

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 14.03.2018

+ **O.M.P. (COMM) 67/2016**

K.S.CHAUHAN

..... Petitioner

versus

NEW DELHI MUNICIPAL COUNCIL

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Ms Malavika Lal and Mr Harish Arora.

For the Respondent: Mr Gaurave Bhargava, Additional Standing Counsel for NDMC.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

Introduction

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') impugning an arbitral award dated 11.09.2015 (hereafter 'the impugned award') passed by the Arbitral Tribunal constituted of a Sole Arbitrator. By the impugned award, the Arbitral Tribunal has rejected the petitioner's claim for reduction in the monthly license fee and has allowed the respondent's counter claim for the balance amount for arrears in payment of monthly license fee along with interest, both *pendente lite* and future interest. The Arbitral Tribunal has also awarded costs in favour of the respondent.

2. Briefly stated, the disputes between the parties arise in the following context:-

2.1 The respondent (hereafter 'NDMC') invited bids for allotment of parking lots surrounding India Gate (Group No.IV) for a period of two years from 01.04.2011 to 31.03.2013. The petitioner being interested in operating the parking lots submitted his application for allotment of the said parking lots on 24.03.2011. The petitioner offered to pay a monthly license fee of ₹26,53,582/- for all the parking lots comprised in the said group (an area measuring approximately 28,322 sq. mtrs.). After the bids were submitted, NDMC found that it was not in a position to allot the parking lots located in the Khan Market area in view of the order passed by this Court on 17.01.2014 in *Khan Market Traders Association & Anr. v. Union of India & Ors.: LPA 565/2011*. The petitioner's bid was the highest and, therefore, the petitioner was informed that the parking lots at Khan Market area were not available but his application for the remaining parking lots could be considered.

2.2 The petitioner furnished a letter dated 31.03.2011 agreeing to accept the allotment of the parking lots excluding the parking lots at Khan Market area, which were approximately 5700 sq. mtrs with a pro rata reduction in the monthly license fee offered by him.

2.3 In view of the above, NDMC accepted the petitioner's offer albeit with a pro rata reduction in the monthly license fee. On 31.03.2011, NDMC issued a Letter of Acceptance (LoA)

communicating its acceptance of the petitioner's offer of monthly license fee of ₹21,19,375/- for the parking lots for the period 01.04.2011 to 31.03.2013 subject to the terms and conditions as stated in the Notice Inviting Tenders (NIT).

2.4 The parking lots initially offered by NDMC comprised of parking lots in ten areas comprising an aggregate area of approximately 28,322 sq. mtrs. The parking lots in the Khan Market area were approximately 5700 sq. mtrs. It is the petitioner's case that parking lots were divided into various categories depending upon the tariff that could be charged. Whilst the Khan Market area fell in category A, the other parking lots which were allotted to the petitioner fell in category B or C. In view of the same, the petitioner claimed that the license fee quoted by the petitioner for all the lots – the ten parking areas comprising of Group IV – ought to be reduced by taking into account the rates charged by NDMC for category A parking lots. The petitioner claimed that NDMC was charging ₹172/- per sq. mtrs. on pro-rata basis for parking lots in Group No.I which included Inner and Outer Circle of Connaught Place, New Delhi. Taking the said rate into account, the petitioner claimed that the monthly license fee quoted by the petitioner ought to be reduced by a sum of ₹9,80,400/- (5700 x ₹172).

2.5 The petitioner also raised disputes regarding the areas available to the petitioner near Claridges Hotel, New Delhi and in front of Eastern Court, New Delhi.

3. Before the Arbitral Tribunal, the petitioner filed his Statement of Claims, essentially making three claims in addition to interest and costs. The first claim was with respect to the reduction in the license fee on account of excluding the parking lots at Khan Market area. As stated above, the petitioner claimed that the monthly license fee quoted by him (that is, ₹26,53,582/-) ought to be reduced by ₹9,80,400/- instead of ₹5,34,207/- as calculated by NDMC.

