

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

**O.P.No.644 of 2012**

Darel Logistics Limited,  
having branch office situated at  
AG 55/3, Shanti Nagar,  
Opposite K3 Police Station,  
Anna Nagar, Chennai-600 040.  
by its Branch Manager and  
authorised representative Mr.Kapil Jain .. Petitioner

Vs.

1.Union of India,  
by Commandant,  
Ordnance Depot, Avadi,  
Chennai-600 055.

2.Col.S.K.Singh,  
Sole Arbitrator,  
Col OS ATNK & K Area,  
Ordnance Depot, Avadi,  
Chennai-600 055.

.. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the impugned arbitral award dated 29.10.2011 passed by the second respondent to the extent of the payment of Rs.27,31,400/- awarded in favour of the first respondent and for costs.

For Petitioner : Ms.M.Vidya

For Respondents : Mr.G.Karthikeyan, Asst. S.G for R1

### **ORDER**

The petitioner was entrusted with the transporting of costly Aviation stores from Army Aviation Liaison Cell (AALC), Bangalore, to be delivered to Central Aviation Support Depot (CASD), New Delhi on 20.02.2003. On reaching New Delhi cantonment on 25.02.2003, it was found that one package containing 40 sets MOD-AMS-1096, Bty Temp. Warning System on Cheetah Helicopter was found missing. The deficient stores were valued at Rs.27,31,400/-.

2. Accordingly, a claim was made against the petitioner by the first respondent preceded by a notice dated 18.06.2003. There was also a Court of Inquiry conducted to find out the person responsible for the same. The learned Arbitrator, placing reliance upon Clause 22 of the Contract as against Clauses 20, 23, 24 and 25 of the Contract, was pleased to pass an Award in favour of the first respondent while accepting the counter claim of the petitioner qua the transporting charges. Challenging the same, the present original petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the learned Arbitrator has not taken note of relevant clauses governing especially Clauses 20, 22 to 25 of the Contract. The petitioner was not permitted to peruse the Court of Inquiry Report and furnished a copy. There is an element of bias involved as could be seen from the order dated 07.08.2006 of the learned Arbitrator, by which, the entire issue raised was prejudged. Thus, the award requires interference.

4. The learned Assistant Solicitor General submitted that there is a due compliance of the relevant clauses. The petitioner's counsel was permitted to peruse the Report being confidential in nature. Merely because the learned Arbitrator has made some observation, it cannot be presumed that it has acted in a biased manner. Hence no interference is required.

5. This Court is inclined to take up the issue qua the bias. When it comes to bias, this Court is concerned with a likelihood of it. Obviously the onus is on the party, which raises the plea of bias. In the case on hand, the learned Arbitrator in the order dated 07.08.2006 has observed as follows:

“As already informed, C of I proceedings is a confidential document meant for service purpose.

The Arbitrator is not authorised/liable to show the same to the outsider. However, all clarifications on your application have been replied as above. Besides it is pertinent to mention that as per findings and opinion of the Court, the transporter M/S Delhi Assam Roadways is liable to make good the loss.”

6. The sole Arbitrator was appointed by an Officer of the first respondent. He is supposed to discharge a judicial function and thus, act in a fair manner. He is expected to look on the claims made along with the issues without prejudging them. A perusal of the observation made by the learned Arbitrator would clearly show the entire issues were prejudged. Thus, this Court finds some force in the submission made by the learned counsel for the petitioner.

7. Having found that the learned Arbitrator has prejudged the entire issues much prior to the adjudication, this Court is not inclined to go into the other issues raised. Once, such a finding is recorded, the only other option is to give liberty to the first respondent to seek constitution of fresh Arbitrator, in which, the earlier Presiding Officer should not be a party. In

such view of the matter, the Award stands set aside, giving liberty to the first respondent to take appropriate steps to constitute and initiate a fresh arbitration Tribunal. All the issues are left open to the parties to be adjudicated by the newly constituted Tribunal. The entire exercise will have to be done within a period of six months from the date of receipt of a copy of this order. Accordingly, the original petition stands allowed. No costs.

raa



02.04.2018

WEB COPY

**M.M.SUNDRESH,J.**

raa



**O.P.No.644 of 2012**

**WEB COPY**

**02.04.2018**