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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 18.11.2025

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FAO(OS) (COMM) 273/2018

DELHI TRANSPORT INFRASTRUCTURE DEVELOPMENT
CORPORATION LTD (DTIDC) & ANRAppellantsThrough: Mr. Amiet Andlay and Mr. Arun K.
Sharma, Advs.

versus

M/S WELL PROTECT MANPOWER SERVICES (P) LTD

.....Respondent

Through: Mr. Tarkeshwar Nath, Mr. Anant Dev
and Mr. Harshit Singh, Advs.**CORAM:****HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE VINOD KUMAR****V. KAMESWAR RAO , J. (ORAL)**

1. This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 ("Act") by the appellant/Delhi Transport Infrastructure Development Corporation Ltd. ("DTIDC") challenging the order of the learned Single Judge in OMP (Comm.) No. 229/2018, which is in turn a petition filed by the appellant herein challenging the award passed by the learned Arbitrator whereby the claims of the respondent were allowed.

2. The challenge also encompasses order dated 08.10.2018, which is an order of the learned Single Judge in Review Petition 386/2018 in OMP (Comm.) 229/18 whereby the learned Single Judge has dismissed the Review Petition filed by the appellant herein. Suffice to state that the Review Petition was filed on a liberty granted by the Division Bench in an



appeal by the appellant under Section 37 of the Act being FAO (OS) (Comm.) 193/2018.

3. The factual matrix, which is the background to the appeal, is that pursuant to an NIT, the respondent was awarded a tender for providing watch & ward / security surveillance at three ISBTs i.e. Kashmere Gate, Anand Vihar and Sarai Kale Khan. As disputes had arisen, the matter was referred by this Court in an Arbitration Application filed under Section 11(6) of the Act to the Arbitrator.

4. The subject matter of challenge in the petition under Section 37 of the Act is primarily with regard to payment of revised minimum wages as said to have been paid by the respondent to its employees between the period from 01.10.2011 to 31.03.2014.

5. The other challenge was consequential to the issue relatable to the payment of revised minimum wages i.e. whether the security deposit, which has been forfeited by the appellant needs to be refunded to the respondent. Two issues were framed by the learned Arbitrator on both the aspects. These are, issue no. 3 at page no. 56 of the paper-book and issue no. 4 at page no. 60 of the paper-book. The findings of the learned Arbitrator are reproduced as under:-

*“Whether the Claimant is entitled for the payment of Rs. Ninety Five Lacs Twelve Thousand Nine Hundred And Sixty Two (Rs.95,12,962/-) on account of arrears of the enhanced revised minimum wages? OPC
The Claimant has claimed this amount as enhanced minimum wage arrears. He submitted that the minimum wages increased from time to time, in lieu whereof, the Claimant paid the enhanced wage rates to the deployed workers. These enhanced minimum wages*



were not reflected in the bills raised by the Claimant as the enhanced wages were not sanctioned by the Respondent before the bills were raised. As against it the Respondent's averment in his reply, is that, the enhanced minimum wages are matter of record. The Respondent thus has denied this claim of the Claimant, firstly on the ground that the Claimant be put to strict proof of it and secondly on the ground that an amount of Rs. Sixty Two Lac Sixty Thousand And Four (Rs.62,60,004/-) was paid by the Respondent to the Claimant towards final settlement bill which was in full and final satisfaction of the Claimant's bill. The Claimant along with his Statement of Claim has filed 'Due and Drawn statement' ranging from 01.10.11 to 31.03.14 demonstrating an amount of Rs. Ninety Five Lac Twelve Thousand Nine Hundred And Sixty One (Rs.95,12,961/-) due against the Respondent, which the Claimant had paid to the supervisors, gunmen and the security guards posted at the three ISBTs enhanced by the government since 01.10.11. to 31.03.14 pending the contract. In the affidavit of Shri Sanjay Sharma, Executive Engineer, filed on 04.10.16 by the Respondent for Admission and Denial of the Documents, he has admitted this breakup of the enhanced minimum wages in Ex R19, filed by the Claimant in his evidence. The Respondent's counsel has put up her endorsement and signature in admission of Ex R19, as apparent from the order sheet dated 04.10.16. In the light of this document filed by the Claimant in support of its claim and its admission by the Respondent, there is no plausible reason whatsoever to disbelieve this breakup and the details of the enhanced wages given in this document. It is therefore well established and clear that the Claimant has been successful in proving that the minimum wages pending the contract increased during the period of 01.10.11. To 31.03.14 in consequence whereof the Claimant had paid Rs. Ninety Five Lac Twelve



