

SUPREME COURT OF INDIA

Ntpc Ltd.

Vs.

Bhasin Construction P. Ltd.

C.A.No.2675-2676 of 2013

(H.L. Dattu And Dipak Misra JJ.)

03.07.2013

ORDER

H.L. Dattu, J.

1. Leave granted.

2. These appeals are directed against the judgment and order passed by the High Court of Delhi in FAO (OS) Nos. 116 and 118 of 1995, dated 04.12.2008, whereby and whereunder, the learned Division Bench has allowed FAO (OS) Nos. 116 of 1995 and has set aside the judgment and order passed by the learned Single Judge in Suit No. 1510-A of 1986, dated 02.12.1994 and while disposing FAO (OS) No.118 of 1995, has directed the appellant-corporation to pay to the respondent-company a sum of Rs.95,394.10/- along with interest at the rate of 9% per annum on the said amount from the date of the award i.e. 07.05.1986 till the date of payment. The awards dated 15.05.1986 and 07.05.1986 passed by the learned Arbitrator are modified to the above extent and accordingly, are made rule of court by the Division Bench.

3. The brief facts of the case are:

“The appellant, National Thermal Power Corporation Limited (for short 'NTPC') is a Government Company registered under the provisions of the Companies Act, 1956. It is engaged in construction/project for generation, operation, transmission and maintenance of super thermal power projects in India.”

4. Some time in the year 1978, the NTPC had invited tenders for the work of construction of bridges and fly-overs for merry-go-round (M.G.M.) railway system and sidings for the Singrauli Super Thermal Power Project. The said construction work was to be carried out both in the Mirzapur District of Uttar Pradesh (approximately 80% of the total construction

work) and the Sidhi District of Madhya Pradesh (approximately 20% of the total construction work in areas adjoining the construction sites in Uttar Pradesh).

5. The respondent-Bhasin Construction Private Ltd. (for brevity, 'the Construction Company') had participated in the said tender process. In the bid offered by the Construction Company, it had quoted the 'fair wages' payable to the skilled, unskilled or semi-skilled labourers on the date of the settlement of the contract at Rs.2.70/-. The then existing rates of 'minimum wages' payable to the labourers as per the governing laws in the States of Uttar Pradesh and Madhya Pradesh were Rs.6/- and Rs.2/- respectively.

6. Since the bid amount quoted by the Construction Company was the lowest among all the tenders received by the NTPC, the bid so offered by the Construction Company was accepted by the NTPC. Accordingly, the NTPC had issued a Letter of Intent dated 13.10.1978 to the Construction Company awarding the work of aforesaid construction. The Construction Company had accepted the said Letter of Intent issued by the NTPC, by their letter dated 18.11.1978. After a series of communications, the parties had entered into an agreement dated 20.02.1979. The tender documents comprising of Special Conditions of the Contract and General Conditions of the Contract were annexed to the said agreement. In toto, the construction contract was valued at Rs.1,17,61,372/-.

7. During the subsistence of the contract between the parties, the rate of 'minimum wages' in respect of employment of unskilled workers for construction and maintenance was revised and had escalated to Rs.4/- per day by the Government of State of Madhya Pradesh vide the Notification No.342-I-4936-XVI, dated 27.06.1979. Since the lis pertains to 'minimum wages' payable to labourers in the State of Madhya Pradesh only, we would not saddle the judgment by noticing the co-lateral changes effected in the State of Uttar Pradesh.

8. Consequently, the Construction Company, vide its letter No.BCC/710/1093, dated 07.03.1981, made a claim of Rs.5,67,766.84/- towards labour escalation for the work done in Sidhi District, Madhya Pradesh, for the period from 01.02.1979 to 01.12.1980 and Rs.36,83,475.72/- for the work done in the State of Uttar Pradesh on the basis of the increase in the rate of 'minimum wages' payable to the labourers. In the said escalation bill, the Construction Company had claimed escalation at the rate of Rs.3.00/- with effect from 01.02.1979 and Rs.4.00/- with effect from 01.04.1979. After considering the escalation bill so submitted, the NTPC had paid a total sum of Rs.4,72,372.74/- to the Construction Company for the work carried out in State of Madhya Pradesh, vide cheques dated 15.07.1981, 31.07.1981, 28.06.1982 and 22.07.1982, but denied their claim in respect of State of Uttar Pradesh. Thereafter, a series of communications ensued between the parties; however, their respective claims could not be settled. Later NTPC, having noticed that the Construction Company had wrongly claimed a sum of Rs.4,72,372.74/-, requested the Construction Company to refund the aforesaid sum, by their letter dated 07.10.1983.

