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

ARBITRATION PETITION NO.330 OF 2008

Union of India ... Petitioner
Versus
M/s Raj & Co. ... Respondent

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Mr. S.R. Rajguru I/b Ms. Anamika Malhotra for the Petitioner.
None for the Respondent.

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CORAM : S.C. GUPTE, J.

DATE : 14 MARCH 2019

P. C. :

. Heard learned Counsel for the Petitioner-Union. None appears for the Respondent.

2 The petition challenges an award passed by a sole arbitrator in a reference arising out of a contract for construction of a building. According to the Petitioner since the work was not carried out within the stipulated period by the Respondent-contractor, the Petitioner was left with no alternative but to cancel the contract. The Petitioner claims to have appointed a substitute contractor in place and stead of the Respondent. The Respondent was the claimant before the arbitral forum. Out of its 15 claims, only one particular claim, namely, Claim No.1 “for work done but not paid for”, was allowed by the arbitral forum. The learned arbitrator noted that the work done by the Respondent, as recorded by the officers of

the Petitioner, had been considered in the final bill prepared by the Petitioner based on the work actually executed and the price paid. The arbitrator observed that the final bill had been passed for a minus amount of Rs.19,70,691. The Petitioner-union had made a claim against the Respondent for this amount. The question before the learned arbitrator was whether the Respondent-contractor was responsible for the delay in completing the work. After hearing both parties and considering the evidence placed before him, the arbitrator held that it was the Union of India, who had delayed the decision on change of design of piles for the block of 10 quarters and the changed design was supplied more than a year after handing over of the site. This, in turn, had delayed the progress of the work and disturbed the execution of the project. Secondly, the arbitrator held that the Respondent had submitted the first RAR on 7 February 1998, which was not paid by the Petitioner-union. The arbitrator held that there had thus been breaches on the part of the Petitioner-union which had led to several hindrances and made the execution difficult for the contractor. The arbitrator, in the premises, held that there was no case for applying condition 54 of IAFW-2249 (General Conditions of Contract), under which the contract was terminated by the Petitioner-union. The arbitrator, in the premises, calculated the final bill, rejecting claim no.1 of Union of India towards completion of work through another contractor on a risk and cost basis. Since the termination was neither justified nor as per the contractual terms, the arbitrator held that there was no question of recovery on risk and cost basis from the Respondent-contractor. Reiterating his finding on whether or not the contractor was responsible for the delay, as originally considered whilst assessing claim no.1 of the union, the learned arbitrator held that since the Petitioner-union was itself responsible for breach of contract and delay in, firstly, making available a clear and unhindered site and, secondly, on account of its decision on modification of pile foundation items, the Petitioner-union was not entitled to terminate the contract and get the contract work executed through another contractor at the risk or cost of the Respondent-contractor. After considering, accordingly, the cancellation of contract as unjustifiable and the amount of risk and cost worked out by the union as not recoverable from the Respondent-contractor, the learned arbitrator worked out the amount payable under the final bill by the Petitioner-union. Knocking off the risk and cost amount of Rs.29,89,967, the arbitrator worked out the amount payable to the Respondent in the sum of Rs.10,19,276. The arbitrator also held that there was no merit in charging penalty at double the market rate for the Schedule 'B' material not returned by the contractor. The arbitrator held that factors of wastage and off cuts were not considered whilst arriving at the consumed material. The arbitrator was of the view that single market rate recovery would suffice and, thus, considered the rate of Rs.160/- per bag and Rs.18/- per kg towards appropriate recovery and, accordingly, reworked the amount of recovery at Rs.1,86,339.40 instead of Rs.6,24,471.69 as considered in the final bill. Adding the difference of Rs.4,38,132.29 to the final bill amount, the arbitrator held that the total amount payable by the Petitioner to the Respondent was Rs.14,57,408.29.

3 The analysis of the learned arbitrator and his findings on the basis of such analysis are clearly possible views based on the material placed by the parties before him. The arbitrator's findings are supported by evidence and are based on reasonable construction of the terms of the contract. There is

no irrelevant or non-germane material considered or relevant or germane material disregarded by the arbitrator whilst arriving at these views. There is, thus, no infirmity in the impugned award to the extent it awards claim no.1 of the Respondent after considering the Petitioner's counter claim (claim no.1), within the parameters of the law of challenge to an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996.

4 There is, accordingly, no merit in the petition. The Arbitration Petition is dismissed.

(S.C. GUPTE, J.)