

HIGH COURT OF DELHI

**INDIAN OIL CORPORATION LTD AND ANR
V/S
TELTECH INSTRUMENTATION PVT LTD AND ANR**

Date of Decision: 28 January 2013

Citation: 2013 LawSuit(Del) 501

Hon'ble Judges: [Manmohan Singh](#)

Case Type: Original Miscellaneous Petition

Case No: 59 of 2013

Subject: Arbitration, Civil

Acts Referred:

[Arbitration And Conciliation Act, 1996 Sec 34\(2\), Sec 34](#)

Final Decision: Petition dismissed

Advocates: [Debasish Moitra](#), [Harish Malhotra](#), [Tanuj Khurana](#)

Reference Cases:

[Cases Referred in \(+\): 3](#)

Judgement Text:-

Manmohan Singh, J

[1] The petitioners have filed the abovementioned petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the award of Rs. 54,48,321/-, dated 31 st October, 2012 passed by the learned sole Arbitrator.

[2] In the petition, it is stated that in the year 1998, the petitioners invited Tender bearing No.ENG/PT/376/98 for design, supply, testing, installation and commissioning of automation of drawing trucks, filling system and motorized operated valves with remote operation facility at its Bijwasan Terminal. It must be clarified that under Clause 9 of the said Tender, the respondents had to undertake annual maintenance for a period of three years after the expiry of the two years warranty period. Cost of all apparel, equipment, instruments and services (preventive & breakdown to take care of maintenance) was to be borne by the respondents during the annual maintenance contract period. The parties entered into a works contract for civil engineering works by virtue of Work Order No.ENG/INS/304/ Bijwasan, dated 15 th October, 1998 in response to the respondents' offer dated 22 nd May, 1998.

[3] The expected date of completion of erection/installation was 30 th July, 1999 and the expected date of commissioning was 15 th September, 1999. The date of factory acceptance test was 23/25 th September, 1999. The work was completed by December, 1999. The mechanical completion was done on 10 th January, 2000 and the site acceptance test was done on 9 th March, 2002.

[4] The case of the respondents before the learned Arbitrator was that the petitioners modified the scope of work and additional work was got done. As per the Tender, it was for 250 channels Master actuating station. The petitioners asked to make for 60 channels vide letter dated 19 th December, 1998. The respondents revised the offer and LOI was issued. The petitioners further revised the scope of work to 120 channels FCU and PLC in the meeting held on 19 th December, 1998. The respondents submitted the revised offer on 22 nd January, 1999. They also submitted the justification of offer on 19 th March, 1999 on being asked by the petitioners on 8 th March, 1999. The petitioners issued approval on 6 th August, 1999. The respondents commissioned UPS, energized TLF instrument on 28 th October, 1999 but flushing of the line was not done by the petitioners which resulted in unablensess of the respondents to go for calibration and measurement of flow meter and stamping till 28 th August, 1999. The respondents supplied material worth 8 lacs and requested to make payment vide letter dated 8 th October, 1999. The petitioners withheld Rs. 54,48,321/- out of which Rs. 47 lac on account of liquidated damage.

[5] The following issues were framed in the arbitration proceedings on 4 th December, 2009:-

"1. Whether the claimants have been negligent in their completion of project

on time. OPR

2. Whether the delay in execution of work is attributable to the Claimant, if so, its effect. OPR

3. Whether the Respondent is entitled to suggest changes in the work order or to make any alteration or addition to the original specifications at different stages of the work and before final payments are made. OPR

4. If the answer of issue no. 3 is in affirmative, whether the Claimant is entitled to the benefits (financial and extension of time) arising out of the repercussions thereof. OPC

5. Whether the Respondent has suffered losses on account of delay in execution of work. OPR

6. Whether the Claimant is entitled to the claims as per the statement of claims. OPC

7. Whether the Respondent is entitled to claim Liquidated damages for non completion of work within stipulated time. OPR

8. Relief."

[6] The respondents also filed an application for rejection of counter claim in the proceeding. Thereafter, on 12 th August, 2010 it was decided that the issue of maintainability of counter-claim and its getting barred by period of limitation would be decided at the time of final award. Thus, two issues were also framed in this regard. The same read as under:-

"9. Whether the Counter Claim of Respondent is maintainable.

10. Whether the Counter Claim of Respondent is barred by limitation."

[7] The issues No.1, 2 & 3 being inter-related were decided together by the learned sole Arbitrator who gave the following findings thereon:-

" .The expected date of completion of erection/ installation was 15.09.1999. The contention of claimant is that the delay occurred due to modification of scope of work and some additions to the work by the respondent. The respondent has not denied the modification or addition to the work. The respondent has stated that it had a right to modify as per the terms of the contract. Respondent has further stated that the delay was on account claimant's poor mobilization and planning. As it has come on record that scope of the work order and the quantum of the work order was changed and also certain obligation such as flushing of line was not done on time by the respondent, therefore it would not be just in proper to hold the claimant solely and exclusively responsible for the delay. Respondent contention that modified specifications could not have resulted in delay had the claimant planned properly and mobilized men and material : may not be fully sustainable. In a project work and execution of engineering work the procurement of items, planning, placement of manpower are inter-related and one has a bearing on another. In these circumstances I hold that there were a contributory reasons from both the sides resulting in the delay in completion of work. I accordingly hold that claimants are not exclusively negligent and the delay cannot be solely attributed to claimant. The respondent may be entitled to change the work and its scope but if the same become the reason for the delay in execution of work the consequences of such delay cannot be justifiably fastened on the executing agency."

[8] In view of the finding on issue No.3 in favour of the respondents, issue No.4 was also decided in their favour, with the finding that the respondents are entitled to the benefits arising out of the repercussions thereof.

