Chief Justice's Court

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 182 of 2024

Appellant :- Union Of India Through Garrison Engineer
Respondent :- Ms Satendra Nath Sanjeev Kumar Architect, Contractors/Builders, Civil Engineers And Colonisers
Counsel for Appellant :- Pranay Krishna
Counsel for Respondent :- Vikash Bhatnagar

Hon'ble Arun Bhansali,Chief Justice
Hon'ble Vikas Budhwar,J.

1. Heard Shri Pranay Krishna, learned counsel for the appellant and Shri Vikash Bhatnagar, learned counsel for respondent.

2. Challenge in this appeal under Section 34 of the Arbitration and Conciliation Act, 1996 (in short 'The Act') is to the order passed by Presiding Officer, Commercial Court-I, Meerut in Arbitration Case CNR No. UPME19-002052-2022, Old No. 100 of 2000, (Union of India Vs. M/s Satendra Nath Sanjeev Kumar) whereby the application preferred under Section 34 of the Act by the appellant-objector for setting aside the award dated 25.07.2000 of the arbitral tribunal was rejected.

3. The case of the claimant-respondent before the arbitral tribunal was that a tender was floated by the appellant-objector on 15.07.1985 for executing the work of Provn of Water Borne Sanitation to existing Pan Type Latrines in the area of AGE B/R III under G.E. (N) Meerut, project relatable to Lumpsum Contract based on IAFW 2159. The tender amount was INR 16,83,533.62. The claimant-respondent along with others applied on 10.08.1985 and his bid was accepted on 16.09.1985. The period of completion of work was 12 months. Since disputes and differences occurred,

the same was referred to sole arbitration in terms of the agreement and on 07.01.1999, a Lieutenant Colonel of appellant organization was appointed as the sole arbitrator. A counter claim was also filed by the appellant-objector. The arbitral tribunal pronounced the award on 25.07.2000 in favour of the claimant-respondent and against the appellant-objector.

4. Challenging the award dated 25.07.2000 of the arbitral tribunal, the claimant-respondent filed an application under Section 34 of the Arbitration Act before the Commercial Court which came to be rejected on 09.11.2023 upholding the award of the sole arbitrator.

5. Questioning the order of the Commercial Court, Meerut as well as the award dated 25.07.2000 of the sole arbitrator, the present appeal has been preferred.

6. Shri Pranay Krishna, learned counsel for the appellant-objector while challenging the order of the Commercial Court as well as the award has confined his submissions only to the extent of allowing the claims related to escalation in the labour wages etc. He submits that in view of the Clause 6(A) contained in the General Conditions of Contracts of Military Engineering Service for Lump-sum Contractor (IAFW-2159), there was no provision for awarding claims for escalation in labour wages etc. and while failing to consider the same, the award of arbitral tribunal affirmed by Commercial Court stands vitiated as it amounts to patent illegality.

7. Elaborating the said submission, it is contended that Clause 6(A) deals with the contingencies arising out of discrepancies and adjustment relating to bills which includes escalation wherein the deciding authority is Accepting Officer. While making the said

submission, it has been urged that the escalation in labour contract is a part of the final bill which is non-arbitral as the said dispute is to be decided by the Accepting Officer and is final. Reliance has also been placed upon the communication of the appellant-objector under the signatures of Colonel Commander Works Engineers (Accepting Officer) dated 27.06.1998 wherein the claimant-respondent was apprised that the claim regarding escalation are not arbitral disputes as the decision of the Accepting Officer is final and binding.

8. Lastly, it has been argued that the payability of escalation of wages etc. is dependent upon a specific provision stipulated in the contract and since it is not provided in the terms of the contract thus, the arbitrator committed patent illegality and has re-written the contract which is impermissible making the award suffering from patent illegality. Thus, it is prayed that the award as well as the order of the Commercial Court be set aside.

9. Countering the said submission, Shri Vikash Bhatnagar who appears for the claimant-respondents has argued that the award passed by the arbitral tribunal as well as the order of the Commercial Court dated 09.11.2023 upholding the award does not suffer from any patent illegality so as to warrant interference in the present proceedings.

