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

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Date of decision: 02.05.2017

+ O.M.P. (COMM) 218/2017 and I.A. No. 5351-52/2017

CHIEF ELECTORAL OFFICE & ANR. Petitioners

Through Ms.Iram Majid, Adv.

versus

MAHALAKSHMI LIGHT

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. These objections are filed by the petitioners under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) seeking to challenge the Award of the Sole Arbitrator Justice Jaspal Singh (Retd.) dated 07.01.2017.

2. Some of the basic facts are that the petitioners invited tenders for supply of tentage and furniture items on hire basis in connection with the General Elections to the Lok Sabha in 1999. The tender of the respondent was accepted on 09.08.1999 with regard to the Karol Bagh and Outer Delhi Parliamentary Constituencies. The parties consequently entered into an agreement which contained an arbitration clause. As disputes arose, the matter was referred to the learned Arbitrator.

3. It is the case of the respondent that it supplied all the required supplies and facilities. Bills/challans pertaining to the Karol Bagh Parliamentary Constituency amounting to Rs.19,98,426.24/- were raised while the bills relating to the Outer Delhi Parliamentary Constituency were to the tune of

Rs.80,30,362/-. It is the case of the respondent that though the aforesaid bills/challans have been duly verified by the concerned Returning Officer and recommended for payment, no payment has been made despite numerous reminders and service of a legal notice. A claim of Rs.1,00,28,788.24/- has been raised with interest.

4. The learned Arbitrator rejected the submissions of the petitioners and passed an Award in favour of the claimant/respondent for Rs.1,00,28,788.24/- plus interest as stated. Costs of Rs.2 lakhs were also awarded.

5. I have heard learned counsel for the petitioners.

6. She has referred to ground 9(e) of the petition to point that two of the bills raised by the respondent were bogus and no amount was recommended by the concerned Returning Officer while the rest of the bills were found to be highly inflated. It is stated that after taking a detail examination of the bills preferred by the respondent amounting to Rs.80,30,362, only an amount of Rs.8,19,567/- could be recommended by the concerned Returning Officer. It is further stated that bogus, fraudulent and highly inflated claims have been raised by the respondent and deductions have also been recommended. It is further submitted by the learned counsel for the petitioners that against two Electoral Officers an enquiry committee was constituted which came to the conclusion that the officers in question were guilty of having passed fraudulent and bogus bills and hence she submits that the Award is liable to be set aside on account of the fraud played by the respondent.

7. A perusal of the Award would show that the learned Arbitrator relied upon Clause 19 of the Tender Form which reads as follows:-

“Payment shall be made to the approved tent contractor after due scrutiny and approval of the competent authority on the bills submitted by the contractor after approval by the Returning Officer concerned. The contractor shall deposit the copy of the challans of the supplied items in the office of the Chief Electoral Officer, Kashmere Gate, Delhi on day to day basis for proper records and scrutiny. No payment shall be considered if the tentage items etc. are not actually physically got verified through the Returning Officer and another representative of the Chief Electoral Officer if so & ordered by C.E.O. in writing before dismantling of the structures etc.”

8. Based on this, the Award concludes that no payment could be made to the claimant if tentage items were not actually physically verified through the Returning Officer and another representative of the Chief Electoral Officer, if so ordered in writing before dismantling of the structures. In this case as the Returning Officer had not appointed any other representative of the Chief Electoral Officer, the actual physical verification was liable to be done by the Returning Officer. Hence, the Award poses a question, as to whether the tentage items were actually got verified through the Returning Officer? The Award further notes that it is an admitted case that the time was short and therefore all orders were orally given. None of the parties suggested that the orders were placed in writing. The Award further notes that the two Returning Officers, namely, Sh. Dharam Pal for the Karol Bagh Parliamentary Constituency while Sh. Raajiv Yaduvanshi for the Outer Delhi Parliamentary Constituency have been examined by the claimant and both have confirmed having physically verified the tentage. The Award notes certain reports prepared by the petitioners which seem to indicate anomalies in the bills. However, the Award concludes that it was the Returning Officer who was at the spot and who was supervising the entire matter. All the bills

have been scrutinized and verified by them. They have also given their evidence about their correctness. The verification was as per the terms of Clause 19 of the Agreement. Accordingly, the claim of the respondent was allowed.

9. Coming to the submission of the learned counsel for the petitioners, she has relied heavily on two enquiry reports. The first enquiry dated 24.01.2006 is conducted by one Sh.Mukesh Prasad on account of the disciplinary proceedings initiated against Sh. H.K.Mann, Superintendent. The allegation against Mr.Mann while functioning as a Superintendent in the office of the Returning Officer of the Outer Delhi Parliamentary Constituency during Lok Sabha Elections of 1999, he verified bogus, inflated and undated challans/bills submitted by the respondent. However, the conclusion of the enquiry shows that the enquiry officer concluded that the charges have not been proved. The second enquiry dated 15.02.2006 is conducted by Sh.Mukesh Prasad against Sh. J.S. Jolly who was said to be functioning as Ex.-SDM(Elections) in the office of the Returning Officer of the Outer Delhi Parliamentary Constituency. The charge against him was that he had verified bogus, inflated and undated challans/bills submitted by the respondent for the said elections of Lok Sabha for 1999. In this case, the enquiry officer has held that the charge stands proved.

10. I may notice that as far as first report is concerned, as the charged official was exonerated, it cannot and does not help the petitioners in any manner. The second report was not placed before the Arbitral Tribunal. In the absence of any such report, the Award does not deal with the same.

11. Apart from not producing the said document before the learned Arbitrator, it is noteworthy that the second enquiry report pertains to an

enquiry against Sh. J.S. Jolly who is SDM (Elections). In the light of the fact that the two Returning Officers of the said two Constituencies of Karol Bagh and Outer Delhi, namely, Sh. Dharam Pal and Sh. Rajiv Yadhvanshi were the concerned officials as per the agreement who had to verify the reports and the fact that they have verified the reports and given evidence in favour of the claimant would show that the enquiry against Sh. J.S. Jolly has not relevance.

12. In any case, in my opinion, these are findings of fact which the petitioners seek to impugn by the present petition. This is not permissible legally.

13. The Division Bench of this court in *Union of India vs. Nidhi Builders (FAO(OS)365/2015* in its judgment dated 10.12.2015 held as follows:-

“8. These are factual findings based upon the evidence on the record and on interpretation of the relevant provisions of the contract. It is well settled that the interpretation of clauses of the relevant contract falls within the domain of the Arbitrator and the factual findings are also not liable to be disturbed in a petition under Section 34 until and unless some clear cut perversity is pointed out. This is not the case here.”

14. In the present case there are no reasons to interfere in the interpretation of the terms of the contract and the findings of fact recorded by the learned Arbitrator.

15. There is no merit in the present petition and same is dismissed. All pending applications also stand dismissed.

(JAYANT NATH)
JUDGE

MAY 02, 2017/rb