Thousand Nine Hundred and Sixty One (Rs. 95,12,961/-) to the deployed workers. The Claimant has clearly pleaded that all the payments made by him to the workers were made in the presence of the representatives of the Respondent which the Respondent has not denied in his defence statement. The Respondent's assertion against it is that the bill of amount of Rs Sixty Two Lacs Sixty Two Thousand and Four (Rs. 62,62,004/-) was prepared by the Respondent finally on acceptance of the Claimant, and thus this amount was paid to the Claimant in July 2014 in accord and in full satisfaction as final settlement to the Claimant. This contention of the Respondent is found without any force for the Claimant's case is that, he had no earlier occasion to claim these amounts of enhanced minimum wages, he paid to workers from the Respondent because the Respondent had not sanctioned the enhanced minimum wages on their revision by the government during the contract period. Ex R2 Notice Inviting Tender No. 23-2011-12 given by the Respondent to the contractor in its 'NOTE', term no. 1 clearly mentions,

"If the minimum wages is revised by the government of NCT of Delhi/government of India, the incremental wages, if applicable, will be provided".

In presence of this term there remains no hitch and hesitation in holding that to pay revised minimum wages to workers by the contractor was ultimately the liability of the Respondent.

The Respondent is therefore liable to reimburse the amount of Rs. Ninety Five. Lac Twelve Thousand Nine Hundred and Sixty Two (Rs.95,12,962/-) along with interest to the Claimant. This issue is decided accordingly in favour of the Claimant and against the Respondent.

... ..

IV. Issue No. 4.



Whether the Claimant is entitled for refund of security deposit of Rs. 27,51,468/-? OPC

With regard to claim of Claimant for recovery of the security amount of Rs. Twenty Seven Lac Fifty One Thousand Four Hundred and Sixty Eight (Rs.27,51,468/-) which is 10% of the total amount of contract deposited through two FDRs quoted below, with the Respondent;

1. FDR of Rs. Fifteen Lac Sixty Four Thousand Six Hundred and Thirty (Rs.15,64,630/-) issued by State Bank of India, Dilshad Garden, Delhi.

2. FDR of Rs. Eleven Lac and Eighty Seven Thousand (Rs. 11,87,000/-) issued by Syndicate Bank, Seemapuri, DTC Depot, Delhi.

The Respondent has not disputed these deposits but has declined to refund them on the following grounds;

i. Lack of Documentary evidence.

*ii. Terms and Conditions No. 37 and 38 of the Notice Inviting Tender which stipulate as under-
"in the event of default being made in the payment of any money in respect of wages of any person deployed by the contractor for carrying out of this contract and if a claim therefore is filed in the office of the Labour Authorities, the department may failing payment of the said money by the contractor make payment of such claim on behalf of the contractor to the said Labour Authorities, and any sums so paid, shall be recoverable by the department from the contractor.*

"if any money shall, as the result of any instructions from the Labour Authorities or claim or application made under any of the Labour laws, or Regulation, be directed to be paid by the department, such money shall be deemed to be payable by the contractor to the department within seven days, the department shall be entitled to recover the amount from the contractor by



deduction from money due to the contractor or from the performance security".

