

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

ARBITRATION PETITION NO. 1412 OF 2013

Prelaxmi & Co.

...Petitioner

vs

Union of India

...Respondent

Ms.Hasmit Trivedi I/b. Priyanka Pawar and Charvy Hatkanagalekar for
Petitioner.

Mr.T.J. Pandian for Respondent.

CORAM : S.C.GUPTE, J.

DATE : 28 NOVEMBER 2018

P.C. :

Heard learned Counsel for the parties.

2 The arbitration petition challenges an award passed by an arbitral tribunal of three arbitrators. The dispute between the parties arose out of a contract for supply and stacking of machine crushed stone ballast on railway tracks between Chainage 9700 to 17700 M on Panvel-Karjat Section. The contract was terminated by the Respondent by a letter dated 2 June 2003 after following the procedure laid down in Clause 62 of the General Conditions of Contract. The Petitioner herein, who was the claimant before the arbitral forum, had raised various claims on account of work done but not paid, as also for refund of security deposit related charges and penalty and other claims. After hearing the parties, the claims were rejected by the arbitral tribunal. The arbitral tribunal also rejected all counter claims filed by the Respondent herein.

3 Learned Counsel for the Petitioner, firstly, submits that the

impugned award is devoid of any reason. Even a cursory reading of the award shows that the award has discussed reasons for rejection of each of the claims made by the Petitioner claimant.

4 Alternatively, it is submitted that the arbitral tribunal has recorded findings on various claims without evaluating all documents on record or without referring to the evidence on record or even referring to the terms and conditions of the contract and contentions of the parties. The award refers to major documents forming part of the record before the arbitral tribunal and also briefly indicates arguments of the parties. Based on these, the arbitral tribunal has come to its findings. The findings exhibit possible views and not views which are either impossible or such that no fair or judiciously minded person could have arrived at or as would shock the conscience of the court. The award, in other words, cannot be termed either as an award passed in contravention of public policy of India or suffering from patent illegality appearing on the face of the award. No award can be faulted merely on the ground of incorrect appreciation of evidence or incorrect reading of the contract between the parties so long as the findings of the arbitrator in that behalf exhibit a possible view. The impugned award, in the present case, is clearly supported by some evidence on record and does not disregard any relevant document or material or take into account any irrelevant document or material.

5 Learned Counsel for the Petitioner submits that considering the circular issued by the Railways, which prohibited withholding of dues from one contract pending adjudication of disputes in another contract, the Petitioner's claim for work done and recorded but not paid for, forming part

of claim no.1, could not have been rejected by the learned arbitrators. Clause 52-A of the General Conditions of Contract applicable in the present case provides that when any sum of money is due or payable to the contractor under the particular contract (including the security deposit returnable to him), it could be withheld or retained by way of lien by the Railways against any claim arising out of or under any other contract made by the contractor with the Railways or any other department of the Central Government. Admittedly, there is another claim of the Railways in respect of another contract against the same Petitioner and that other claim is the subject matter of another pending arbitration proceeding between the parties. In view of a clear provision of lien in respect of claims in other contract/s, no fault can be found with the impugned award of the arbitrators even in respect of claim no.1. In case the Railways' claim under the other contract is rejected, the Petitioner will be entitled to this amount, which has been withheld.

6 There is, accordingly, no merit in the challenge to the impugned award. The arbitration petition is dismissed. No order as to costs.

(S.C. GUPTE, J.)