

SUPREME COURT OF INDIA

Oil & Natural Gas Corp.

Vs.

Wig Brothers Builders & Enginnr.P.Ld

C.A.No.8817 of 2010

(R.V.Raveendran and H.L.Gokhale JJ.)

08.10.2010

JUDGEMENT

R.V.Raveendran,J.

1. Leave granted.

2. The appellant (also referred to as `ONGC') entrusted a construction work to the respondent under a contract dated 11.10.1983. Clause 25 of the contract provided for settlement of disputes by arbitration. Certain disputes arose between the parties in regard to the said contract and they were referred to a sole arbitrator on 31.12.1986. The claimant made several claims aggregating to Rs.82,89,000/-. ONGC made counter claims aggregating to Rs.1,24,87,000/-. The arbitrator awarded Rs.9,50,000/- under the first claim, Rs.7,80,132/- under the second claim, Rs.4,77,129/- under fifth claim and several smaller amounts under claims 3, 4, 6 to 13, 15, and 17, in all aggregating to Rs.25,26,270/-. The arbitrator also awarded 12% pendente lite interest and 6% from the date of the award/decreed. The counter claims were rejected.

3. The ONGC challenged the said award by filing a petition under sections 30 and 33 of the Arbitration Act, 1940 (`Act' for short). The civil court (Additional District Judge, Dehradun) dismissed the said petition filed by ONGC and made the award a rule of the court. ONGC filed an appeal before the Uttarakhand High Court. By impugned judgment dated 14.6.2007, the High Court upheld the judgment of the civil court making the award the rule of the court, subject only to one change, by reducing the rate of pendente lite interest from 12% to 6% per annum. The said judgment is challenged by ONGC in this appeal by special leave.

4. It is now well settled that a court, while considering a challenge to an award under sections 30 and 33 of Arbitration Act, 1940, does not examine the award, as an appellate court. It will not reappreciate the material on record. An award is not open to challenge on the ground that the arbitrator had reached a wrong conclusion or had failed to appreciate some facts. But if there is an error apparent on the face of the award or if there is misconduct on the part of the

arbitrator or legal misconduct in conducting the proceedings or in making the award, the court will interfere with the award. Keeping the said principles in view, we will consider the challenge.

5. The award has been made with reference to several claims. The appellant has not been able to make any valid ground to attack except with reference to claim No.(1). In fact, the learned counsel for appellant rightly concentrated upon the award on claim No.(1), which relates to the claim for compensation for loss on account of prolongation of the completion period on account of the ONGC's failure to perform its contractual obligations. The arbitrator has held that the delay in completion was due to the fault of both the contractor and ONGC and that both are equally liable for the delay of 19 months. The arbitrator held that as both were equally liable, the contractor was entitled to compensation at the rate of Rs.1 lakh for a period of 9 = months (that is half of the period of delay of 19 months) in all Rs.950,000/-. The arbitrator has observed that there is no provision in the contract by which the contractor can be estopped from raising a dispute in regard to the said claim. But clause 5A of the contract pertains to extension of time for completion of work and specifically bars any claim for damages. The said clause is extracted below :

“In the event of delay by the Engineer-in-Charge to hand over to the contractor possession of land/lands necessary for the execution of the work or to give the necessary notice to the contractor to commence work or to provide the necessary drawing or instructions or to do any act or thing which has the effect of delaying the execution of the work, then notwithstanding anything contained in the contract or alter the character thereof or entitle the contractor to any damages or compensation thereof but in all such cases the Engineer-in-Charge may grant such extension or extensions of the completion date as may be deemed fair and reasonable by the Engineer-in Charge and such decision shall be final and binding.”

6. In view of the above, in the event of the work being delayed for whatsoever reason, that is even delay which is attributable to ONGC, the contractor will only be entitled to extension of time for completion of work but will not be entitled to any compensation or damages. The arbitrator exceeded his jurisdiction in ignoring the said express bar contained in the contract and in awarding the compensation of Rs.9.5 lakhs. This aspect is covered by several decisions of this Court. We may refer to some of them. In *Associated Engineering Co. v. Government of A.P.*¹, this Court observed:

“24. The arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. His sole function is to arbitrate in terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled outside the bounds of the contract, he has acted without jurisdiction. ...”

In *Rajasthan State Mines & Minerals Ltd. v. Eastern Engineering Enterprises*², this Court held :

"The rates agreed were firm, fixed and binding irrespective of any fall or rise in the cost of the work covered by the contract or for any other reason or any ground whatsoever. It is specifically agreed that the contractor will not be entitled or justified in raising any claim or dispute because of increase in cost of expenses on any ground whatsoever. By ignoring the said terms, the arbitrator has travelled beyond his jurisdiction as his existence depends upon the agreement and his function is to act within the limits of the said agreement. This deliberate departure from the contract amounts not only to manifest disregard of the authority or misconduct on his part but it may be tantamount to mala fide action.

It is settled law that the arbitrator is the creature of the contract between the parties and hence if he ignores the specific terms of the contract, it would be a question of jurisdictional error which could be corrected by the court and for that limited purpose, agreement is required to be considered.

He cannot award an amount which is ruled out or prohibited by the terms of the agreement."

In *Ramnath International Construction (P) Ltd. v. Union of India*³, a similar issue was considered. This Court held that clause 11(C) of the General Conditions of Contract (similar to clause 5A under consideration in this case) was a clear bar to any claim for compensation for delays, in respect of which extensions had been sought and obtained. This Court further held that such a clause amounts to a specific consent by the contractor to accept extension of time alone in satisfaction of claims for delay and not to claim any compensation; and that in view of such a bar contained in the contract in regard to award of damages on account of delay, if an arbitrator awards compensation, he would be exceeding his jurisdiction."

7. In view of the above, the award of the arbitrator in violation of the bar contained in the contract has to be held as one beyond his jurisdiction requiring interference. Consequently, this appeal is allowed in part, as follows:

“(a) The judgment of the High Court and that of the civil court making the award the rule of the court is partly set aside in so far as it relates to the award of Rs.9.5 lakhs under claim No.(1) and the award of interest thereon.

(b) The judgment of the civil court as affirmed by the High Court in regard to other items of the award is not disturbed.”

¹1991 (4) SCC 93

²1999 (9) SCC 283

³2007 (2) SCC 453