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

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Date of decision: 21.7.2017

+ O.M.P. (COMM) 266/2017

M/S PAWAN HANS HELICOPTERS LTD. Petitioner
Through Mr. Puneet Taneja and Ms. Shaheen,
Adv.
versus

M/S CONCESSIONAIRE DOCUMENTATION
INDIA(P) LTD Respondent
Through Mr. Parikshit Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

Caveat No. 654/2017

Since respondent is represented through counsel, caveat stands discharged.

IA No. 8111/2017 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

O.M.P. (COMM) 266/2017

1. This petition is filed under section 34 of the Arbitration and Conciliation Act, 1996 seeking to impugn the Award passed by the learned Arbitrator dated 1.4.2017. Some of the relevant facts as per the petition are that the petitioner awarded a contract for supply of trained manpower to the respondent to handle activities such as travel handling of passengers, embarkation and disembarkation of passengers, loading, unloading of

baggage etc for the flights of the helicopters of the petitioner to Mata Vaishno Devi Shrine from Katra-Sanjhi Chhat-Katra vide agreement dated 24th September 2009 for the period 1.11.2008 to 31.10.2010.

2. The contract is said to have been extended from 1.11.2010 to 30.6.2011. A fresh contract was given to the respondent vide agreement dated 1.10.2011. We are concerned with this agreement in this petition. As per this contract the respondent was to charge a fee of Rs.5.90 lacs per month and was to supply 25 number of manpower which included one Manager, three supervisors and 21 Assistants/Helpers. The contract had a termination clause which permitted the petitioner to terminate the agreement by giving 10 days' notice. It is the case of the petitioner that being a public sector undertaking it had to see that the respondent/contractor was complying with the labour laws. It is submitted that the respondent had failed to show the said compliance. Hence, the contract was terminated on 29.10.2012 w.e.f. 8.11.2012.

3. Disputes having arisen between the parties the matter was referred for arbitration.

4. Before the Arbitrator the claimant/respondent made the following claims:- (i) Claim No.1 for refund of bank guarantee for Rs.7,08,000/- said to have been illegally invoked by the petitioner.

(ii) Claim No.2 for payment of dues of Rs.12,85,355/-

(iii) Claim No.3 for interest

(iv) Claim No.4 for Rs.29,50,000/- being the amount due for the period November 2012 to March 2013 i.e. after the termination of the contract.

(v) Claim No.5 interest on the above amount

(vi) Claim No.6 loss of profit on account of termination of contract. Rs.50,00,000/-

(vii) Claim No.7 was for goodwill and Reputation Rs.50,00,000/-;

(viii) Claim No.8 for litigation expenses.

5. On 13.10.2014 the learned Arbitrator framed 15 issues. The two basic issues were issue No.1 i.e. whether the agreement dated 1.10.2011 was illegally terminated by the respondent and second one being whether the claimant is entitled to recovery of a sum of Rs.14,38,075/- being the shortfall in the contractual payments made by the respondent between the months of May 2012 till November 2012.

6. On issue No.1 i.e. whether the agreement was illegally terminated by the petitioner, the learned Arbitrator noted the contents of the termination letter dated 29.10.2012. It noted the pleas of the petitioner that the respondent had not kept record of daily attendance of manpower, wages, ESI and PF etc. and did not supply the statements. It also noted that it was the case of the petitioner that the respondent failed to provide details of its license from the authorities under the Contract Labour Act. The learned Arbitrator concluded that the respondent had failed to show compliance of the Contract Labour Act and rejected the contention of the respondent that the said statute does not apply to the State of Jammu and Kashmir. The award, also noted that it was for the petitioner to have obtained a copy of the license under the said Contract Labour Act when the contract was signed on 1.10.2011. As such, the learned Arbitrator concluded that it was a default of both the parties as they have entered into a contract in 2011 without the respondent having obtained the necessary license. Accordingly, the Award concluded that the termination of the contract was a consequence of the

respondent's failure to satisfy the petitioner about the said license and hence the said Award concluded that the petitioner has not been unfair in terminating the contract.