[9] While deciding issues No.5 & 9 together being inter-related, the learned sole Arbitrator gave the following conclusion:-

"Both these issues are inter-related and therefore clubbed for award. The respondent has claimed damages on account of loss due to depreciation/profit. It has been held above the delay is not solely and

exclusively attributable to the claimant and apart from that no facts and figures or plausible description of how the loss has accrued to the respondent has been given. The claim of the damages by the respondent is notional and as the facts and circumstances of the case reveal the delay is not exclusively attributable to the claimant. Hence losses by respondent have not been established. I reject this claim of the respondent."

[10] As far as issue No.6, i.e. regarding entitlement of the respondents to the claims as per the statement of claims, and issue No.7, i.e. regarding entitlement of the petitioners to claim liquidated damages for noncompletion of work within stipulated time are concerned, the same were decided together and the following findings were arrived at by the learned sole Arbitrator:-

"Issues No.6 & 7 are related to deduction to LD by respondent and release of same sought by the claimant and therefore are clubbed for award. As it has already been held by me above that the claimant is not solely to be held responsible for the delay and respondent too has changed the scope and quantum of the work order and has not on time discharged its obligation of flushing the pipe. This is a case of delay where both claimant as well as respondent are contributory I therefore hold that deduction of LD should not have been implemented. Under these circumstances I direct the respondent to release the amount of Rs.54,48,321.00 in favour of claimant. So far as claim of interest @ 18% as claimed by the claimant is concerned I decline to grant the same. This is due to the fact that apart from the respondent claimant has been contributory to the delay and in the facts and circumstances of the case it cannot be said that the respondent had invoked the LD or withheld the amount merely on any prejudice against the claimant. The claim of interest by the claimant is therefore is not justified and I therefore reject the same."

[11] Issue No.8 was decided in favour of the respondents and against the petitioners. Similarly, issue No.10 was decided against the petitioners by coming to the conclusion that the counter-claim of the petitioners was barred by limitation.

[12] I have gone through the pleadings before the Arbitrator as well as the award passed thereon. This Court is not inclined to interfere with the award passed by the sole Arbitrator.

[13] The scope of Section 34 of the Arbitration and Conciliation Act, 1996 is limited to the stipulations contained in Section 34(2) of the Act. The jurisdiction of the Court to interfere with an Award of the Arbitrator is always statutory. Section 34 is of mandatory nature, and an Award can be set aside only on the Court finding the existence of the grounds enumerated therein and in no other way. The words in Section 34(2) that "An Arbitral Award may be set aside by the Court only if" are imperative and take away the jurisdiction of the Court to set aside an Award on any ground other than those specified in the Section. The Court is not expected to sit in appeal over the findings of the Arbitral Tribunal or to re-appreciate evidence as an appellate court. A recent observation of the Supreme Court in the case of [P.R. Shah, Shares and Stock Brokers Private Limited Vs B.H.H. Securities Private Limited And Others](#), 2012 1 SCC 594 is apposite in this regard and the relevant portion, contained in paragraph 21 of the said judgment is, reproduced as under:

"21. A Court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or re-appreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34 (2) of the Act.

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".

[14] The petitioners have challenged the arbitral award on the grounds as set out in the petition and there is not even a whisper in the said grounds as to how they fall under the limited and narrow mandate of Section 34 of the Arbitration and Conciliation Act, 1996. Even if the additional grounds under Section 34, as laid down by the Supreme Court in the case of [ONGC Vs. Saw Pipes Ltd.](#), 2003 AIR(SC) 2629 are considered, which are patent illegality arising from statutory provisions or contract provisions or that the Award shocks the conscience of the Court, no such facts are narrated in the petition. The endeavor of the petitioners is thus to convert the challenge to the arbitral award into an appellate proceeding involving a total re-hearing of the matter and re-appreciation of evidence, and which endeavor as per the consistent dicta of the Supreme Court is impermissible in law.

[15] It is settled law that the Award is not open to challenge on the ground that the Arbitral Tribunal has reached a wrong conclusion or that the interpretation given by the

Arbitral Tribunal to the provisions of the contract is not correct. In the present case, the learned Arbitrator has after considering the rival submissions of the parties, taken the view that the respondent is not merely responsible for delay as the petitioner itself has changed the scope and quantum of the work and the delay was contributory to both parties. Further, it appears from the record that the date of factory acceptance was 23/26 th September, 1999 and the work was completed by December, 1999. There is a very short delay. The learned Arbitrator had rather given the extensive benefit to the petitioner by not awarding interest component. In normal course, the petitioner ought to have accepted the Award gracefully. As the petitioners have challenged the same, thus, it is being decided on merit. Thus, the entire objections of the petitioners, as contained in the grounds, are contrary to the scheme of Section 34 of the Arbitration and Conciliation Act, 1996. There is no averment in the petition as to the existence of any illegality that is apparent on the face of the arbitral award.

[16] The Arbitral Tribunal is the final arbiter of the disputes between the parties referred to it. The Supreme Court has expounded on the principle as to the sanctity of the decision of the arbitrator in the case of [Markfed Vanaspati and Allied Industries Vs Union of India](#), 2007 7 SCC 679, where in paragraph 17 of the said judgment it was observed as under:

"17. Arbitration is a mechanism or a method of resolution of disputes that unlike court takes place in private, pursuant to agreement between the parties. The parties agree to be bound by the decision rendered by a chosen arbitrator after giving hearing. The endeavor of the court should be to honor and support the award as far as possible".

[17] After having gone through the award passed by the learned sole Arbitrator, I find that there is no error therein. The learned Arbitrator has given its correct findings of the facts and circumstances of the present case, as the said findings are in consonance with the contract between the parties. The objections of the petitioners are thus without any merit. The same are accordingly dismissed. No costs.