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

ARBITRATION PETITION NO.736 OF 2016

V. Krishnamurty	...Petitioner
V/s.	
Union of India & Ors.	...Respondents

Mr.Aditya Chitale i/b MNSQ Legal for the Petitioner.

Mr.Induprakash Tripathi for the Respondent Nos.1 and 2.

CORAM : R.D. DHANUKA, J.
DATE : 8TH JUNE, 2016.

P.C. :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996, the petitioner has impugned the arbitral award dated 21st January, 2016, dismissing the claims made by the petitioner and allowing the counter claim made by the respondent nos.1 and 2. Some of the relevant facts for the purpose of deciding this petition are as under :

2. On 5th September, 2006, the petitioner was offered to take up the advertisement rights from the respondent nos.1 and 2 at three stations on interim basis. On 13th September, 2006, the offer of the petitioner was accepted. In the letter of acceptance it was made clear by the respondent nos.1 and 2 that the respondent nos.1 and 2 had

agreed the request of the petitioner for granting 15 days as gestation period for putting up displays subject to condition that after finalization of tender, the contract period will start from the date of letter of acceptance and no gestation / grace period would be given. The petitioner was requested to submit the payment of Rs.11.00 lacs for the first month. It was once again made it clear that the contract would commence after 15 days of the receipt of the said letter or date of display whichever is early on the same tender terms and conditions. It is not in dispute that pursuant to the said letter of acceptance dated 13th September, 2006, the payment of Rs.11.00 lacs for the first month was made on the terms and conditions as set out in the said letter dated 13th September, 2006.

3. The petitioner was granted gestation for the interim contract on 9th October, 2006 till 28th October, 2006. It is the case of the petitioner that on 12th December, 2006, another contract permitting the petitioner a gestation period upto 28th December, 2006 was granted and thereafter the petitioner removed its display on 28th December, 2006. On 19th January, 2007, the petitioner was informed about the acceptance of regular tender offer and was asked to make payment. The petitioner thereafter paid an amount of Rs.66.00 lacs on 27th January, 2007.

4. The dispute arose between the parties insofar as gestation

period of 30 days is concerned. It was the case of the petitioner that since the petitioner did not accept the period of 15 days as gestation period in the contract on interim basis, the petitioner was entitled to the gestation period of 30 days in the contract awarded by the respondent nos.1 and 2. It was however, the case of the respondent nos.1 and 2 before the learned arbitrator that since the petitioner had accepted the contract on interim basis, based on the basis of 15 days gestation period and has agreed that in view of the said period of 15 days accepted by the petitioner, the petitioner would not be entitled to any gestation in the regular contract awarded by the respondent nos.1 and 2. Since the petitioner did not pay the amount to the respondent nos.1 and 2 within the time prescribed, the respondent nos.1 and 2 demanded compensation in terms of the contract from the petitioner and made counter claim before the learned arbitrator.

5. Mr.Chitale, the learned counsel appearing for the petitioner submits that since the petitioner had not accepted the gestation period of 15 days from the interim contract awarded to the petitioner, the petitioner was entitled to gestation period of 30 days in regular contract and thus there was no question of making any payment for the said period to the respondent nos.1 and 2 and thus the respondent nos.1 and 2 could not have recovered any compensation from the petitioner for the alleged delay.

6. The next submission of the learned counsel for the petitioner is that though the petitioner had tendered the affidavit in lieu of examination in chief before the learned arbitrator, the respondent nos.1 and 2 instead of cross-examining the said witness proposed to be examined by the petitioner, the respondent nos.1 and 2 chose to file a counter affidavit to the said affidavit in lieu of examination in chief and thus the learned arbitrator not having considered the deposition made in the affidavit in lieu of examination chief, the award suffered from violation of principles of natural justice and thus deserves to be set aside on this ground.

7. Mr.Tripathi, learned counsel appearing for the respondent nos.1 and 2 on the other hand invited my attention to the correspondence exchanged between the parties forming part of the arbitration petition and also the findings rendered by the learned arbitrator in the impugned award. He submits that the petitioner had made payment of Rs.11.00 lacs based on the premise that the petitioner had accepted the gestation period of 15 days in the interim contract and had also accepted that in the regular contract awarded to the petitioner by the respondent nos.1 and 2, no further gestation period would be permitted. He submits that the learned arbitrator has considered the entire correspondence and rendered a finding of fact that the petitioner has accepted the gestation period of 15 days in

the interim contract and had agreed that no further period of gestation would be permitted in the regular contract.

8. Insofar as the submission of the learned counsel for the petitioner that since there was no cross-examination of the witness proposed to be examined by the petitioner, non-consideration of the affidavit in lieu of examination in chief by the learned arbitrator was in violation of the principles of natural justice is concerned, he submits that the petitioner through its learned counsel had requested the learned arbitrator to consider the said affidavit in lieu of examination in chief as part of the written arguments. The learned arbitrator has recorded this request of the learned counsel for the petitioner in the impugned award. He submits that the said affidavit in lieu of examination in chief was treated as written arguments and thus there was no question of the respondents cross-examining the said witness before the learned arbitrator. He submits that there was no violation of principles of natural justice.

9. Learned counsel appearing for the respondent nos.1 and 2 submits that the learned arbitrator has recorded various findings of fact which are based on the documents produced by both the parties and the impugned award is based on the interpretation of the terms and conditions of contract and thus the interpretation of the contract being possible interpretation, this Court cannot substitute the

interpretation by another interpretation.

10. A perusal of the correspondence annexed to the petition clearly indicates that the respondent nos.1 and 2 in the letter of acceptance dated 13th September, 2006 made it clear that the administration had agreed to the request of the petitioner for grant of 15 days as gestation period for putting up the display subject to condition that after finalization of tender, the contract period would start from the date of letter of acceptance and no gestation / grace period would be given. A perusal of the impugned award rendered by the learned arbitrator indicates that the finding rendered by the learned arbitrator that the date of commencement was agreed by the petitioner at the time of awarding the interim contract and it was fixed that the date of issuance of letter of allotment for three years shall be the date of commencement of the contract, as no separate gestation period would be provided for three years contract since the petitioner has already availed off 15 days for the interim contract of three months. The learned arbitrator also has rendered the finding that the petitioner had made payment of Rs.11.00 lacs based on the said premise that there was no further gestation period to the regular contract awarded to the petitioner.

11. Insofar as the submission of the learned counsel for the petitioner that there was violation of principles of natural justice by the

learned arbitrator is concerned, a perusal of the award indicates that the petitioner through his counsel has made a statement before the learned arbitrator that the affidavit filed by the petitioner shall be considered as the written arguments. The respondent nos.1 and 2 accordingly filed their counter argument to the said affidavit, which is also considered by the learned arbitrator in the impugned award.

12. A perusal of the award indicates that the learned arbitrator has considered all the relevant facts including the pleadings and the documents produced by the parties and has rendered the findings which in my view, are not perverse and thus this Court cannot interfere with such findings in this petition filed under section 34 of the Arbitration & Conciliation Act, 1996. In my view the interpretation of the contract by the learned arbitrator is a possible interpretation and thus cannot be substituted by another interpretation by this Court.

13. In my view, since the petitioner did not make payment to the respondent nos.1 and 2 in terms of the contract, the learned arbitrator was justified in allowing the counter claim made by the respondent nos.1 and 2. I do not find any infirmity in the impugned award. The petition is devoid of merits and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)