There is absolutely no material brought forth by Respondent to suggest the breach or infringement of any of the said terms and conditions by or on behalf of the Claimant. Even a single instance has not been given by Respondent to show that the Claimant had not paid to the manpower deployed at the three ISBT's and there was any complaint of any non-payment against the Claimant or that there has been any dispute in Labour in Labour Department against the Claimant, in consequence whereof, the Respondent was made to make good any amount towards the wages of the deployed persons, which the Respondent is/was entitled to recover from the security deposits of the Complainant..

In absence of the proof referred above, the Respondent cannot deny to return Rs. Twenty Seven Lac Fifty One Thousand Four Hundred Sixty Eight (Rs. 27,51,468/-) to the Claimant which they are withholding unjustifiably.

It is to be noticed that an enquiry report along with NOTE SHEET dated 19.02.2013 sent by Anti-Corruption department to Transport Commissioner pointing out some irregularities and flaws on part of the Claimant in providing watch and ward/Security surveillance services at the three ISBTs has been placed on record by the Respondent. The report is stoutly denied by the Claimant. Even assuming this report been proved for a while, yet the irregularities referred therein do not form any breach of conditions no. 37 and 38 above to enable the Respondent to withhold or forfeit the amount of security deposits of the Claimant.

Apart from refusing to return security deposits on the foregoing grounds, the Respondent has



pleaded a set-off alleging inefficiency and irregularities of the Claimant in execution of the contract mentioned in the Enquiry Report and has alleged that the Respondent is therefore entitled to forfeit the security deposit. These irregularities and shortcomings pointed out by the team of vigilance department formed the defence of the Respondent in Writ Petition (C) No. 5444 of 2013 and CM No. 12164 of 2013 filed by the Claimant before the Hon'ble High Court of Delhi. By filing this petition the Claimant had assailed the order of the Respondent dated 16.08.2013 vide which the Respondent had terminated the services of the Claimant at Kashmere Gate, ISBT. The High Court discarded, these inefficiencies alleged by Respondent and disposed of these Writ Petitions on 16.09.13 by the following order;

"for the reasons stated hereinabove the impugned order is set aside. It is however made clear that quashing of the order dated 16.08.2013 does not preclude the Respondent from passing a fresh order, pursuant to notices dated 6.03.2013 & 23.5.2013 issued to the petitioner".

But pursuant to, this order the Respondent neither passed any order afresh nor assailed the order before the apex court. The order thus attained finality and the Respondent cannot be allowed to plead those irregularities and shortcomings again as a defence, to decline the return of the security deposits of the Claimant. The Principle of Res Judicata bars their way. Issue No. 4 is accordingly decided in favour of the Claimant and against the Respondent. The Respondent is directed to return Rs. Twenty Seven Lakh Fifty One Thousand Four Hundred and Sixty Eight (Rs. 27,51,468/-) along with 18% interest, per annum from the date it became refundable, pendente lite, and till it is actually paid to the Claimant."



6. The learned Single Judge, by referring to the conclusion drawn by the learned Arbitrator has, in paragraph 4 onwards has stated as under:-

“4. A reading of the above would show that the Arbitrator has preliminary passed his Award on appreciation of the evidence led before him, including the evidence of Mr. Sanjay Sharma, Executive Engineer, non-denial of the breakup of enhanced minimum wages in Ex.R19 and non-denial of the assertion of the respondent that the wages were paid before the representatives of the petitioner. This being a case of appreciation of evidence, the Court in exercise of its power under Section 34 of the Act cannot act as a Court of appeal and re-appreciate the evidence so as to arrive at a different conclusion. In Associate Builders v. DDA (2015) 3 SCC 49, the Supreme Court, after analyzing the provisions of Section 34 of the Act, has held as under:-

“33. It must clearly be understood that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score [Very often an arbitrator is a lay person not necessarily trained in law. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows:

“General, you have a sound head, and a



good heart; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong”.