9. Since the parties had disputed the claim, in terms of Clause 57 of the agreement, they had referred the dispute for arbitration before the Sole Arbitrator. The parties had raised two

separate claims for adjudication and decision before the Sole Arbitrator. The Construction Company had claimed a sum of Rs.37,78,869.82/- [Rs.36,83,475.72/-(for Uttar Pradesh)+ Rs.5,67,766.84/- (for of Madhya Pradesh) - Rs.4,72,372.74/- (amount of labour escalation already paid)] as balance due from NTPC alongwith interest towards the increased wages paid by them to the labourers, whereas the NTPC had denied the said claim of the Construction Company and further claimed a refund of Rs.4,72,372.74/- with interest at the rate of 18% p.a. from the date of payment till the date of refund of the amount.

10. While deciding the claim made by the Construction Company, the learned Arbitrator had raised ten issues for his consideration and decision. The issues so framed were:-

- ”(1) What were the minimum wages for unskilled labour in Madhya Pradesh during the relevant period?
- (2) What were the minimum wages for unskilled labour in Uttar Pradesh during the relevant period?
- (3) What were the fair wages for unskilled workers at the time of the contract at the places where works were to be executed?
- (4) What has been the effect of the increase in minimum wages on fair wages?
- (5) Is the contract indivisible as claimed as regards the payment of wages to unskilled workers for the works executed at the place (s) in M.P. and at different places of U.P. and if so, to what result?
- (6) Is the work site No.10 located in M.P. or both in M.P. and U.P.?
- (7)Is the claimant entitled to recover escalation in wages for the whole of the No.10 and if so, to what extent?
- (8) What amount was actually spent by the claimant Co. on the payment of wages to unskilled labour on account of escalation in minimum wages?
- (9) Is the Claimant Company entitled is more payment, even if they did not pay more wages to unskilled workers on account of such escalation in wages?
- (10) Is the Claimant Company entitled to recover any interest in this regard and, if so, to what amount?
- (11) Relief."

11. Since the question before us is limited to liability for payment of money for escalation in rates of minimum wages in Madhya Pradesh, we would not notice the discussion and decision made by the learned Arbitrator in respect of work carried out in Uttar Pradesh. The learned arbitrator has considered issue Nos. 1, 3, 5 and 9 collectively and recorded his findings that minimum wages (fair wages) for labour in Sidhi District, Madhya Pradesh was Rs.2.00/- upto 26.06.1979 and pursuant to the notification was raised to Rs.4.00/- and further that the contract is not divisible and thereby wages payable in Uttar Pradesh and Madhya Pradesh could not be calculated in isolation with each other. He has relied upon Clauses 7.1(a) and 7.3 of the Special Conditions of the Contract and Clause 5 3 A(b) of the General Conditions of the Contract and has concluded that the claim for reimbursement on account of increase in 'fair wages' payable by the Construction Company would be admissible under the contract only, when there has been escalation in 'minimum wages' on account of the notification issued by the appropriate State Government under the payment of Minimum Wages Act, however, such reimbursement would be subject to whether or not the Construction Company has paid such increased 'fair wages' on account of the said escalation. In so far as issue No.8, the learned Arbitrator has concluded that for the works carried out at the sites/sides located in Sidhi District, Madhya Pradesh the Construction Company had to pay and has paid increased wages to unskilled labourers from Rs.2.00/- to Rs.4.00/- per day with effect from 27.6.1979. While considering issue No.6 and 7, the Sole Arbitrator has agreed with the claim made by the Construction Company in respect of construction work of Bridge No. 10 situated at the border of the two States that the minimum wages payable for all labourers would be the same irrespective of whether the work is carried out by them in the Madhya Pradesh or Uttar Pradesh and consequently, directed the NTPC to make the payment of the amounts for escalation in minimum wages in Madhya Pradesh. In conclusion the learned Arbitrator has thought it fit to direct the NTPC to pay a sum of Rs.5,10,850/- to the Construction Company.