10. Submission is that the Clause-6(A) of the terms of the contract does not forbid payments of the amount relatable to escalation of wages etc. as the said clause only applies in those contingencies wherein there is any discrepancy or variations with respect to the bill of the quantities mentioned in schedule 'A', particulars, specifications, drawing and general contradictions wherein the deciding authority would be the Accepting Officer. He has invited

the attention of the Court towards Clause 58 of the General Conditions of Contracts so as to contend that an obligation has been cast upon the contractor to pay not less than the fair wages as defined or the minimum wages fixed under the Minimum Wages Act whichever is higher to the labourer engaged by it for executing work. It is, thus, argued that the learned arbitrator after meticulously analyzing the documents available on record has proceeded to award an amount of INR 2,90,800/- to the claimant under head, escalation. It is also submitted on behalf of the claimant-respondent that the award has been passed within the para meters as envisaged in the contract and the award does not suffer from any patent illegality.

11. We have heard the arguments of the rival parties and perused the record carefully.

12. Facts are not in issue. It is not disputed that the claimant was awarded a contract. The period of completion was 12 months i.e. 17.09.1986, however, on extension, the work was completed on 30.04.1998, on which date, the claimant-respondent physically handed over the project to the appellant-objector. The bone of contention between the parties is whether the escalation of wages etc. was arbitral or not.

13. To test the said submission, we have carefully gone through the clauses of General Conditions of Contract. The said document is admitted to the parties. A perusal of Clause-6(A) of the General Conditions of Contract would reveal that the same speaks about the discrepancies and adjustment of errors relatable to the description of schedule A, bills of quantities, particulars specifications, drawings and general conditions. Furthermore, the said clause is unambiguous and applies in those contingencies

wherein there is variation/ discrepancies and conflicting provisions in any documents being part of the contract, the Accepting Officer was made the sole deciding authority.

14. Importantly, in the present case, there is nothing on record to show that there is any variation/conflicting provision forming the part of the contract but the issue is regarding payment of escalation of wages etc. Indeed, the said Clause 6(A) of the General Conditions of Contract would not apply. It was neither pleaded nor argued before us that there was any short-comings in the work executed by the claimant-respondent, however, what is being argued is the legal proposition that the issue of escalation was not arbitral. The Court finds that Clause 58 of the General Conditions of Contracts deals with the payment of fair wages which should not be minimum to the wages fixed under the Payment of Wages Act. In absence of any specific bar or restriction pointed out by the learned counsel for the appellant-objector in the General Conditions of Contracts, in our opinion the escalation of wages could not have been said to be non-arbitral. So far as the reliance placed upon the communication dated 27.06.1998 of the officer of the appellant-objector addressed to the claimant-respondent is concerned, the same would not be applicable as the contract stood completed on 30.04.1988, thus, any document referred to which is approximately after a decade would not be of any relevance. Similar is the correspondence of the appellant-objector dated 01.06.1989 which is also post completion of the contract. Nonetheless the sole arbitrator was required to decide the disputes and differences based upon the terms and conditions and the documents available on record which was applicable as on the date of the contract and any document which had been prepared long after completion of contract would not in any case have any

application.

15. Notably, the scope of interference in appellate proceedings under Section 37 of the Act stands bracketed to the grounds which are available under Section 34 for challenging the award. The award is not required to be set aside until and unless it is vitiated by "patent illegality" appearing on the face of the record with a caveat that the award should not be set aside merely on the ground of erroneous application of law or by appreciation of evidence. Nonetheless, it is also not permissible to interfere, particularly, when the interpretation is a plausible one. The Hon'ble Apex Court has reiterated the aforesaid principal of law in the case of ***MMTC Ltd. v. Vendanata Ltd.*** reported in **(2019) 4 SCC 163,** ***SSANGYONG ENGINEERING AND CONSTRUCTION COMPANY LIMITED v. NATIONAL HIGHWAYS AUTHORITY OF INDIA (NHAI),*** reported in **(2019) 15 SCC 131,** ***UHL Power Company Ltd. v. State of Himachal Pradesh*** reported in **(2022) 4 SCC 116** and ***S.V. Samudram v. State of Karanataka & Anr.*** in **Civil Appeal No. 8067 of 2019 decided on 04.01.2024.**

16. Viewing the case from all the angles, this Court has no hesitation to hold that the award does not suffer from any patent illegality so as to warrant interference in the present proceedings.

17. Accordingly, the appeal being devoid of merits and is liable to be dismissed and is **dismissed**.

Order Date :- 23.4.2024
A. Prajapati

(Vikas Budhwar, J.) (Arun Bhansali, C.J.)