4. The second claim raised by the petitioner was with respect to the parking lot at Claridges Hotel. The petitioner claimed that the parking site at Claridges Hotel was shown as 1410 sq. mtrs.; however, the actual area available at site was less by 30%. Accordingly, the petitioner claimed that the monthly license fee quoted by the petitioner ought to be reduced by a sum of ₹98,370/-.

5. The third claim raised by the petitioner was with respect to the parking site in front of Eastern Court measuring 1623 sq. mtrs. The petitioner claimed that 50% of the said area was not available on account of construction of a footpath. The petitioner claimed that part of the said site could not be used on account of construction works relating to the Delhi Metro. The petitioner claimed that the Janpath Road had been closed with effect from 01.09.2011 and, therefore, no vehicles came to the Eastern Court parking lot. Accordingly, the petitioner claimed that the monthly license fee quoted by the petitioner ought to be further reduced by a sum of ₹81,249/-.

6. In addition to the above three claims, the petitioner also claimed interest at the rate of 12% p.a. from 01.04.2011 and a further sum of ₹5,00,000/- as costs of litigation.

7. NDMC countered the aforesaid claims and also preferred counter claims for arrears of monthly license fee, interests on the same and costs of arbitration.

8. By the impugned award, the Arbitral Tribunal rejected the claims made by the petitioner and allowed the counter claims of the respondent. The Arbitral Tribunal rejected the petitioner's claim with regard to the reduction of license fee on account of exclusion of the Khan Market area principally on the ground that the petitioner had accepted the same and also furnished a letter dated 31.03.2011. The claim made by the petitioner in respect of reduction/non availability of site at Claridges Hotel and in front of Eastern Court was also rejected on the ground that the petitioner had not followed the procedure as prescribed under Clause 8 of the Agreement executed between the parties, inasmuch as, the petitioner had not submitted any hindrance report as required in terms of the aforesaid clause.

Submissions

9. Ms Malavika Lal, the learned counsel appearing for the petitioner earnestly contended that the manner in which the reduction in license fee was calculated was *ex facie* erroneous and did not take into account the category of the parking lot. Whereas other parking sites allotted to the petitioner fell in category B or C, the parking site at

Khan Market fell in category A. She earnestly contended that Khan Market parking lot would yield the highest revenue amongst all the parking lots falling in Group No. IV and the petitioner had submitted his bid on the said basis. She contended that the Arbitral Tribunal had grossly erred in not considering that all the parking lots falling within Group No. IV could not be provided the same weightage.

10. Next, she contended that there would be no dispute that the parking site available at Claridges Hotel was much less than what was indicated at the time of submission of bids. She stated that the centralized system followed by NDMC subsequently also indicates that the parking site at Claridges Hotel is only about 360 sq. mtrs. Lastly, she contended that the parking lot in front of Eastern Court could not be used and, therefore, the Arbitral Tribunal has grossly erred in not allowing the petitioner's claim in that regard. She also referred to the decision of this Court in ***Puneet Kumar v. New Delhi Municipal Council: W.P.(C) 5299/2004, decided on 20.04.2004.***

Reasoning and Conclusion

11. As noticed above, the Arbitral Tribunal had rejected the petitioner's claim for higher reduction in the monthly license fee on account of exclusion of the parking lots at Khan Market principally on the basis of the undertaking given by the petitioner. The letter dated 31.03.2011 submitted by the petitioner prior to the NDMC accepting the petitioner's offer, reads as under:-

“To
The Director (Enf.)
N.D.M.C.
Jai Singh Road
New Delhi

Sub.: Deduction of Khan Market parking from group No.4 parking lot of Surrounding India Gate.

Sir,

I, Kartar Singh Chouhan have quoted highest rates in the above said parking lot, it has come to my knowledge that the Khan Market parking space measuring – 5700 sq. mt. is to be deducted from Group No.4 parking lot. I hereby undertake as under:-

1. That I am ready to take group no.4 parking lot on pro rata basis after deduction of Khan Market Parking having an area 5700 sq. mt.
2. That I will not move to arbitration/count for any claim pertains to Khan Market area.

