

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arb. Case No.74 of 2014

Reserved on : 18.04.2024

Date of decision : 29.04.2024

State of Himachal Pradesh & Anr. ...Petitioners.

Versus

M/s Asphalt Carpet Constructions Co. ...Respondent.

Coram:

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ No

For the petitioners : Mr. Y.P.S. Dhaulta, Additional
Advocate General.

For the respondents : Mr. J.S. Bhagol, Senior Advocate
with Mr. Satish Sharma,
Advocate.

Satyen Vaidya, Judge (Oral):

By way of instant petition, an Award dated 08.08.2014 passed by learned Arbitrator in Arbitration Case No.44 of 2011, has been assailed.

2. The main plank of challenge to the impugned Award is that the same exceeds the scope of agreement between the parties. The award of amount by the Arbitrator in favour of respondents on account of price escalation is

¹ ***Whether reporters of Local Papers may be allowed to see the judgment?***

beyond the scope of the agreement. On this ground, the impugned award is alleged to be against public policy.

3. The brief facts necessary for adjudication of this petition are that the respondent was awarded a work of construction of link road from Sitalpur to Nanowal Km. 0/0 to 18/400 and the work period allowed to the respondent was one year, which was to commence w.e.f. 26.01.2005. Hence, the date of completion was 25.01.2006.

4. The work was completed by respondent on 28.12.2008. Respondent claimed compensation of additional cost on account of prolongation by alleging defaults on the part of the petitioners herein.

5. The Arbitration clause was invoked. Respondent submitted various claims including a claim for Rs.21,58,775.39 on account of price escalation. Respondent also claimed interest for pre and pendente lite period @ 18%. Price escalation was claimed with the allegations that the site was not handed over to the petitioners within the entire work period. In addition, there were various other hindrances attributable to the petitioners, which eventually delayed the

execution of the work and consequently, increased the cost of the construction.

6. The Arbitrator has rejected all other claims of respondents except the claim of price escalation to the tune of Rs.15,46,250/- and interest @ 8% per annum has also been awarded for pre and pendente lite period.

7. The respondent has accepted the award, whereas, the petitioners have assailed the same on the ground as mentioned above.

8. I have heard, Mr. Y.P.S. Dhaulta, learned Additional Advocate General for the petitioners and Mr. J.S. Bhagol, Senior Advocate with Mr. Satish Sharma, Advocate, for respondent and have also gone through the record carefully.

9. In ***UHL Power Company Ltd. Versus State of Himachal Pradesh, 2022 (4) SCC 116***, a Three-Judge Bench of Hon'ble Supreme Court expounded the scope of interference under Section 34 of Arbitration and Conciliation Act, 1996, and has held as under:-

“15. This Court also accepts as correct, the view expressed by the appellate court that the learned Single Judge committed a gross error in reappreciating the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the said court to do so in proceedings under Section 34 of the Arbitration Act, by virtually acting as a court of appeal.

16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court is examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Ltd. V. Vedanta Ltd., the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words: (SCC pp.166-67, para 11)

11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)

(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of fundamental policy of Indian Law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.”

10. In UHL Power Company Ltd. (*supra*), while discussing the scope of the power of Arbitrator, it has held that in case the interpretation of relevant clause of agreement as arrived at by the Arbitrator was possible and plausible, the same cannot be interfered with merely because another view could have been taken.

11. Keeping in view the above dictum, I find no ground to interfere with the impugned award. Noticeably, learned Arbitrator has returned a finding of fact that the reasons for delay in implementation of agreement are attributable to the petitioners/employer.

12. Learned Additional Advocate General, has not been able to point out any material from which the findings of facts recorded by the learned Arbitrator can be termed to be either patently illegal or perverse. That being so, the grant of compensation to the respondent/Contractor on account of price escalation during continuation of work period by application of Clause 40 and 38.1(e) of the agreement, cannot be said to be illegal exercise of jurisdiction by the Arbitrator.

13. Clause 40 of the Agreement deals with the compensation event and Clause 38.1(e) allows the inclusion of value of variations and compensation events.

14. Compensation allowed in favour of respondent/Contractor can also not be said to be unreasonable or exorbitant. The impugned award is supported by detailed

reasons. In result, there is no merit in the petition and the same is dismissed.

Pending application(s), if any, also stand disposed of.

29th April, 2024
(Pardeep)

(Satyen Vaidya)
Judge