SUPREME COURT OF INDIA

Union of India

Vs.

Varindera Constructions Ltd.

C.A.No.3994-3995 of 2018

(R.K.Agrawal and Ashok Bhushan,JJ.,)

19.04.2018

JUDGMENT

R.K.Agrawal,J.,

SLP(Civil)No.9743-9744 of 2013

1. Leave granted.

2. These two appeals are preferred against the impugned common judgment and order dated 28.05.2012 passed by the High Court of Delhi at New Delhi in FAO (OS) Nos. 238 and 239 of 2012 whereby the Division Bench of the High Court dismissed the appeals filed by the appellant herein while upholding the decision of learned single Judge of the Court. Since the moot question is same in these two appeals, both would be disposed off by this common judgment.

3. Brief facts:-

(a) The appellant herein is the Union of India and the respondent herein is the Contractor. On 30.10.2006, the appellant floated two tenders for the construction of the residential accommodations at Hissar. Pursuant to that, the appellant received tenders of various companies.

(b) Being the lowest quotation of the respondent- Contractor, its tender was accepted by the appellant. The lump sum amount of these two contracts were Rs. 39,09,80,362.61 and Rs. 35,21,99,854.30 respectively. Consequently, the appellant and the respondent-Contractor entered into formal contract and laid down terms and conditions of the contract by which it was decided that both would be bound and also added the clause of arbitration in case of dispute.

(c) As per the terms of the contract, respondent started the work of construction as per the schedule on 20.03.2007 and finally completed the work within the stipulated

extended time period of completion. At this juncture, respondent submitted the final bill along with some additional claims. The claim of additional amount was rejected by the appellant. As a result, the respondent invoked the arbitration clause and the dispute was referred to learned Arbitrator Shri Sunil Chopra, Chief Engineer (Contract) as provided under the Contract.

(d) Learned Arbitrator made the Award dated 24.08.2011. It is pertinent to note here that the respondent referred total 12 claims in the arbitration proceeding. Out of these claims, two were rejected by learned Arbitrator and one claim is partly withdrawn by the respondent and the remaining claims were decided in favour of the respondent.

(e) Feeling aggrieved, the appellant filed OMP Nos. 890 and 891 of 2011 before the High Court of Delhi. Learned single Judge of the High Court, vide common order dated 16.03.2012, dismissed both the petitions and upheld the Award passed by learned Arbitrator.

(f) Being aggrieved with the said order, the appellant preferred two separate first appeals being FAP (OS) Nos. 238 and 239 of 2012 respectively. However, the same two appeals also got dismissed by the Division Bench of the High Court in limini vide judgment and order dated 28.05.2012.

(g) As a result, the appellant has filed these two appeals by way of special leave before this Court.

4. We have given our thoughtful consideration to the submissions of learned senior counsel for the parties and perused the material on record placed before us.

Point(s) for consideration:-

5. The present case is confined only to the extent as to whether the Award of the arbitrator and the findings of the High Court are contrary to the express provision of Clause 19, according to which no escalation is permissible to the contractor for, inter alia, increase in wages of labour due to statutory hike, which the contractor may have to incur during the execution of the work on any account?

Rival contentions:-

6. At the outset, learned senior counsel for the appellant-Union of India contended that the relationship of the appellant and respondent is governed by the terms and conditions of the contract and as per Clause 19 of the special conditions, it is clearly mentioned that " No escalation, reimbursement whatsoever shall be made to the contractor for increase in, inter-alia, wa.ges of the labor during the execution of the contra.ct". Hence, the Notification issued by the State of Haryana which increased the minimum wages of the labour during the subsistence of the contract does not vest any right to the contractor to claim any extra amount

on account of labour wages. Hence, the impugned decision of the High Court is liable to be set aside.

7. Per contra, learned counsel for the respondent submitted that this Court need not interfere with the order passed by the High Court and the arbitral Award under the question as the challenge in the instant appeal does not fall within the contours of Section 34 of the Arbitration and Conciliation Act, 1996 (for brevity "the Act"). The alleged challenges pertain to certain claims relating to interpretation of the contract which falls within the jurisdiction of the Arbitrator and findings of facts which are final and binding between the parties, hence, this Court ought not to interfere if the interpretation taken is plausible one and does not shocks the conscience of this Court. Further, it was submitted that the impugned decision of learned single Judge as well as the Division Bench of the High Court is well-reasoned and based on the cannon of laws which does not call for interference by this Court. Therefore, these appeals being devoid of merits and deserve to be dismissed.

Discussion:-

8. The primary object of the arbitration is to reach a final disposition in a speedy, effective, inexpensive and expeditious manner. In order to regulate the law regarding arbitration, legislature came up with legislation which is known as Arbitration and Conciliation Act, 1996. In order to make arbitration process more effective, legislature restricted the role of courts in case where matter is subject to the arbitration. Section 5 of the Act specifically restricted the interference of the courts to some extent. In other words, it is only in exceptional circumstances, as provided by this Act, the court is entitled to intervene in the dispute which is subject matter of arbitration. Such intervention may be before, at or after the arbitration proceeding, as the case may be. In short, court shall not intervene with the subject matter of arbitration unless injustice is caused to either of the parties.

