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Supreme Court refuses to interfere with an award on the ground of alternate interpretations

NTPC Ltd. v. M/s Deconar Services Pvt. Ltd.

Case No. Civil Appeal No. 6483 and 6484 of 2014
Date 4th March 2021
Court Hon'ble Supreme Court of India
Coram N.V. Ramana J., Surya Kant J., Aniruddha Bose J.

1. FACTS & PROCEDURAL HISTORY

A. *The Transaction*

- 1.1 NTPC Ltd. (“**Appellant**”) had issued two tenders for the construction of two sets of quarters. The first project included construction of 100 units of quarters and the second project involved the construction of 68 units of quarters. M/s. Deconar Services Pvt. Ltd. (“**Respondent**”) had participated in the process and was awarded the two contracts by the Appellant. Initially, the Respondent was L-3 apropos the first project and 1-2 apropos the second project. However, after negotiations, the Appellant decided to award both the projects to the Respondent on the basis of an offer by the Respondent of 16% rebate on the prices for completing the first project, in the event he was awarded both the contracts.

B. *The Cause of Action*

- 1.2 On 28.06.1988, two letters of award were issued to Respondent, however, the Appellant delayed the delivery of site. As a result, it delayed the construction of the quarters in both projects.
- 1.3 Subsequently, disputes arose between the parties regarding the final payment owed to the Respondent for the completion of the project. Respondent chose to take recourse to arbitration as provided by the dispute resolution clause in the contract.

C. *Procedural History*

- 1.4 On 07.07.2000, the arbitration concluded and awards were granted in favour of the Respondent. The Respondent was awarded with payments for both projects along with specific rates of interest of per annum *pendente lite* and future interests. Aggrieved by the awards, the Appellant approached the Delhi High Court (“**High Court**”) under Section 30 and 33 of Arbitration Act, 1940 (“**1940 Act**”) and filed objections against both the awards. The learned Single Judge dismissed the objections of the Appellant, imposed a cost of Rs. 50,000 and made the award, order of the High Court.
- 1.5 The Appellant appealed against the order of the Single Judge before a Division Bench of the High Court under Section 39 of Arbitration Act, 1940. The Division Bench dismissed the appeal and imposed a cost of Rs. 10,000. Being aggrieved by the decision of the Division Bench of the High Court, the Appellant filed a Civil Appeal by way of a Special Leave Petition before the Hon’ble Supreme Court of India (“**Court**”).

2. APPELLANT’S CONTENTIONS BEFORE THE COURT

- 2.1 *Firstly*, the Appellant argued that the Arbitrator erred in interpreting rebate as conditional and neither the terms of the offer by the Respondent nor the letter of award included the same. Thus, the Appellant presented an alternate interpretation regarding conditional rebate stating that the same was granted in exchange for awarding both contracts to Respondent.

- 2.2 *Secondly*, the contract explicitly mentioned that the quoted prices were to remain firm during the execution of the contract, therefore, the Appellant argued that, the Arbitrator erred in granting escalation of prices. To buttress his submissions, the Appellant relied on the case of *New India Civil Erectors (P) Ltd.*¹ in which the Court had rejected a claim for escalation of prices during the period of delay. In light of these submissions, the Appellant argued that the forums below should have had interfered with the award since the same was contrary to the terms of the contract between both parties.
- 2.3 *Thirdly* and lastly, the Appellant objected to the costs imposed by the three forums.

3. RESPONDENT'S CONTENTIONS BEFORE THE COURT

- 3.1 The Respondent vehemently opposed the contentions of the Appellant and submitted that the scope of interference in an arbitral award was limited, as the Court did not sit in appeal over the award. The primary premise of the Respondent was to argue that, as long as the arbitrator had taken a reasonable view, the Court could not have interfered in the same.
- 3.2 Additionally, the Respondent while placing his reliance and supporting the decisions of the High Court, argued that the Appellant was prolonging the litigation.

4. ISSUES

- 4.1 Whether or not the awards passed by the Arbitrator warranted an interference by the Court on the ground of alternate interpretations?

5. JUDGMENT

A. *Scope of Interference*

- 5.1 At the outset, the Court examined the scope of interference by courts in arbitral awards passed under the 1940 Act. On this point, the Court referred to *Kwality Manufacturing Corporation*² wherein the Court itself had observed that the scope of interference by the courts in arbitral awards is limited. Any court does not sit in appeal over the findings and decisions of the Arbitrator.
- 5.2 *Secondly*, the Court observed that, where the arbitrator has taken a possible view, albeit, a different view may be possible on the same evidence, the Court would not interfere with the award on these grounds. The Court relied upon the case of *Arosan Enterprises Ltd.*³ to hold that it has become a well settled position in law that, reappraisal of evidence by the court is not permissible and that an error apparent on the face of the record does not imply closer scrutiny of the merits and materials on record. The Court authoritatively held as follows:

¹ *New India Civil Erectors (P) Ltd. v. Oil & Natural Gas Corporation* (1997) 11 SCC 75.

² *Kwality Manufacturing Corporation v. Central Warehousing Corporation* (2009) 5 SCC 142.

³ *Arosan Enterprises Ltd. v. Union of India* (1999) 9 SCC 449.

