

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

Amk

APPEAL NO. 480 OF 2018
IN
ARBITRATION PETITION NO. 933 OF 2013

Union of India .. Appellant
Vs.
M/s. Bright Power Project (I) Pvt. Ltd .. Respondent

WITH
NOTICE OF MOTION (L) NO. 1869 OF 2015
IN
APPEAL NO. 480 OF 2018
IN
ARBITRATION PETITION NO. 933 OF 2013

Union of India .. Applicant

In the matter between

Union of India .. Appellant
Vs.
M/s. Bright Power Project (I) Pvt. Ltd .. Respondent

Mr. Suresh Kumar a/w. Ms. Priyanka Tiwari, Ms. Mohinee Chaugule,
Ms. Sumandevi Yadav, Ms. Smita Thakur for the Appellant.
Mr. Amrut Vernekar for the Respondent.

**CORAM : PRADEEP NANDRAJOG, C.J. &
N. M. JAMDAR, J.**

DATE : 16th JULY, 2019.

P. C. :

1. Heard learned Counsel for the parties.
2. Pursuant to a notice inviting tender, the Respondent company was awarded the work to design, supply and erect Over Head Electrification (OHE) in Koparkhairane-Turbhe-Vashi-Nerul Section. 18 months was

the time within which the work had to be executed and this would relate to the date 14.01.1999. There was delay in executing the works. The works were finally completed in the month of August, 2004.

3. Unless the Railway track was laid, the Over Head Electrification work could not commence, much less be completed. The delay took place on account of fact that the Railway track was laid somewhere around 23.10.2003. Correspondence exchanged between the parties evidences that the Appellant admitted the fact that unless the track is laid the Over Head Electrification work cannot be completed.

4. Relying upon said exchange of correspondence between the parties, the Tribunal, in the Award dated 01.07.2008 noted that the issue whether the contractor would be entitled to cost escalation and other expenses is to be decided.

5. The case of the Appellant was that while extending the period to complete the work no liquidated damages were levied and the contractor was informed that the work has to be completed at the rate stipulated in the contract.

6. For reasons unknown, probably a mistake on behalf of the Appellant, the contract did not incorporate that the General Conditions of Contract, notified by the Railway Authority would be deemed to form a part of the contract. As a result, clauses in the General Conditions of Contract on the issue of escalation became inadmissible.

7. In view of delay wholly being attributable to the Appellant, the Tribunal awarded the escalation as also other expenses incurred towards the security staff, insurance covers and incidental expenses etc.

8. Laying a challenge to the Award, the Appellant argued before the

learned Single Judge in proceeding under Section 34 of the Arbitration and Conciliation Act, 1996 that the General Conditions of the Contract barred claim towards escalation. Noting that the General Conditions of the Contract were not incorporated by reference in the agreement between the parties, the learned Single Judge has dismissed the objection filed to the Award.

9. In Appeal, the contention is that irrespective of whether the General Conditions of the Contract apply or do not apply to the contract, since while extending the time to complete the works the Appellant did not levy damages, the Arbitrators could not have awarded the amounts as per the award.

10. Merely because the Appellant thought that it was acting charitably while extending the contract by not levying liquidated damages is neither here nor there. That the Appellant wrote to the effect that during the extended period of execution of the works, no escalation or damages would be payable is also neither here nor there.

11. In view of the admitted fact that the entire delay was attributable to the Appellant, Respondents would be entitled to recompense for the extra amount spent under various heads as per the award.

12. We find no merits in the Appeal. The Appeal is dismissed.

13. Since the Appeal has been dismissed, the Notice of Motion seeking stay of execution of the Award is dismissed.

14. The amount deposited by the Appellant in this Court be paid over to the Respondent together with such interest which accrued thereon.

[N. M. JAMDAR, J.]

[CHIEF JUSTICE]