



2025:DHC:4710



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 28.02.2025
Pronounced on : 30.05.2025

+ **O.M.P. (COMM) 205/2021, I.A. 13899/2021, I.A. 986/2022 & 987/2022**

B. G. SHIRKE CONSTRUCTION TECHNOLOGY PVT. LTD

..... Petitioner

Through: Mr. Rajiv Kapoor, Advocate.

Versus

ARMY WELFARE HOUSING ORGANISATION & ANR.

..... Respondent

Through: Mr. A.K. Tiwari and Mr. Rahul
Burmani, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present petition has been filed raising objections under Section 34 of the Arbitration & Conciliation Act, 1996 (hereafter, the 'A&C Act') against the award dated 19.04.2021 (hereafter, the 'impugned award') delivered by the Arbitral Tribunal comprising of Sole Arbitrator (hereafter, 'AT') to the limited extent of impugning the part of the Award discussing the base rates for Labour component.

2. The impugned award came to be delivered in the context of contract agreement No. AWHO/BANGALORE/08/2009 dated 01.06.2010 which



came to be executed in consequence of a Public Tender invited by the respondent for '*Work of Construction of Residential accommodation for A WHO at Kanamangala, (Part A), Bangalore*'. The petitioner submitted its bid on 13.04.2010. It was awarded the work on 04.05.2010 and the same was to be completed within a period of thirty months. The work was completed on 10.10.2015 after two extensions. The petitioner issued a 'No Claim Certificate' on 14.11.2018. After receipt of final payment, the petitioner invoked the arbitration clause on 25.11.2019 in relation to its escalation claim under Clauses 172 of the GTC.

3. Clause 127 pertained to escalation on account of labour component of the contract price and Clause 130 was the escalation clause pertaining to cement and steel price.

4. The said clauses enabled the petitioner to claim escalation in the price based on the agreed formulas. Various formulas accounted for escalation in contract price during the execution of works on the assumption of normative increase in the price of various components like labour, fuel and lubricants, steel, cement and other materials. The formulas used certain indices like government regulated minimum wages payable to the labour and whole sale price index notified by the authorities to calculate the escalation on account of other components mentioned above.

5. The dispute referred to arbitration pertained to applicable indices in the price escalation formula in Clauses 127 and 130 of the Contract Agreement. Larger dispute pertained to labour price index in the escalation clause and the other dispute pertained to the whole sale price index applied for calculating escalation pertaining to steel.

6. Then there was the question of estoppel raised before the tribunal in



view of the petitioner's acceptance of payments made by the respondent in full and final settlement of its final bill and a "No claim Certificate" dated 14.11.2018 issued by it indicating satisfaction of all outstanding claims. AT framed a specific issue (Issue No 1), on the effect of such two actions of the petitioner on its escalation claim.

7. AT ruled in favour of the petitioner and decided Issue No 1 upholding the petitioner's right to claim escalation despite issuing the "No claim certificate" dated 14.11.2008 and accepting payment made under the final bill by the Respondent on full and final basis. The AT rejected the Respondent's contention that the Petitioner was estopped from claiming escalation for the aforesaid reasons. AT accepted the plea of economic duress raised by the Petitioner.

8. However, having upheld the maintainability of claim, the AT rejected the claim on merits by deciding Issue No. 2 against the Petitioner, holding that the Petitioner's choice of applicable indices was flawed.

9. In this manner, the net result was the dismissal of the claims of the Petitioner, which has been assailed in these proceedings.

10. Petitioner assailed the award on the following grounds: firstly, it is argued that CD-7 and CD-8, the two notifications pertaining to March 2009 and June 2010 were arbitrarily deemed soiled by the AT and not taken in account. Secondly, it is contended that there are substantial changes in the final notification dated 25.01.2011 and the draft notification dated 09.07.2009. Thirdly, it is submitted that the conduct of the respondent would show that itself made the payments of the RA Bill Nos. 1 to 39 taking the base labour index L0 as 131.60, as per the June 2010 notification and it is only after the publication of the Notification dated 25.01.2011 in March



2011 that the respondent unilaterally switched to the new rate of Rs. 141.18. Lastly, it is submitted that the award fails the test of ordinary understanding and is invalid in the eyes of the law since the AT took an implausible view. Reliance has been placed on P.R. Ramesh vs. State of Karnataka¹, Anamalai Ambedkar Thotta Makkal Sangam and State of Tamil Nadu & Anr.², S. Kovendan & Ors. v. State of Tamil Nadu, rep. by the Secretary to Government, Department of Education, Madras & Ors.³