12. On the claim made by the NTPC, the learned Arbitrator in his award dated 15.05.1986 has concluded that the NTPC is required to reimburse the Construction Company in accordance with the agreement between them for payment of escalated 'minimum wages' from Rs.2.00/- to Rs.4.00/- and rejected the claim of the NTPC for refund of the monies already paid to the Construction Company.

13. Outcome of the proceedings of the learned Arbitrator resulted in filing of two suits before the High Court of Delhi by the parties. While the learned Arbitrator had filed the Award, dated 07.05.1986, and proceedings before the High Court as required under Section 14(2) of the Arbitration Act, 1940, the NTPC has questioned the Award dated 7.5.1986 by filing its objection under Section 30 and 33 of the Act in Suit No.1496-A of 1986. The other connected suit (Suit No.1510-A of 1986) arises out of the Award dated 15.05.1986, wherein the claim made by NTPC for refund of the monies paid to Construction Company was rejected by the learned Arbitrator.

14. The learned Single Judge of the High Court in the judgment and order dated 02.12.1994 in Suit No.1496-A of 1986, has observed that the escalation claim of the Construction

Company in respect of the work carried out in the State of Madhya Pradesh could only be a sum of Rs.5,67,766.84/- and keeping in view the escalation costs already paid by the NTPC, the Construction Company would be entitled for payment of Rs.95,394.10/- only. The learned Single Judge has also come to the conclusion that the learned Arbitrator had erroneously awarded a sum of Rs.5,10,850/- which is beyond the claim made by the Construction Company and, accordingly, has set aside the Award, dated 07.05.1986. By a separate order, dated 02.12.1994 in Suit No.1510-A of 1986, has delved into the question of "basic wage" considered under Clause 7.1(a) so as to carry out the escalation calculations and concluded that the learned Arbitrator has erroneously considered the escalation from Rs.2.00/- instead of Rs.2.70/-, which infact was admittedly paid by the Construction Company as fair wages to the labourers in Sidhi District, Madhya Pradesh. Keeping the aforesaid fair wages paid by the Construction Company as basic wages, the learned Single Judge has calculated the difference payable at the rate of Rs.1.03/-, considering escalated amount of Rs.2.97/- after 10% absorption as per Clause 53-A(b) of the General Conditions of Contract. Consequently, the learned Single Judge has modified the Award dated 15.05.1986 and observed that the Construction Company has paid a sum of Rs.2,09,376.74/- in excess of the amounts due under the contract and accordingly directed it to refund the said amount to NTPC with interest at the rate of 12% per annum thereon from the date of payment till realization.

15. Being aggrieved by the aforesaid order passed by the learned Single Judge, the Construction Company had filed two appeals, one against the orders passed in Suit No.1510-A of 1986 and the other against the order passed in Suit No.1496-A of 1986. The appeals are numbered as FAO (OS) No.116 of 1985 and FAO (OS) No.118 of 1995. However, the NTPC being satisfied with the aforesaid judgment and orders passed by the learned Single Judge had not carried the matter in further appeal before the Division Bench.

16. The Division Bench, by the impugned judgment and order dated 04.12.2008, has allowed the FAO (OS) No.116 of 1985 and made the Award dated 15.05.1986 rule of Court. However, the Division Bench, in FAO (OS) No.118 of 1995, has modified the impugned judgment and order of the learned Single Judge and directed the NTPC to make payment of Rs.95,394.10/- to the Construction Company for the increase in minimum wages from Rs.2.00/- to Rs.4.00/-. It is the correctness or otherwise of the said order which is the subject matter of these appeals by special leave.

17. We have heard learned counsel for the parties and carefully perused the documents on record. In our view, to appreciate the contentions canvassed by the learned counsel for the parties, the Clauses 7.1(a) and 7.3 of the Special Conditions and Clauses 16.2 and 53-A (b) of the General Conditions of the Contract between the parties are required to be noticed:

"Special Conditions of Contract (SCC):

Clause 7.1 For the purpose of calculation of reimbursement/refund on variation in prices, if there be any (plus or minus), the basis of calculation shall be as under:-

Clause 7.3 The price variation of different components under 7.1. a, b & c above shall be subjected to the ceilings as stipulated under clause 53-A "General Conditions of Contract" for admissibility of reimbursement/refund on variation in prices."