“...it is clear that for the objector/appellant in order to succeed in their challenge against an arbitral award they must show that the award of the arbitrator suffered from perversity or an error of law or that the arbitrator has otherwise misconducted himself. Merely showing that there is another reasonable interpretation or possible view on the basis of the material on the record is insufficient to allow for the interference by the Court.”

B. Scope of Interpretation on the Ground of Alternate Interpretations

5.3 Apropos the issue of rebate refund, the Court opined that the Arbitrator’s interpretation that the rebate of 16% was offered on the condition that Respondent would carry out both projects simultaneously was correct. Notably, the Arbitrator’s interpretation of rebate as conditional was justified on the ground that the Arbitrator analysed the documents, particularly a letter dated 14.06.1988 sent by Respondent to Appellant following the negotiations, the award of both contracts to Respondent on the same date and works programme (L-2) for both projects.

5.4 The Court rejected the Appellant’s argument that an alternate interpretation regarding the rebate existed, according to which, the rebate was granted merely for awarding both sets of contracts to Respondent. While the Court agreed with the said interpretation, it found the argument of alternate interpretation insufficient to warrant interference by it in the arbitral award. Accordingly, it held as follows:

“...While we are in agreement with the appellant that such an interpretation is possible, we are of the opinion that this is not sufficient to interfere with the award passed by the Arbitrator. As already highlighted, the Court does not sit as an appellate Court over the decision of an arbitrator, and cannot substitute its views for that of the Arbitrator as long as the Arbitrator had taken a possible view of the matter. We are of the considered opinion that in the present case, the Arbitrator has given clear reasoning for the possible view taken by him on the interpretation of the contract between the parties...”

5.5 It held that the Court does not sit act as an appellate authority over the decisions by arbitrator. Arbitrator in this case had the taken a possible interpretation and provided clear reasoning for the same and as long as these factors were present, the High Court rightly refused to interfere with the award.

C. Grant of Escalation Charges

5.6 Apropos the grant of escalation charges for work done by Respondent beyond the specified period of the contract, the Court recognised that the Arbitrator interpreted the firm price clause to mean that it operated only for the scheduled period of the contract and not beyond. Further, the Arbitrator also took into consideration the facts that the Appellant caused delay and it also did not object to the work done by Respondent beyond the scheduled period.

5.7 On the point of law as to whether the grant of escalation charges is valid, has been upheld on previous occasions. The Court referred to its decision in *Assam State*

*Electricity Board*⁴ to hold that the Arbitrator could grant escalation charges beyond the permissible limit under the contract on the basis of his construction of the contract clauses, evidence on record and relevant factors warranting consideration. In that case, the Court had held as follows:

“13. The arbitrator has taken the view that the provision for price escalation would not bind the claimant beyond the scheduled date of completion. This view of the arbitrator is based on a construction of the provisions of the contract, the correspondence between the parties and the conduct of the Board in allowing the completion of the contract even beyond the formal extended date of 6-9-1983 up to 31-1-1986. Matters relating to the construction of a contract lie within the province of the Arbitral Tribunal. Moreover, in the present case, the view which has been adopted by the arbitrator is based on evidentiary material which was relevant to the decision. There is no error apparent on the face of the record which could have warranted the interference of the court within the parameters available under the Arbitration Act, 1940. The arbitrator has neither misconducted himself in the proceedings nor is the award otherwise invalid.”

5.8 The Court distinguished the case of *New India Civil Erectors (P) Ltd.*⁵ relied upon by Appellant on the ground that the construction of clauses was the Arbitrator’s domain and as long as the interpretation followed by him was possible, the Courts would avoid interference. Thus, the Court refused to interfere in this issue.

6. CONCLUSION

6.1 The Court refused to interfere with the award on the ground that there may be alternate interpretations available arising from the terms of the contract. Pertinently, the Court observed that the Appellant had neither pointed out any error apparent on the face of the record nor otherwise made out a case for interference with the award.

6.2 On the point of award of a claim by the Arbitrator, the Court observed that the same is vested with the discretion of the Arbitrator and the evidence on record. There is no general principle that can be read in isolation from the facts of the case.

7. PSL OPINION/ANALYSIS

7.1 The Court’s refusal to interfere with the evidence on record and refusal to examine the Arbitrator’s decision reflects the consistent approach of the courts. The position of law on the point of refusal to interfere merely because there may be an alternate interpretation has been clarified in-depth under both the 1996 Act and the 1940 Act. This will particularly prevent unnecessary and prolonged litigations arising out of or in relation to arbitrations.

⁴ Assam State Electricity Board v. Buildworth Pvt. Ltd. (2017) 8 SCC 146.

⁵ *Supra* note 1.

7.2 Recently, on identical lines, the Delhi High Court had observed a similar *ratio* in the case of *Megha Enterprises*⁶ wherein it was held that the court cannot interfere with an award on the ground of inference drawn by the Arbitral Tribunal from the evidence on record. Therefore, these decisions certainly aid in the fostering of the arbitration regime in the right direction.

⁶ *Megha Enterprises & Ors. v. M/s. Haldiram Snacks Pvt. Ltd.*, MANU/DE/0791/2021.