State Of Maharashtra vs M/S. Nav Bharat Builders on 7 September, 1990

Equivalent citations: AIR1991SC11, 1990(2)ARBLR195(SC), (1991)93BOMLR689, JT1990(3)SC710, 1990(2)SCALE468, 1991SUPP(1)SCC68, 1990(2)UJ695(SC), AIR 1991 SUPREME COURT 11, (1990) 3 JT 710 (SC), (1991) 1 CURLJ(CCR) 281, (1991) 17 ALL LR 113, 1990 UJ(SC) 2 695, (1991) 5 JT 19 (SC), 1991 SCC (SUPP) 1 68, (1990) 2 LANDLR 524, (1990) 3 CURCC 311, (1990) 2 GUJ LH 433, (1990) 2 LJR 566, (1990) 2 ARBILR 195

Bench: L.M. Sharma, P.B. Sawant

ORDER

1. These special leave petitions are filed against the judgment and order dated 19th September, 1989 of the Division Bench of the Bombay High Court passed in First Appeal No. 1185 of 1988.

2. After hearing the learned Counsel on both sides and after going through the relevant material on record we are of the view that these petitions have to be dismissed in limine. Since we have heard the submissions of the parties at some length, we indicate briefly our reasons for this order.

3. Admittedly, the Award is a non-speaking one and there was no stipulation in the reference to the arbitrator that he should give reasons for his Award. The petitioner-State Government made two grievances before us against the Award. The first was with reference to the compensation that was awarded to the respondent-contractor for the stoppage of work. In this connection, it was the contention of the Government that since Clause (6) of the contract between the parties had provided for a specific rate of Rs. 10,0007- per day as compensation for stoppage of work, the arbitrator had travelled beyond the said term by granting damages at the rate of Rs. 28,590/- for 146 days from January 25, 1980 to June 21, 1980. It was also pointed out to us that in fact the State Government had given a package of concessions by a memorandum of November 26, 1980 to mitigate the hardship of the contractor on account of the stoppage of work, in addition to what was agreed to in the original contract.

4. We are not impressed by these contentions, firstly, because Clause (6), as its heading shows, provides for compensation only for temporary stoppages of work. There is no dispute that the work had stopped completely for about 11 months from January 25, 1980 to November 16, 1980. The arbitrator has in fact divided this long period into three periods viz., (i) 25th January, 1980 to 21st June, 1980, (ii) 22nd June, 1980 to 30th September, 1980 and (iii) 1st October, 1980 to 16th November, 1980 and has granted compensation at the enhanced rate of Rs. 28,590/- per day for the first period only. He has granted no compensation for the second period probably because it was a rainy season and the work would have stopped in any case as contended by the Government, and has granted compensation at the agreed rate of Rs. 10,000/- for the third period, may be because

the stoppage was of a shorter duration. It is not for the Court to speculate the reasons. We are in agreement with the learned Counsel for the respondent- contractor that a continuous stoppage of work for the entire working-season is not contemplated by Clause (6). As regards the contention that by the subsequent memorandum of November 26, 1980, the respondent-contractor was compensated by grant of a package of concessions, we are of the view that this itself would show that even the Government was satisfied that Clause (6) did not provide for long stoppages such as the one for the first period from 25th January to 21st June, 1980 and, therefore, the compensation provided there being inadequate the contractor needed to be compensated further. The said memorandum further mentions in terms that the stoppage of work was on account of non-supply of cement by the Government. Since further the dispute between the parties had arisen with regard to the proper rate of compensation for the long period of stoppage, it was open for the arbitrator also to construe Clause (6) and to find out whether it provided the rate of compensation only for short stoppages, or for long stoppages as well such as the one in question. From the Award all that can be said is that the arbitrator seems to have come to the conclusion that there has to be a different rate of compensation for the long stoppage. As pointed out by the learned Counsel for the respondent-contractor, voluminous record was placed before the arbitrator to prove the actual damage suffered by the contractor on account of the long stoppage. If, therefore, the arbitrator taking into consideration the said record had fixed the particular rates for the different periods, it cannot be said that he had committed any error apparent on the face of the record. The memorandum of November 26, 1980 was also before the arbitrator. If in spite of the same, the arbitrator has granted the particular rate, it would only mean that but for the said concessions, the rate might have been still higher. It is not, therefore, possible to find any fault with the High Court's finding on this count.

5. The other grievance against the Award, viz., the additional interest charges granted to the contractor for the period he was required to pay interest on advances for machinery and for mobilisation, to the Government, in the first instance, all that was disputed before the High Court was the quantum of interest and not the liability of the Government to pay the said interest. In the original petition filed before us also, the grievance made was only with regard to the quantum and not with regard to the chargeability of the said interest. It was only by way of a supplementary affidavit that this point was sought to be urged before us. In any case, we cannot go behind the quantum so awarded particularly when it is a non-speaking Award.

Hence, the petitions are dismissed as stated at the outset.