It is very important to bear this in mind when awards of lay arbitrators are challenged.] . Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. [(2012) 1 SCC 594 : (2012) 1 SCC (Civ) 342] , this Court held: (SCC pp. 601-02, para 21)

“21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a nonmember, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is



therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at."

5. It is further contended by the counsel for the petitioner that the respondent was not entitled to the release of the security amount as the petitioner had issued two notices dated 06.03.2013 and 23.05.2013 alleging that the respondent was making payment of wages in cash. This being in breach of the agreement, the petitioner could not have been held entitled to release of the security amount.

6. I am unable to agree with the said submission of the learned counsel for the petitioner. The Arbitrator in his Impugned Award has taken note of the fact that the termination notice dated 16.08.2013 based on the notices referred to by the counsel for the petitioner had been quashed by this Court vide its order dated 16.09.2013 passed in WP(C) No. 5444/2013 and though the petitioner had been granted liberty to pass a fresh order, the petitioner did not do so. As far as these notices were concerned, they were based on some report of Anti-Corruption Department, which remain unproved. The Sole Arbitrator has further taken note of the fact that there was no material brought forward by the petitioner to suggest any breach or infringement of the terms of the Contract by the respondent except the assertion in these notices. The petitioner has also not shown if there was any dispute pending before the Labour Department against the respondent or any of its worker had made any claim against the respondent or in default against the petitioner. The Arbitrator has therefore, held that there was no justification for the petitioner to withhold the refund of the security amount. This being a question of fact and appreciation of evidence, this Court in exercise of its power under



Section 34 cannot start the process of re-appreciating the same. In any case, the view expressed by the Arbitrator cannot be said to be perverse or unreasonable so as to warrant any interference of this Court.

7. In view of the above, I find no merit in the present petition and the same is accordingly dismissed and with no order as to cost.

7. The review petition, which has been filed by the appellant pursuant to the liberty granted by the Division Bench was also rejected by the learned Single Judge by stating the following in paragraph 2 to 5 of order dated 08.10.2018:-

“2. I have considered the submission made by the learned counsel for the petitioner, however, I find no force in the same. It may be noted that the petitioner did not file any application under Section 16 of the Act before the Sole Arbitrator challenging the arbitrability of the disputes raised by the respondent. The only plea raised by the petitioner before the Sole Arbitrator was that with the full and final settlement of all the claims, the claim raised by the respondent was not maintainable or justified. Such plea can be found in the Statement of Defence in paragraph 2 of the Preliminary Objections and paragraph 4 and 5 in the Preliminary Submissions of the Statement of Defence and is reproduced hereinbelow:-

“PRELIMINARY OBJECTIONS:

Xxxxxx

2. That the claim as made by the claimant are not maintainable in view of the full and final payment having been received by the claimant from the respondent.

xxxxxxx

PRELIMINARY SUBMISSIONS:

xxxxxxx



4. That it is submitted that on 1.4.2014 completion certificate was prepared by the respondent. Thereafter on 24.6.2014, the final “bills and measurements” were prepared by the respondent as under:-

Total	Rs. 6,32,57,625-00
Less already paid	Rs. 5,68,50,604-00
Balance to be paid	Rs. 64,07,021-00
Less Recoveries	Rs. 1,47,017-00
Net Balance	Rs. 62,60,004-00

The above final “bills and measurements” were accepted by the Claimant pursuant to which a sum of Rs. 62,60,004.00 was paid by the respondent and accepted by the Claimant.

5. That in the circumstances, the claims as made by the claimant are neither tenable nor maintainable. The respondent however reserves the right to make appropriate counter claim against the claimant. The respondent also reserves its right to amend the reply to the Statement of Claims at a later stage on any ground, whether or not mentioned in the present reply.”

3. A reading of the above would clearly show that the plea before the Sole Arbitrator was not that with the payment of the final “bills and measurements”, the Arbitration Agreement ceased to exist or the disputes raised by the respondent were not arbitrable any further. It is for this reason that the petitioner did not file any application under Section 16 of the Act before the Sole Arbitrator.