7. On issue No.2 the learned Arbitrator noted that the agreed lump sum fee payable to the respondent was Rs.5.90 lacs per month and it was to be varied. The Award notes that the employees deployed by the respondent worked under the direct supervision of the Officer In-charge of the petitioner and they had first hand knowledge of the number of persons deployed. The question of asking the respondent to prove the number of persons deployed would not be relevant. Had there been a shortfall of supply, the petitioner itself would have issued an appropriate notice seeking an explanation and consequent reduction of bills. The Award notes that no evidence to this effect was shown or filed by the petitioner. The plea of the petitioner that based on the provident fund record of the respondent the number of employees deployed can be calculated was rejected as not every employee may be eligible for PF. The Award notes shortfall in the payment made by the petitioner. Accordingly, it awarded Rs.14,42,955/- to the respondent. On the claim of interest it was noted that the respondent was entitled to interest @ 12% per annum w.e.f. 1.11.2012. The counter-claim filed by the petitioner were rejected. Issue No.6 was also decided in favour of the respondent, namely, refund of the bank guarantee amount of Rs.7,08,000/-. On this amount interest @ 12% per annum was also awarded from the date of invocation, namely, 14.8.2013. Hence, a total award of Rs.32,20,721/- was passed in favour of the respondent along with costs.

8. I have heard learned counsel for the parties. Learned counsel for the petitioner has vehemently sought quashing of the award and has argued as follows:-

(i) The petitioner is a public sector corporation and was obliged to comply with the statutory provisions. Further, being a principle employer as the respondent had failed to comply with the applicable labour laws, in the eventuality of a liability arising, the petitioner would also be liable. He relies upon judgment of the Supreme Court in *Hindustan Times Limited vs. UOI, 1998 (2) SCC 242* to argue that there is no limitation for recovery of dues on account of non-compliance of statutory labour laws. Hence, he submits that the Award has wrongly ignored the fact that the respondent had not complied with the statutory labour law provisions.

(ii) He further submits that wrong amounts have been allowed to the respondent. The lump sum contract was for Rs.5.90 lacs per month for deployment of 25 persons. The award directs payment of amounts for accommodation, lunch and dinner allegedly for the personnel of the petitioner which is not as per the terms of agreement between the parties. Hence, the award to that extent is illegal and not based on the contract between the parties.

9. I will now deal with the aforesaid submissions of the learned counsel for the petitioner. As far as the issue of compliance of labour law requirement is concerned, the learned Arbitrator has noted that it was for the petitioner to have ensured appropriate compliance at the inception of the contract on 1.10.2011. Accordingly, the learned Arbitrator has come to a conclusion that both the parties are in default for having entered into a contract in 2011. I may only note that in fact the parties entered into a

contract for the first time on 24th September 2009 w.e.f. 1.11.2008. The contract was renewed on 01.11.2010 and again on 01.10.2011. The contract was terminated on 29.10.2012. Hence, for nearly four years the petitioner has been awarding the contract to the respondent. Now, at this stage, the petitioner has woken up to this contention that it may have a liability being the principle employer on account of alleged non-compliance of statutory requirements regarding labour laws by the respondent. The plea, in my opinion, is highly belated and only an excuse to wriggle out of its liability. The reliance of learned counsel for the petitioner on the judgment of the Supreme Court in **Hindustan Times Ltd. Versus UOI (supra)** is misplaced. On a query from the court, it was submitted by the learned counsel for the petitioner that till date, no liability has been fastened or raised on the petitioner on account of alleged non-compliance of labour law provisions by the respondent. Admittedly, despite lapse of almost four years from the date of termination of the contract and nine years from the date of commencement of the contract there has been no statutory liability imposed on the petitioner. The award has awarded dues for the services provided by the respondent and no more. Claims like loss of profit, loss of goodwill and reputation etc. have been rejected. In my opinion, on this plea of the petitioner the learned Arbitrator has rightly not denied the dues of the respondent for the work actually performed.

