

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****ARBITRATION PETITION NO.1237 OF 2014**

Union of India	Petitioner
vs	
M/s. Vinay Agarwal	...Respondent
.....	
Mr. T.J. Pandian, for the Petitioner.	
None for the Respondent.	

.....
CORAM : S.C. GUPTE, J.

DATED: 29 JANUARY, 2019

P.C.:

. Heard learned Counsel for the Petitioner. The Respondent is absent though served.

2. This petition challenges an award passed by an arbitral tribunal of three arbitrators. The Respondent-contractor was the claimant before the arbitrators. He had prayed for award of fourteen claims, whereas the Union of India, who was the Respondent before the arbitral forum, had prayed for four counter-claims. The arbitrators, by their impugned award, allowed five claims of the Respondent. These were Claim No.1 - for work done not paid, Claim No.4 - for balance payment of leading spoils dump, Claim No.5 - for increase in cost of petroleum products and spare parts, Claim No.7 – for cost of material at site and Claim No.13 - for interest. The arbitrators rejected all four counter-claims of the Union. The Union challenges the award of all five

claims of the Respondent-contractor as well as rejection of its counter-claims by the arbitrators.

3. Learned Counsel for the Petitioner-Union relies on a judgment of our Court in another case between the same parties, namely, **Union of India vs. Vinay Agarwal**¹ decided on 6 May 2015. That was an arbitration petition similar to the one we are dealing with in the present case. Even there, the contractor was awarded Claim Nos .1, 4, 5, 7 and 13, which were exactly on the same lines as in the case of the present award. These claims were granted on the same reasoning, as is contained in the award impugned in the present petition. This Court set aside that award on Claim Nos. 5, 7 and 13, holding it to be contrary to the agreement and vitiated by patent illegality. The award on Claim Nos. 1 and 4 was not interfered with on the ground that that was no case for setting it aside. Learned Counsel prays for setting aside even the present award on the same grounds. Learned Counsel submits that award on Claim Nos. 1 and 4 in the earlier case was not interfered with because there was no material produced in support of the application. It is submitted that in the present case the Petitioner-Union had produced the relevant material. The Respondent does not show cause.

4. Considering this order in the earlier case between the same parties and for the reasons discussed therein, which are also applicable to the facts of the present case, the award impugned in the present petition, so far as it relates to Claim Nos. 5, 7 and 13 of the Respondent, is set aside.

¹ MANU/MH/0800/2015

5. As far as Claim Nos.1 and 4 are concerned, even in the present case, there is no material placed before the Court to show that the award is vitiated by any patent illegality or any of the grounds mentioned in Section 34 of the Arbitration and Conciliation Act, 1996 ('Act').

6. Claim No.1 relates to work done but not paid for by the Petitioner-Union. The arbitrators have relied on the agreement signed by the parties, as also letters exchanged between them and other evidence produced. Based on this material, the tribunal has come to a conclusion that the Respondent-contractor was not provided with clear site to work. The arbitrators have noted that, in the absence of a clear site due to resistance offered by stake-holders in land acquisition, due to which acquisition got delayed and subsequent delay in handing over clear site to the contractor, the delay in work was to the account of the Petitioner-employer and the Respondent-contractor could not be held responsible for the same. The arbitral tribunal also relied on reconciliation of due payment jointly signed by the parties, whereby the contractor's claim amount of Rs.11,55,806 was reduced to Rs.5,44,750. Based on the reconciled statement, the contractor's claim was awarded in the sum of Rs.5,44,757. The arbitrators' award in this behalf is clearly supported by evidence and exhibits a possible view of the material placed before the tribunal. It merits no interference under the provisions of Section 34 of the Act.

7. As for Claim No.4, the arbitrators have taken into account the total quantity of work as per a joint statement signed by the parties.

The arbitrators also noted that on perusal of a drawing signed by both parties that a portion of the spoils had to be dumped beyond the limits of Railway land and, hence, the contractor had legitimate claim for payment of compensation. The arbitrators noted that under the relevant clause of the contract, the contractor was not required to dump spoils except at sites in possession of the Union. The arbitrators, accordingly, observed that the contractor was required to be compensated for the work done by him beyond the scope of the contract. Considering the typical drawing jointly presented by the parties before the arbitral forum, the tribunal held that ends of justice would be met if 50% of the quantity involved in cutting was taken into consideration for considering this claim. This quantity, i.e. 50% of 14873.48 cu.mtr., worked out to 7434 cu.mtr. So far as the rate for payment of this item is concerned, the arbitral tribunal have refused to accept the lead of 1 km as claimed by the Respondent-contractor, but considered a lead of 500 mtrs., which would meet the ends of justice. This the arbitrators did after considering leading cuts spoils in sections involving long cuttings. Neither the approach of the arbitrators in assessing the claim nor the conclusions arrived at by them on the basis of such assessment exhibits an impossible view, or a view, which no fair or judiciously minded person would take, or a view which would shock the conscience of the Court. In the premises, the award merits no interference under Section 34 of the Act.

8. Even so far as the Petitioner Union's counter-claims are concerned, there was no material to support the counter-claims. The only award on these counter-claims, which is pressed by the Petitioner in its challenge before this Court, is the award on Counter-claim Nos. 2 and

3, which relate to royalty charges to be paid by the contractor. These counter-claims were inextricably connected to the Respondent contractor's Claim No.8 concerning royalty charges and were considered under that particular item. The arbitrators held that on the question of royalty payment, Collector of Amravati had wrongly claimed royalty charges on soil, treating it as a minor mineral. The arbitrators noted that the Respondent-contractor had approached this Court in its Nagpur Bench in a writ petition, where this Court was pleased to declare that soil was not a minor mineral and, hence, no royalty charges were applicable. This order was confirmed by the Supreme Court upon a challenge laid before it by Collector, Amravati. The arbitrators noted that it was only after the Supreme Court decision, i.e. in February 2000, Government of Maharashtra had amended rules under Minor Mineral Act, 1952, declaring soil as a minor mineral for the purpose of royalty charges. The tribunal, however, held that this came much later; by the time the contract was entered into between the parties and the contract work was carried out, the amendment was not in place and, hence, the contractor had not factored in costs of royalty charges while quoting for the work and under the circumstances, royalty charges could not be recovered by the Petitioner-Union from the Respondent-contractor. Learned Counsel submits that the Collector's order charging royalty was before the arbitral forum. That may be so. That does not change the reasoning of the arbitrators. What they considered was that these charges were not applicable at the time of awarding of the contract and were not in contemplation of either side. This view of the learned arbitrators is clearly a possible view and does not merit any interference under the provisions of Section 34 of the Act.

9. Accordingly, the arbitration petition is partly allowed by setting aside the impugned award dated 8 November 2013 so far as it relates to Claim Nos. 5, 7 and 13. The rest of the award is confirmed. No order as to costs.

(S.C. GUPTE, J.)