4. Sub-Section 2 and 3 of Section 16 of the Act are reproduced hereinunder:-

“16. Competence of arbitral tribunal to rule on its jurisdiction.—

xxxxx

(2) A plea that the arbitral tribunal does not



have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.”

5. A reading of the above provisions would clearly show that the plea that the Arbitral Tribunal does not have jurisdiction is very different from the plea that the claim raised by the claimant is not maintainable or devoid of any merit. The first is a question of jurisdiction, while the second is a question of the merit of the claim of the claimant. The plea raised by the petitioner is one on the merits of the claim raised by the respondent and not of the jurisdiction of the Arbitral Tribunal adjudicating such claim. The Arbitrator has also considered this issue in the same light and has held that, as admittedly, the final “bills and measurements” did not contain the element of increase in wages due to statutory notification, the claim was maintainable and has allowed the same on merit. It is not the case of the petitioner that this finding of the Arbitral Tribunal is incorrect in any manner. Dispute raised by the petitioner is that the respondent has failed to produce any evidence in support of such claim. This is very different from the plea of lack of jurisdiction of the Arbitral Tribunal.

6. I may only note that even when the matter was argued before me on 23.05.2018, the plea was not of lack of jurisdiction of the Arbitral Tribunal but was on merit of the Award, therefore, even otherwise the review is not maintainable.



7. In view of the above, I find no merit in the present Review Petition and the same is accordingly dismissed, with no order as to cost.”

8. The submissions of Mr. Andlay, learned counsel appearing on behalf of the appellants are primarily the reiteration of the submissions as were advanced before the learned Single Judge. Inasmuch as in the absence of any evidence produced by the respondent showing payment of revised minimum wages to the workers between the period from 01.10.2011 to 31.03.2014, the learned Arbitrator could not have awarded/granted the same in favour of the respondent. That apart, it was sought to be urged that something, which was not claimed by the respondent has been granted. He has drawn our attention to a chart filed by the respondent as Annexure R-19 at page no. 237 of the paper-book which encompasses payments under different heads like reliving charges, ESIC, uniform allowances, etc., which are beyond the claim of minimum wages.

9. Insofar as the issue no. 4 is concerned, Mr. Andlay concedes to the fact that the said issue is consequential to the issue no. 3. In other words, it is only in the eventuality that the findings on the issue no. 3 are set aside that issue no. 4, which is for the refund of security deposit to the respondent shall be set aside.

10. We are unable to agree with the submission made by Mr. Andlay insofar as the issue that the respondent having not filed any evidence to show that it has paid the revised minimum wages for the aforesaid period to the employees and the Arbitrator could not have granted the said claim. Suffice to state, we have put a specific query to Mr. Andlay as to whether any of the employees have raised a claim against the appellant for the



revised minimum wages, the answer is in the negative. If that be so, the dates reveal that the dispute relates back for a work, which was awarded in the year 2011 and was raised in the year 2015 i.e. almost 10/14 years back. If no claim has been made, surely a presumption can be drawn that the revised wages have been paid by the respondent to its employees and for this reason they had not made any claim. Even otherwise, there is no denial to the fact that the payment of statutory dues is a statutory obligation on the part of the appellant, who being the principal employer has to ensure the payment of minimum wages to the employees of the contractor. In any case, we have reproduced the findings of the learned Arbitrator on this issue, with which we agree.

11. Insofar as the order dated 08.10.2010 is concerned, we find that the learned Single Judge is justified in rejecting the review petition for the reasons stated in the said order, which we have also reproduced above. Suffice to state the scope of interference with the order passed by a Court in a petition under Section 34 of the Act is very limited.

12. We are of the view that no ground is made out by the appellant justifying interference with the orders passed by the learned Single Judge.

13. Accordingly, the appeal is dismissed.

V. KAMESWAR RAO, J

VINOD KUMAR, J

NOVEMBER 18, 2025/sr