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Steel Authority of India Ltd. Vs Steel Products Ltd. and Another

Court: Jharkhand High Court

Date of Decision: July 17, 2002

Acts Referred: Arbitration Act, 1940 â€" Section 39

Hon'ble Judges: Gurusharan Sharma, J

Bench: Single Bench

Advocate: R.K. Merathia, for the Appellant; Binod Poddar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Gurusharan Sharma, J.
Heard the parties and perused lower Court records M/s. Steel Authority of India Limited (in short SAIL) has filed

this appeal u/s 39(vi) of the Arbitration Act, 1940, against judgment and decree dated 12.6.2000, passed by 1st Subordinate Judge, Bokaro at

Chas, in Title (Arbitration) Suit No. 10 of 1990, whereby and whereunder award dated 30.1.1990 given by the sole arbitrator, Dr. N.R. Sircar

has been made Rule of Court. Four, Blast Furnaces with heart area of 2000 cubic meters each were in operation at Bokaro Steel Plant for

production of hot metal. While producing hot metal, hot molten slag is an inescapable arising, which has to be disposed of in a planned way. For

this purpose an area known as Blast Furnace slag dump has been earmarked. Blast Furnace slag contains some quantity of iron scrap, which can

be recovered, removed and sold/purchased. The hot molten slag is transported through laddles. Sometime in March. 1982, SAIL invited tenders

for ""recovery, removal and purchase of iron scrap, steel skull scrap and used/rejected refractory materials on as is where is basis on payment, from

Blast Furnace slag dump of Bokaro Steel Plant on lumpsum basis."" Offer made by M/s. Steel Products Limited was accepted by letter of

acceptance dated " 9.4.1982 and sale order was placed on the said company on 2.6.1982. M/s. Steel Products Limited started raising disputes

right from inception of the contract with regard to dumping of materials in the earmarked area as per the sketch map attached to the tender

documents. The contract was for dumping of fresh arisings of iron scrap used/rejected, refractory materials according to pattern of dumping, which

was in vogue. The earmarked area wherefrom the contractor was to recover the materials was confined to the area under track (sidings) Nos. 1,

1-A, 2, 2-A, 3, 4, 5 and 6 as shown in the sketch map i.e. from axis B + 87002 to B + 87009. The disputes and differences between the parties,

which were referred to the sole arbitrator were related to interpretation of the contract and the rights and liabilities of the parties thereunder. The

contractor alleged that the contract was for lifting all arisings from entire slag dump and SAIL was required to dump all scrap arisings etc. over the

area demarcated to M/s. Steel Products Limited; but it was not done.

Rather iron scraps were dumped in the unallotted areas and so the contractor suffered huge loss and damage and submitted claim of Rs.

18,74,18,787,31 paise, which was calculated on the basis of the quantity alleged to have not dumped in the earmarked area multiplied by the price

and over and above the loss profit and interest. Subsequently, amount of claim was revised and it was reduced to Rs. 3,00,00,512.55 paise.

According to SAIL in the total contract value of Rs. 2,04,54,545/- in which on subsequent escalation came to Rs. 2,15,63,173/- the contractor

already recovered materials worth more than Rupees six crores. The sole arbitrator by non-speaking award dated 30.1,1990 directed SAIL to

pay a sum of rupees fifty-seven lacs to the contractor in full and final settlement of all claim and counter-claim of the parties, which were subject-

matter of arbitration.

2. Mr. R.K. Merathia, counsel for appellant, submitted that in terms of Clause 3 of the tender document vis-a-vis Clause 19 of the sale order the

contractor was precluded from claiming any damages on account of non-availability of the materials and quality of materials. The contractor also

failed to prove annul damage, if any, suffered on account of any breach of contract on the part of SAIL.

It appears that the sole arbitrator in his cross-examination by SAIL sated that he had duly considered Clause 3 of the tender document and

Clauses 19 and 20 of the sale order and gave his award on the basis of force majaure clause. There was no force majaure contingency during

operation of contractual period in question. As per Clause 20 Bokaro Steel Plant after end of force majaure contingency, if any, was required to

dump all fresh arisings in the demarcated area allotted to the contractor, which was not done. Bokaro Steel Plant did not dump fresh arisings

including steel scrap and other materials in the earmarked area in the terms and provisions of the contract and thereby committed breach of

contract. Sole arbitrator in his evidence also stated that he had considered all evidence, pleadings and papers placed before him. No misconduct

on the part of arbitrator was proved.

It is well settled that only in a speaking award the Court can look into reasoning of the award and it is not open to the Court in a non-speaking

award to prove mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled him to arrive at

his conclusion. There is no error apparent on the face of the record and the arbitrator cannot be said to have exceeded his jurisdiction in awarding

the amount in question.

3. No legal proposition has been raised by the appellant for setting aside the award. I find no reason to interfere with the impugned judgment and

decree. There shall be no order as to costs.