General Conditions of Contract:

Clause 16.2:

"The contractor shall pay to the labourers employed by him either directly or through sub-contractor wages not less than 'fair wages' as defined in the contractors' labour regulations".

Clause 53 A (b):

"Reimbursement/Refund on variation of price:

(a) ...

Labour: For the purpose of this contract the minimum wages of unskilled labour and the skilled labour and of semi-skilled labour on the date of submission of the tender shall be taken as shown in Schedule-D on account of any legislation, notification, labour award, the minimum wages of unskilled labour, of skilled labour and of semi-skilled labour are increased at any time or times after the submission of the tender and the contractor has to pay any increased wages then the corporation shall reimburse to the contractor the increase in the cost of labour not exceeding the increase permitted under the legislation, notification, labour award or duly approved binding agreement as aforesaid, subject to hereinafter provided-"

(b)(i).....

(b)(ii) "Provided however no increase shall be payable if the increase is not more than 10% of the said wages and, if so, the increase shall be payable only on the excess over 10% and provided further that any such increase shall not be payable if such increase has become operative after the contract or extended date of completion of the works or items of work in question"

18. Clause 7.1(a) of the Special Conditions of Contract relates to refund on variation in prices of various components of works contract; one such component being 'Labour'. It explains that basic index for calculation there would be the minimum wages payable to the unskilled labour as per applicable rates in Sidhi District, Madhya Pradesh under the Minimum Wages Act. Clause 7.3 speaks of price variation of different components prescribed under 7.1 a, b and c and that would be subjected to the ceilings as stipulated under Clause 53-A of General Conditions of the Contract for the purpose of admissibility of reimbursement/ refund on variation in prices.

19. Clause 16 of the General Conditions of the Contract defines the meaning of the expression 'fair wages'. It adopts the meaning as defined in Regulation 16 of the Contractors' Labour Regulations. It means "fair wages" to include wages for weekly day of rest and other allowances, whether for time or piece work, after taking into consideration, the prevalent

market rates for similar employment in the neighborhood, but shall not be less than the market rates of the wages fixed under the Payment of Minimum Wages Act, 1948.

20. Schedule 'D' to these General Conditions of the Contract pertains to the minimum wages which are contemplated as per 'Payment of Minimum Wages Act' as notified by the appropriate State Government applicable to the concerned project site.

21. Clause 53-A(b) of the General Conditions of the Contract is in two parts. The first part speaks of payment of the minimum wages to unskilled labour and the skilled labour and semi-skilled labourers on the date of submission of the tenders and the same shall be taken as shown in Schedule-D of the contract, i.e., under the Payment of the Minimum Wages Act. The second part of the Clause speaks of the increase of wages on account of a legislation, by issuance of a notification or by passing the labour award in respect of the minimum wages of unskilled labour and of skilled labour and of the semi-skilled labour at any time after the submission of the tender. The Construction Company, after such increase, is required to pay the increased wages and on proof of such payment of the said increased wages having been made, the NTPC is required to reimburse the increased wages paid to its workers to the contractor. The proviso appended to Clause 53-A(b) provides that the increased wages need not be paid by the NTPC, if the increase in wages is not more than 10% of the said wages. The other part of the proviso speaks of the payment of increased wages to the contractor, if the increase is in excess of 10% and again such a payment need not be made by the Corporation, if such increase has become operative after the completion of the contract or extended date of completion of the works or items of work in question.

22. Having noticed the relevant clauses in the contract between the parties, we advert to the reasoning and conclusions drawn in the two Awards passed by the learned Arbitrator, dated 07.05.1986 and 15.05.1986 and the judgment and order passed by the learned Single Judge and the Division Bench of the High Court of Delhi.

