

psv

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

**ARBITRATION PETITION NO.248 OF 2017
WITH
CHAMBER SUMMONS NO.1018 OF 2017
WITH
NOTICE OF MOTION (L.) NO.2376 OF 2018**

M/s.Kartarchand And Sons & Ors.	..Petitioners
Vs.	
Union of India & Anr.	..Respondents

Mr.N.B. Sawant for Petitioners.
Ms.Martina Sapkal i/b. M/s.Arun Sapkal & Co. for Respondent No.1.

CORAM : G.S. KULKARNI, J.

DATE : 4th MARCH, 2019

P.C.:

Heard learned Counsel for the petitioners and learned Counsel for the respondents.

2. Challenge in this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) is to the award dated 6 September 2016 passed by the arbitral tribunal. The respondents awarded to the petitioners a tender for construction of T.E. Bldg. In T.D.S. Compound, at Pune (Phase-I). An agreement between the parties was entered into. The work was awarded with a contract value of Rs.43,91,983.40 with stipulated date of commencement and completion

as 18.7.1979 and 17.1.1981 respectively. The work was finally completed by the petitioners on 20 May 1983. The final bill was paid on 22 February 1988.

3. On 8 January 1986 and 9 April 1988, the petitioners invoked arbitration on the ground that disputes and differences have arisen between the parties in regard to the payments to be received by the petitioners from the respondents under the said contract. There is a prior history of litigation. Earlier an arbitral tribunal was appointed to enter reference. In the meantime, the proprietor of petitioner No.1 expired on 30 October 1993. The legal heirs of the petitioner No.1 instituted probate proceeding in the year 1995. There was change of arbitrators and there was ultimately an award passed by an arbitrator Mr.S.S. Goyal on 29 September 1997. The probate was obtained on 22 December 2003 under the order passed by this Court. There were proceedings initiated against the said award in this Court. This Court in writ petition No.1006 of 2007 and writ petition No.1024 of 2007 passed an order dated 11 July 2007 and directed the arbitrator to decide the reference afresh after hearing all the parties. Accordingly, the parties were heard by the learned sole arbitrator and the impugned award was delivered.

4. Learned Counsel for the petitioners has pointed out that in all about 50 claims were made on different counts and only two claims namely claim at serial No.38 was partly allowed and claim at serial No.39 was also partly allowed. The details of the claims are as under:-

“Claim No.38: Payment for refund of amount paid and deducted from 25th R-A bill on account of reimbursement of increase in labour rates. (Claim amount Rs.35,204/-)

Findings: This claim is a part of greater claim made under claim No.39. Hence this claim will be decided together with claim No.39.

Claimants submit that labour reimbursement for increase in fair wages for Rs.35,204/- made in 24th RA bill on 31.3.83 but deducted from 25th RA bill on 8.10.83. Claimants refer exhibits C-102, C-105, C-110, C-155, C-173, C-185 etc vide which they have cited letter of labour enforcement officers and put their demand for payment of above claim.

Respondent refers clause 10(c) provision of the agreement which encompasses that contractor should necessarily and properly pay in respect of such increased wages. Claimants failed to furnish any such proof despite their letter dated 4.8.81 (exhibit R-24) wherein proof of having enhanced cost of material or wages of labour was asked. Respondent counters during the hearing on 17.7.15 that payment was done as advance payment and case sent to SE(C) for approval as per the contract. SE returned the case and therefore the deduction was made because of nonfurnishing of proof by the Claimant.

Perusal of Clause 10(c) (para 1,4,5) and Clause 10-CA reveals that for the purpose of this clause contractor shall keep such book of accounts documents to show the amount verifiable by the Engineer in charge. The Respondents have produced exhibit R-77 which is an internal document of Respondent, a letter dated 3.8.83 by SE(C) to EE(C) Pune asking details of enhancement of labour statement etc. As per the hearing held on 30.6.16 Claimants stated that they are not able to find reply to R-24 of the Respondent. They stated that there was no objection for less payment of labour from the side of Respondent or third party and there was no fine imposed for any failure to submit fortnightly labour report by the Respondent. They refer exhibit R-72, page 21 citing certificate of labour by the EE. In reply the Respondent submitted that department overlooked many faults as evident from cement consumption register (exhibit

R-68) and emphasised that the approving authority for such cases ie SE had objected and returned labour case because the documents related to labour were not available and that is the reason for recovery in the final bill.

Above claim finds its origin in Clause 10(c) of the agreement and therefore availability of vital records is of paramount importance and basic to the origin of the claim. The Claimant has not been able to show the above basic record of payment of labour in reply to Exhibit R-24 or any labour report at the material time. However, this claim is related to claim No.39 and also a part of claim No.39 only. Hence this claim will be covered under discussion and decision on Claim No.39.

Award: I, therefore award NIL under these claims in favor of the Claimant.

