IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.1043 OF 2014

M/s. Axis Carriers ....Petitioner
vs
M/s. Bharat Petroleum Corp. Ltd. And Anr. ...Respondents

WITH
ARBITRATION PETITION NO.305 OF 2015

M/s. Oasis Carriers ....Petitioner
vs
M/s. Bharat Petroleum Corp. Ltd. And Anr. ...Respondents

.....

Mr. Anand Pujari, a/w. Ms. Shakuntalla Joshi, i/b. S.I. Joshi & Co., for the Petitioner.

Mr. S.A. Bhalwal, a/w. Ms. Usha Singh, i/b. Vyas and Bhalwal, for Respondent No.1.

......

CORAM : S.C. GUPTE, J.

DATED: 11 JANUARY, 2019

P.C.:

Arbitration Petition No.1043 of 2014

. Heard learned Counsel for the parties. This arbitration petition challenges an award passed by a sole arbitrator in a dispute between the parties arising out of a transportation contract for movement of bulk LPG by road.

2. The Petitioner claims to have provided trucks to the Respondent Corporation for movement of bulk LPG in pursuance of acceptance of its tender. It is submitted that the Respondent Corporation was required to make greater utilisation of tank-trucks supplied by those

tenderers, who had offered low rates leading to minimum financial outgo to the Corporation. Learned Counsel submits that based on this stipulation of contract between the parties, it was obligatory on the part of the Respondent Corporation to make full utilisation of the tank trucks offered by the Petitioner. It is submitted that out of the total requirement of 700 trucks of the Respondent, the Petitioner had supplied 27 trucks. It is submitted that the Petitioner had suffered damage for under-utilisation of its trucks by the Respondent Corporation, despite its commitment to make a better and fuller utilisation, considering the low rates offered by the Petitioner.

3. It is not in dispute that for the utilisation actually made of the trucks offered by the Petitioner, the Respondent Corporation has paid the contractual dues to the Petitioner. Insofar as the Petitioner's case of under-utilisation of its trucks is concerned, the learned arbitrator, in his impugned award, considered whether there was any minimum monthly mileage offered for any truck offered by the transporter to the Respondent Corporation. The learned arbitrator construed Clauses 1 and 16 of the General Terms and Conditions of the tender, which *inter alia* made it clear that the region-wise monthly mileage indicated in the contract was purely indicative and actual mileage would depend upon the LPG availability at sources, demand fluctuations, turnaround of the trucks, commissioning of new plants etc. It was made clear in both Clauses 1 and 16 that the Respondent Corporation did not give any guarantee for minimum mileage and that no transporter could claim any minimum mileage or consequential damages. Clause 16 underscores the point by stating that there was no guarantee for utilisation of any truck

either for (a) minimum days per month, (b) minimum mileage carried or (c) route for which the tank-trucks would be utilised. The arbitrators' view on the interpretation of the contract, particularly in the light of Clauses 1 and 16 thereof, is clearly a reasonable view. It is not an impossible view, or a view which no fair or judiciously minded person would take or which would shock the conscience of the court. The arbitrators' interpretation, accordingly, does not merit any interference under the provisions of Section 34 of the Arbitration and Conciliation Act, 1996.

3. Learned Counsel for the Petitioner submits that the arbitrator has wholly disregarded the provisions of Clause 3 of the General Terms and Conditions of the tender. Learned Counsel relies on the decision of the Supreme Court in the case of **Delhi Development Authority vs. R.S. Sharma And Company, New Delhi**[1]. Relying on this decision, it is submitted that if an award is made plainly contrary to any term of contract, it would clearly amount to an error apparent on the face of the award resulting in a jurisdictional error in the award. Clause 3 of the General Terms and conditions provides that subject to meeting all terms and conditions, tenderers offering low rates leading to minimum financial outgo to the respective Corporations would be given preference while awarding the contracts and their tank-trucks would be given longer routes/sectors while utilising them based on prevailing circumstances. In the first place, for application of this stipulation, the counter-party transporter must show that he had offered low rates leading to minimum financial outgo to the Corporation. Even if he does

1 (2008) 13 Supreme Court Cases 80

so, insofar as preference given to him is concerned, such preference must be given while awarding a contract. The Petitioner has, in fact, been awarded the contract at the rates submitted by him. Insofar as regionwise estimated monthly mileage offered by the Respondent is concerned, Clause 3 makes it clear that longer routes/sectors would be given based on prevailing circumstances. This clause has to be read in the light of Clauses 1 and 16 of the General Terms and Conditions of contract, which, as indicated above, make it clear that there would be no guarantee of any minimum mileage or any minimum utilisation or in respect of any particular route. These clauses read together suggest that the view taken by the learned arbitrator is clearly a possible and reasonable view. It does not merit any interference under the provisions of Section 34 of the Act.

4. In the premises, there is no merit in the petition. The petition is dismissed.

Arbitration Petition No.305 of 2015

5. It is not in dispute that this petition involves the same controversy as in the companion petition dealt with above except that the number of trucks offered by the Petitioner is 20 as against 27 offered in the companion petition.

6. For the reasons stated in the companion petition as above, even this petition has no merits and is dismissed.

(S.C. GUPTE, J.)