23. It is neither in dispute nor could be disputed by the parties that the Construction Company at the relevant point of time of execution of 20% of the construction work in Sidhi District, Madhya Pradesh was paying Rs.2.70/- as the 'fair wages' to the unskilled/semi-skilled labourers on the date of submission of their tender, since the Construction Company had specifically stated in the escalation bill submitted to the NTPC that the amount paid as 'fair wages' to labourers at Sidhi District, Madhya Pradesh was Rs.2.70/-.

24. The learned Arbitrator, keeping in view the possible construction that could be placed on Clauses 7, 16 and 53-A(b) of the General Conditions of the Contract, has thought it fit to allow only the increased wages paid by the respondent-Company from Rs.2.70/- to Rs.4.00/-, i.e., from the 'fair wages' as quoted in the escalation bill to the increased 'minimum wages'. The learned Single Judge has more or less accepted this view of the learned Arbitrator and on the basis of the said rates has rightly concluded that the amount that requires to be paid by NTPC is only a sum of Rs.95,394.10/-. He has arrived at this figure keeping in view Rs.1.03/- as the difference of amount payable as per the contract. However, the Division Bench of the

High Court, while modifying the conclusions reached by the learned Single Judge has thought it fit to direct the NTPC to pay the escalated wages by taking into account the difference of the minimum wages as payable on the date of submitting the tender and the increased minimum wages, i.e., Rs.2.00/- to Rs.4.00/-.

25. The learned counsel for the appellant, Mrs.Rachana Joshi Issar has taken trouble to convince us, that, what would be payable by the NTPC to the Construction Company is only the difference between the 'fair wages' paid by the contractor and the 'minimum wages' fixed by way of legislation. Therefore, she would submit that what is payable to the Construction Company by the NTPC is only a sum of Rs.1.03/- after making the calculations as provided under proviso to Clause 53-A(b) of the General Conditions of the Contract.

26. Per Contra, Ms. Binu Tamta, learned counsel for the Construction Company would submit that the Division Bench of the High Court is justified in directing the NTPC to pay the difference of the minimum wages that was fixed by the State of Madhya Pradesh at the time of offering the tender and the increase of the minimum wages by way of notification during the subsistence of the contract.

27. We have considered the rival submissions canvassed by the learned counsel for the parties. We are of the view that what is brought forth for our consideration and decision is, whether the NTPC is required to make payment of escalated labour charges to the Construction Company from the amount of the statutory 'minimum wages' as on the date of submission of tender forms or 'fair wages' as quoted in the tender form submitted by the Construction Company. Therefore, the entire case of the parties would revolve only on the mathematical calculation that requires to be done.

28. Admittedly, the Construction Company while offering its tender forms to NTPC had specifically stated that the 'fair wages' payable to their labourers for the construction work at Sidhi District in the State of Madhya Pradesh is Rs.2.70/- though, at the relevant point of time the minimum wages prescribed for the said work was only Rs.2.00/-. Subsequently, the minimum wages payable in the State of Madhya Pradesh was revised by the State Government by issuing Notification dated 27.06.1979 to Rs.4.00/-. If that is so, in the light of Clause 7 of Special Conditions of Contract and Clauses 16 and 53-A(b) of the General Conditions of Contract read with the tender documents and escalation bill submitted by the Construction Company, it is abundantly clear that what is required to be paid to the Construction Company by the NTPC is only the difference between Rs.4.00/- and Rs.2.70/-, subject to other calculations as provided in the proviso to Clause 53-A of the General Conditions of Contract.

29. In our considered opinion, the learned Single Judge had rightly concluded that the difference shall be calculated between the 'fair wages' paid by the Construction Company before issuance of the notification and the increased minimum wages after issuance of the notification and if it is calculated in that manner, what requires to be paid is Rs.1.03/- after

making necessary adjustments as provided under second proviso to Clause 53-A(b). However, the learned Division Bench had erroneously calculated the amounts payable based on the difference of minimum wages at the time of submission of tender forms and as increased by the Notification. The aforesaid amount shall carry interest at the rate of 9% per annum from the passing of the Award, dated 07.05.1986, till the date of actual payment.

30. With these observations and directions, we set aside the judgment and order passed by the Division Bench of the High Court in part. To the extent indicated in the order, the appeals are partly allowed.

Parties to bear their own costs.

Ordered accordingly.