sum of Rs.38,068/- on account of lubricant sales. The bank guarantee submitted by the petitioner under the said agreement arrived at between the parties expired on 23rd May, 2004 and was not renewed by the petitioner despite request made by the respondent.

4. Since the petitioner had collected cash of Rs.2,70,000/- from the sale proceeds and had not deposited the same with the respondent along with various other amounts, the respondent invoked arbitration agreement and appointed an arbitrator. The petitioner also filed counter claim before the learned arbitrator.

5. A perusal of the award indicates that the learned arbitrator has considered the submissions of both the parties at length and have taken into consideration the settlement arrived at between the parties on 17th September, 2004 whereby the petitioner had admitted the outstanding liability in the sum of Rs.2,60,152.54 and other

amounts. The cheque issued by the petitioner in favour of the respondent was also dishonoured.

6. Mr.Naidu, learned counsel for the petitioner submits that the appointment of the learned arbitrator was for a specific period beyond which the learned arbitrator could not have continued to act as an arbitrator. He submits that after expiry of the period of appointment of the learned arbitrator, he became *functus officio* and could not have rendered the award. Learned counsel for the petitioner submits that the petitioner was at the relevant time in hospital and was not given proper opportunity to defend his case. Learned counsel submits that the learned arbitrator has rejected the counter claim filed by the petitioner without any reasons.

7. Insofar as the first submission of learned counsel for the petitioner that the learned arbitrator could not have continued with the arbitral proceedings on expiry of the period within which he was liable to render an award is concerned, it is not in dispute that even after expiry of such period, the petitioner was represented before the learned arbitrator by his brother. The petitioner never raised any issue before the learned arbitrator that the mandate had come to an end on expiry of such period. The petitioner also did not file any proceedings in this respect under section 14 of the Arbitration Act for a declaration that the mandate of the learned arbitrator had come to

an end. In my view, there is thus no merit in this submission of learned counsel for the petitioner.

8. Insofar as the submission of learned counsel that there was no proper opportunity awarded to the petitioner is concerned, learned counsel does not dispute that the notices were received by the petitioner at his address from the learned arbitrator. I am therefore, of the view that there is no merit in this submission of learned counsel.

9. Insofar as the counter claim made by the petitioner is concerned, the learned arbitrator has rendered a finding that the said counter claim was totally misconceived and without any basis and has rightly rejected the same.

10. Learned counsel for the petitioner does not dispute that the petitioner had entered into the settlement agreement with the respondent whereby he had admitted the liability. The award is based on such admitted documents. The findings rendered by the learned arbitrator are not perverse and thus no interference with such findings of fact is warranted under section 34 of the Arbitration Act.

11. Insofar as the rate of interest awarded by the learned arbitrator @ 18% p.a. is concerned, in my view in the facts and circumstance of this case the same is exorbitant and thus the same is reduced to 12% p.a. The award is partly modified to the aforesaid

extent. Rest of the award is upheld.

12. The petition is disposed off accordingly.

13. There shall be no order as to costs.

(R.D. DHANUKA, J.)