9. It is well-settled cannon of law that parties are free to decide their own terms and conditions in case of a contract. In the instant case, Clause 19 of the special conditions deal with issue of bar on reimbursement of certain payments on account of escalation. It is apt to re-produce the said clause 19 herein below:

> "19. Reimbursement/Refund of Variation in Prices:- No escalation, reimbursement what so ever shall be made to the contractor for increase in price of materials and fuels and wages of labour which the contractor may have to incur during execution of the work on any account. The contractor shall quote their rates accordingly."
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> On a plain reading of abovementioned clause, prima facie, it appears that the appellant made it clear that the contractor shall quote their rate after having regard to this clause that no reimbursement regarding any escalation whatsoever be made to the contractor if any such escalation takes place during the subsistence of the contract which the respondent with open eyes had agreed. The word "whatsoever" as used in Clause 19 suggests that even any escalation takes place due to the action of the government would also not be reimbursed.

10. At this juncture, we would also like to mention that Clause 6.3 of special conditions, particularly, deals with the present issue. For the sake of convenience, it is reproduced herein below:

> "Minimum Wages Payable:
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> 6.1. Refer condition 51 of DG MAP general conditions of contracts. The Contractor shall not pay wages lower than minimum wages of labour as fixed by the Govt of India/State Govt/Union Territory whichever is higher.
>
> 6.2 The fair wage referred to in condition 51 of DG MAP general conditions of contracts will be deemed to be the same as the minimum wages payable as referred to above.
>
> 6.3. The contractor shall have no claim whatsoever, if on account of local factor and /or regulations he is required to pay the wages in excess of minimum wages as described above during the execution of work."
>
> (Emphasis supplies by us)

On a plain reading of Clause 6.3 read with Clause 19, it is evident that it was particularly made clear that no escalation would be reimbursed even in the case of Regulation. Hence, in the presence of such clauses, which respondent voluntarily agreed before accepting the contract, any departure cannot be allowed. In other words, now the respondent cannot claim reimbursement of excess of minimum wages on account of hike due to the Notification of the Government of Haryana. If any departure would be allowed from the terms and conditions of the contract, then it would destroy the basic purpose of the contract provided such conditions shall not be arbitrary.

11. In the impugned decision, the Division Bench of the High Court, at Para 6 & 7 held as under:

> "6. Suffice would it be to state that clause 19 and 25 have to be read harmoniously. Whereas Clause 19 prohibits escalation to be paid with respect to the wages of labour, Clause 25 requires minimum wage increase to be reimbursed to the contractor upon there being an impact thereon by a law declared by the State Government. The minimum wages, as we all know, are statutorily notified under the Minimum Wages Act, 1948. We note that the learned arbitrator has granted the benefits under the said head, but not fully recompensing the contractor the 37.46% increase in minimum wages. The reasoning given by the learned arbitrator is that the contractor could have envisaged that there would be some increase in wages during the period of contract.
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> 7. The interpretation by the learned arbitrator, if at all is faulty, is to the detriment of the contractor, for the reason Clause 25, which commences with the expression?

However? is required to be read as an exception to Clause 19 and, if so read, the entire increase in minimum wages which was result of a government notification was required to be recompensed."

12. It is a settled law that the process of interpretation is based on the objective view of a reasonable person, given the context in which the contracting parties made their agreement. On a perusal of the said two paragraphs of the impugned judgment, we fail to understand that on what parameters the High Court has interpreted Clause 19 in light of Clause 25 of the Contract. Both the clauses stand on different footing. Clause 19 deals, inter alia, with the matter of wages whereas Clause 25 deals with the matter of Octroi Sales Tax and other Duties. Such interpretation adopted by the High Court is against the cardinal principle of law which says that the terms of the contract shall be construed by the courts after having regard to the intention of the parties. Courts ought not to take any hypothetical view as it may cause prejudice to either of the parties.

13. It is pertinent to note here that Clause 19 does not start with any word "Subject to". Moreover, there is no other provision in the contract which specifically allow the reimbursement of wages in case of escalation. In the absence of these things, we are of the considered view that it is not permissible in law that Clause 19 ought to be interpreted in light of Clause 25. Also in the impugned judgment, the High Court without having regard to the title and first part of Clause 25, interpreted Clause 19, along with the second part of Clause 25, which is against the cannons of law.

14. To sum up, Clause 19 cannot be read in the light of second Part of Clause 25 as both stands on different footing i.e., deal with separate issues. Hence, the respondent-Contractor in the present case is not entitled to claim any escalation in minimum wages as it would be against the condition of Clause 19 read with Clause 6.3.

15. In view of the above detailed discussion, we are of the considered view that the High Court erred in law. Accordingly, we are inclined to allow these appeals and set aside the decision of the courts below as also the Award. Parties to bear their own cost.