Claim No.39: Claim for payment on account of revision/increase of fair wage over the agreement rates as per Clause 10(c). (Claim amount Rs.5,63,479/- reduced to Rs.213806.43)

Findings: Found partly justified.

Same set of exhibits as for claim No.38 have been cited by the Claimants. Claimant submits that labour rates are specified in agreement and labour rates increased by Government w.e.f 16.12.78 was not included in the agreement. Claimant have further reduced claim amount to Rs.2,13,806.43/- in place of above claim amount. This is suggestive that the amount is not based on fair calculation and firm documentary support. Claimants must have quoted his tender rates keeping in mind latest minimum rate circulated by Government as the circulars are in public domain for the knowledge of all. The calculation made by Claimant is not as per clause 10C provision. Rate revision, if any, is to be made with reference to the same set of labour rate promulgated by government from time to time.

Respondent counters that Claimants never paid at the enhanced rate. There are no documentary evidence or proof for payment at enhanced rate despite repeated request by Respondent. They cite exhibit R-20 and R-24 which asks Claimants to prefer a specific claim with full justification and as per provision of the contract.

Claimants during hearing on 17.7.15 cited C-185 wherein Claimants submitted all the requisite documents pertaining to the claim and verified by the Respondent. However, Claimant has not been able to provide the documentary records which form the very basis of this claim. Payment under Clause 10(c) is on the basis of book of accounts, documentary support etc., and not as per the calculation revised by the Claimants in the Statement of claims.

Respondent raised the issue of leniency shown by Respondent to Claimant in granting extension of time case and emphasized that any claim for extended period should not be admissible.

Perusal of Exhibit R-72 shows that two statements viz Labour Enhancement Statement No.1 and Statement No.2 were prepared by the Executive Engineer with certificates as page No.8 and 21 respectively. The concerned Executive Engineer has certified that labor and wages records are maintained by the contractor and that the same have been verified. The amount of labour enhancement calculated under two statements by the Respondent is shown as Rs.14227.30 and Rs.26777.03 respectively. This fact indicates that total amount under labour enhancement comes to Rs.41004.33. This amount covers the recoveries made and claimed under claim No.38 above. Although the Claimants have not been able to show the records above certificates of Executive Engineer in above exhibit justify the claim. The detailed calculation of Respondent prepared at material time is a reliable calculation.

Award: I, therefore award a total amount of Rs.41004.33 under this claim covering claim No.38 also in favour of the Claimant.”

5. Learned Counsel for the petitioners in assailing the impugned award would contend that the 48 remaining claims as made by the petitioners are erroneously rejected by the arbitral tribunal. He submits that the findings as rendered by the learned arbitrator for rejecting the claims are not supported by record. In support of his contention, learned Counsel for the petitioners placed reliance on the grounds mentioned in the petition. He submits that this petition needs to be admitted and the impugned award in regard to the rejection of other claims as made by the petitioners before the arbitral tribunal is required to be set aside.

6. On the other hand, learned Counsel for the respondents has supported the impugned award. She has placed reliance on the affidavit in reply as filed on behalf of the respondents. She contends that no case is made out to interfere in the petition under Section 34 of the ACA. It is submitted that the arbitral tribunal after appropriately considering all the claims as made by the petitioners and the reasons which are supported by evidence on record, has reached to a correct conclusion that these claims are not justified and could not be granted. Learned Counsel for the respondents has drawn my attention to each of the findings as rendered by the arbitral tribunal in regard to the said claims.

7. Having heard learned Counsel for the parties and having perused the impugned award and the documents as placed on record, I am not persuaded to accept the submissions as urged on behalf of the petitioners. At the outset, it needs to be noted that perusal of the grounds as set out in the petition to challenge the arbitral award itself would not make out any case, for interference in the arbitral award, rejecting the petitioners' claims and to hold that the findings of the arbitral tribunal are perverse. Perusal of the grounds also indicates that these are general grounds and cannot be related to the specific findings as rendered by the arbitral tribunal qua each of the petitioners claims. Learned Counsel for the petitioners is also not in a position to justify as

to how the findings as rendered by the arbitral tribunal are perverse and deserve interference of a nature that the arbitral award be set aside.

8. The arbitral tribunal has rendered the findings on each and every claim. The findings appear to be supported by the facts of the case and evidence on record.

9. The only contention as urged on behalf of the petitioners is that the petitioners would be seeking some information under the Rights to Information Act which would justify that the impugned award is perverse and illegal. This submission certainly cannot be accepted. Learned Counsel for the petitioners is unable to point out why the findings against each of the claim which are not granted would require interference by this Court.

10. The scope of the present proceedings under Section 34 of the ACA is limited. The petitioners have not made out any case for this Court to come to a prima-facie conclusion that the petition deserves to be admitted. I see no reason to interfere with the impugned order. The arbitration petition is devoid of any merits. It is accordingly rejected. No costs.

11. In view of disposal of the petition, chamber summons and notice of motion would also not survive. They are disposed of accordingly.

[G.S. KULKARNI, J.]