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

F-95.

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O.M.P. 250/2008

M/S. AGGARWAL ADVERTISEMENT BUREAU

THROUGH: PROPRIETOR MAHESH AGGARWAL Petitioner

Through: Mr. Rajesh Chhetri, Mr. Pawan

Upadhyay, Mr. Rajeev Chhetri, Ms. Meenakshi

Rawat and Mr. Akash Tyagi, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: None.

CORAM: JUSTICE S. MURALIDHAR

ORDER

16.12.2016

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1. M/s. Aggarwal Advertisement Bureau through its proprietor Mahesh Aggarwal has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') challenging an Award dated 31st March 2008 passed by the sole Arbitrator in the disputes between the Petitioner and the Respondents Northern Railways arising out of an agreement dated 10th May 1994 for "the beautification and maintenance of Kanpur Central Station by painting, distempering and white washing the roofs, platforms, main building and windows." The Petitioner issued a demand notice dated 16th November 1998 claiming damages to the extent of Rs.59,62,193. However in response, the Respondent is stated to have terminated the contract. Consequently on an application by the Petitioner under Section 11 of the Act before this Court, an Arbitrator being appointed on 12th September 2003.

2. A perusal of the impugned Award reveals that there were 31 claims by the Petitioner and these were filed on 2nd December 2003. An affidavit of claim was filed on 29th May 2006.

3. The Railways filed a written statement of defence on 10th March 2004 and a supplementary affidavit dated 23rd November 2006. However, a counter claim was filed belatedly on 30th March 2007 although the counter claim itself is dated 22nd January 2007.

4. In the impugned Award, the learned Arbitrator framed six issues which read as under:

“1. Whether the terms and conditions of agreement/contract executed on 10th May 1994 were violated by Petitioner/Respondent.

2. Whether the Petitioner failed to pay Rs.19,62,223.50 paisa as penalty charges, rental charges, electrical dues and penalty charges for late payment of dues to the Railways.

3. Whether the Petitioner has sole right contract for display of advertisement at Kanpur Central Station as specified in the subject agreement and whether Respondent suffered a loss of Rs.21,359 due to failure of Petitioner having failed to carry out the work assigned.

4. Whether the work of Petitioner was unsatisfactory and he failed to improve his work of maintenance and beautification after repeated warnings.

5. Whether the Petitioners case barred by limitation.

6. Whether the Petitioner in violation of the terms and

conditions of agreement/contract still carrying out work of advertisement in railway premises by displaying hoardings/wall paintings in unauthorized manner.”

5. As can be noticed, one of the important points for determination was whether the counter claims were barred by limitation. However, the learned Arbitrator failed to frame an issue or consider the said aspect. Strangely, the learned Arbitrator framed an issue whether the Petitioner’s claim was time barred although no such plea appears to have been raised by the Respondent.

6. This is one Award which contains no reason whatsoever. Considering that as many as 31 claims were filed by the Petitioner, the least that the learned Arbitrator was expected to do was to deal with each of the claims. That, however, was not done at all. Further despite framing the above issues for consideration, the learned Arbitrator has not considered it necessary to answer them. There is no discussion of the evidence placed on record. There appears to be only a series of conclusions. For instance, there is simply a statement that "Railway Administration suffered a loss of Rs.21,359 because of non-performance" by the Petitioner. There is no indication of the material on the basis of which such a conclusion has been drawn. Then there is a statement that “it appears the Petitioner instead of honouring the terms and conditions of the agreement, held the railway administration to ransom by withholding payment of such a huge amount of electrical dues/penalty charges/rental charges and penalty charges on late payment of dues.” Again there is no indication for the reasons that led to this conclusion.

7. In what appears to be an implied rejection of all the claims, the operative portion of the impugned Award simply states that “after the due

consideration of all the documents & other material paper by petitioner & respondent and having gone through all the evidence, documentary & oral, in connection with the aforesaid dispute and differences, I award and direct as under....” The learned Arbitrator then proceeds to direct that the Petitioner should pay the Respondent Rs.17,42,623 in full and final settlement of all disputes together with simple interest @ 9%. What were the reasons that weighed with the learned Arbitrator to give the above directions and how the above figure was arrived at was not indicated.

8. In sum the impugned Award is bereft of any reasons whatsoever. Under Section 31(3) of the Act unless the parties otherwise agree, it is imperative for the Arbitrator to give reasons for the Award. The impugned Award is plainly in violation of Section 31(3) of the Act. The passing of an unreasoned Award is no longer acceptable and it is contrary to the fundamental policy of Indian law. The ground in Section 34(2)(d)(ii) of the Act is straightway attracted.

9. For the aforementioned reasons, this Court sets aside the impugned Award dated 31st March 2008. The petition is allowed but in the circumstances with no order as to costs.

S. MURALIDHAR, J

DECEMBER 16, 2016
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