I therefore request you to kindly allot me rest of area except Khan Market after deduction of area of 5700 sq. mt. on my quoted rates.

Thanking you,

Yours faithfully

Sd/-

Kartar Singh Chouhan
107, Amrit Kaur Market
PaharGunj
Delhi”

12. It is apparent from the above that the petitioner had accepted a reduction in the monthly license fee on “*pro rata basis*” on account of

reduction of 5700 sq. mtrs. It is, thus, clear from the above that the petitioner was willing to accept all parking lots, excluding the Khan Market parking lots, by reduction in the monthly license fee proportionately to the reduction in the area. It is not disputed that the monthly license fee as quoted by the petitioner was reduced proportionately. And, the monthly license fee as accepted by the NDMC, that is ₹21,19,375/-, would be correct computation of such fee on a pro-rata reduction of the offered monthly license fee. The petitioner now seeks that a disproportionately higher amount be reduced from the monthly license fee by taking into account the rates charged by NDMC in respect of different categories. According to the petitioner, the said rates can be ascertained by the rates in respect of the parking lots in other packages. Clearly, this would militate against the basis as accepted by the petitioner in its letter dated 31.03.2011. It is also not disputed that, thereafter, the parties executed an agreement, whereby the petitioner had agreed to pay a monthly license fee of ₹21,19,375/-.

13. It is, thus, apparent that the petitioner's claim runs contrary to what was agreed between the parties. In this view, this Court finds no infirmity with the decision of the Arbitral Tribunal to reject the said claim.

14. Insofar as the reduction in the license fee sought by the petitioner with respect to the parking lot at Claridges Hotel and in front of Eastern Court is concerned, the Arbitral Tribunal rejected the same

as the petitioner had not followed the procedure as prescribed under Clause 8 of the Agreement. The said clause reads as under:-

“8. That the parties hereto agree that the CONTRACTOR shall not be eligible for any rebate, refund or modification whatsoever to the CONTRACTOR’S financial commitments/obligations to the Council for whatever reason. However, if the area of the parking lot is affected due to execution of any civil/excavation work by any governmental authority, the CONTRACTOR shall submit his report within 7 days of the date of occurrence of the hindrance supported with photograph and verified by an officer duly authorized in this behalf by Council. The proportionate rebate of intervening period from the date of receipt of notice from contractor and receipt/acceptance of report of concerned department shall be worked out and will be adjusted accordingly, against the license fee payable on pro-rata rate by the contractor for future period, however, till receipt and acceptance of report the contractor shall continue to pay the original license fee as fixed at the time of allotment. After completion of the work, a similar report shall also be submitted to determine the actual period of hindrance. Based on the report of concerned department, Director (Enf.) shall decide the cases pertaining to redetermination of license fee.”

15. The finding of the Arbitral Tribunal that there was no hindrance report that was submitted by the petitioner in terms of Clause 8 of the Agreement also cannot be faulted. Thus, this Court finds no reason to interfere with the impugned award.

16. The reliance placed by the petitioner on the decision of this Court in *Puneet Kumar v. New Delhi Municipal Council* (*supra*) is

also misconceived. As is apparent from the reading of the said decision in that case, NDMC had issued the parking lot on 'as and where' basis. However, there was no dispute that it was subsequently found that 42 sq. mtrs. could not be used by the petitioner therein. It is in this context that the Court directed a reduction in the license fee proportionate to the area that was subsequently found to be unusable. In the present case, the Arbitral Tribunal has rejected the petitioner's claim on the ground that the necessary procedure for seeking such waiver had not been followed.

17. Apart from the above, it is also necessary to observe that the judicial review under Section 34 of the Act is restricted to the grounds as stated therein. This Court cannot supplant its view in place of that of the Arbitral Tribunal. An Arbitral Award can only be interfered with if it is rendered without jurisdiction, is patently illegal or is opposed to the public policy of India.

18. Clearly, the impugned award is neither without jurisdiction nor can be stated to be in conflict with the public policy of India. In view of the above, this Court is unable to accept that an interference with the impugned award is warranted.

19. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

MARCH 14, 2018
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