10. Regarding the second plea of the petitioner about wrong calculation and award of payments beyond the terms of the agreement the admitted fact is that the controversy only pertains to bills raised from May 2012 to 8th November 2012. It has been pointed out that for bills prior to May 2012 the admitted payment was only Rs.5.9 lacs per month. That is the amount that

has also been claimed by the respondents. However, it was in May 2012 that the petitioner sought deployment of additional manpower on account of the helicopter service of the second corner being discontinued. Hence, the scale of operations of the petitioner increased and it required additional manpower, which it required the respondent to provide. It is only thereafter that the respondent has raised bills on account of boarding and lodging of persons and for additional staff deployed. Learned counsel for the petitioner submits that there is no dispute about the additional staff deployed. What he objects to is the charges being levied by the respondent on account of meals and accommodation given which demand was misplaced and beyond the terms of the contract. He relied upon clause of the agreement under the heading "Payment Schedule" which provides that the sum of Rs.5.9 lacs is inclusive of all expenses towards travelling, boarding, lodging etc.

11. However, it was clarified by the learned counsel for the respondent that on the request of the petitioner certain employees of the petitioner were accommodated in the accommodation of the respondent and provided with meals. The said bills have been raised on account of the said additional services provided to the petitioner which were said to have been done at the specific request of the petitioner. It has also been pointed out that similar bills were raised for April 2012, which have been paid by the petitioner.

12. The Award has noted the additional bills raised by the respondent. It has noted that additional workforce was required by the petitioner on account of suspension of helicopter services of Global Vectra. It also noted that details of the additional amount sought. It also noted that the respondent has not provided any good reasons for making deductions from the bills which have been submitted by the respondent. A finding of fact was recorded that

the respondent is entitled to recover the said sum of Rs.12,85,355/- for unpaid bill upto October 2012 and Rs.1.576 lacs for unpaid bills for 8 days of November 2012.

13. On the issue of bills issued for meals and accommodation for the employees of the petitioner, a perusal of the claim petition filed by the respondent would show that it has been pleaded in the same that the respondent rented accommodation at Rs.40,000/- per month for boarding and lodging of its employees. The petitioner evinced interest in the accommodation and requested the respondent to accommodate two of its employees in the said rented accommodation and agreed to pay Rs.7,000/- per month for the said two employees plus separate sums for breakfast, lunch and dinner as additional expenses. Hence, separate bill for meals etc. for the said employees of the petitioner have been raised. This fact has also been stated by the witness for the respondent, namely, Shri Anil Tiwari, CW-1. He has repeated the same fact about the arrangement/agreement worked out regarding the said two employees on the request of the petitioner in his evidence by way of affidavit. Admittedly, Shri Anil Tiwari has been extensively cross-examined by learned counsel for the petitioner but there has been no cross-examination on these particular averments of the respondent. There are no cogent reasons to deny the payment of this claim. There are no reasons to quash the findings of facts recorded by the learned Arbitrator. The learned Arbitrator has based on findings of facts on record held that the respondent is entitled to the said sum of Rs.14,42,955/-. The findings are plausible findings.

14. The Supreme Court in *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49 held as follows:

“31.....The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where-

1. a finding is based on no evidence, or
2. an arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or
3. ignores vital evidence in arriving at its decision,

such decision would necessarily be perverse.

32. A good working test of perversity is contained in two judgments. In H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312 at p.317, it was held:

7.It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.

In Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10 at para 10, it was held:

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.”

33. It must clearly be understood that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In *P.R.Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd.*(2012) 1 SCC 594, this Court held:

21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or re-appreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at.

.....”

15. It is manifest that the petitioner is essentially challenging the findings of facts recorded by the learned Arbitrator. Accordingly, there is no merit in the contentions of the learned counsel for the petitioner. There are no reasons to dispute the findings of facts recorded by the learned Arbitrator.

16. There is no merit in these petitions. The same are dismissed.

JAYANT NATH, J.

JULY 21, 2017/n