11. Respondent opposed the petition raising the following pleas; that the escalation towards labour wages were rightly paid to the petitioner as per the Ministry of Labour Notification No. KAE 95 LMW 2008, dated 25.01.2011. In this notification, the Labour index was fixed as 141.18, based on the draft proposal published in Part-4A of the Karnataka Gazette on 09.07.2009. It is submitted that the respondent has paid the escalation costs to other contractor, M/s BL Kashyap and Sons at the same rate. It is submitted that the AT has rightly interpreted the clauses and there is no infirmity in the AT's reasoning.

12. AT, while deciding Issue no 2, rejected the plea of the Petitioner that for calculating the labour price escalation payable under Clause 127, the minimum wages (hereafter, MW) of unskilled worker prevalent in the month of March 2010 would be applicable rather than MW prevalent in the month of April 2010, (the month in which the bid was submitted by the Petitioner). Petitioner had argued that in April 2010, when the bid was submitted by it, MW for the month of April 2010 had not been notified and was not known and the MW had been notified only upto March 2010, therefore the same

¹ 2006 SCC OnLine Kar 692.

² 2013 SCC OnLine Mad 397.

³ 1993 SCC OnLine Mad 388.



should be applied as the basis for calculating escalation.

13. AT however, interpreted Clause 127 read with Note 4 to reject the Petitioner's contention. Clause 127 provided the following formula for calculating labour price escalation:

$$VL=W \times Y/100 \times (Li-Lo)/Lo$$

The dispute pertained to the variable Lo in the formula which was defined as "*Minimum daily wage in rupees of an unskilled adult male mazdoor, fixed under any law, statutory rule or order as applicable on the last date of receipt of Tender*".

14. Clause 127 contained Note No 3 and Note No 4 to explain the contingencies under which value Lo had to be arrived at. According to Note No 3 "*in case the Labour Enforcement Officer makes the announcement before the date of receipt of tender but gazette notification is made subsequently making rates applicable with retrospective effect, the value of Lo shall be as per gazetted notification subsequently made*".

15. Note 3 clearly made rates notified subsequent to the tender submission date applicable, if notified retrospectively. Note 3 took care of an eventuality where the announcement of minimum wages applicable on the date of submission of tender is made by the Labour Enforcement Officer but the same is officially notified in the gazette after the last date for submission of tender. In such eventuality, according to Note 3, the Gazetted rate will apply with retrospective effect.

16. However, according to Note No 4 "*if the increase/decrease in wages of labour is notified/ announced subsequent to the date of receipt of tender with retrospective effect without making the same publicly known by means*



of publicity/ media prior to the date of receipt of tender, then the value of Lo shall be as per the wage known at the time of receipt of tender.

17. Note No 4 clarified to the effect that if the MW is notified subsequent to the last date of submission of tender, then the wage known at the time of the receipt of tender will be applied for arrived at the value of Lo. However, there was an exception to this rule built in Note 4, which qualified this rule to only apply if the subsequent notified rate was not publicised or made known publicly, prior to the last date of receipt of tender.

18. It is evident that Note No 4 mandated that if the minimum wage rate likely to be applicable in the month of April 2010 (month in which the Petitioner submitted its tender/bid) was publicised or made known to the public by the authorities any time prior to April 2010, then such anticipated rate shall be applied to arrive at Lo value, even though the said rate is notified after the last date of submission of tender i.e 13.04.2010. As per Note 4, rate prevalent in the month of March 2010 will not apply for arriving at Lo value.

19. Note 4 actually narrowed down the scope of enquiry for the AT to find out the MW fixed for the month of April 2010 were already publicised and put out in public domain, even before they were gazette notified much after 13.04.2010.

20. Respondent relied upon a notification dated 25.01.2011 issued by Ministry of Labor, Govt. of Karnataka (Exhibit R-11), published on 03.03.2011, wherein MW of Rs 141.18 had been notified for the period 01.04.2010 to 31.03.2011. Respondent contended that the said notification was based on a draft notification dated 09.07.2009 published in Karnataka Gazette Notification, which clearly shows that the anticipated wage for the



month of April 2010 had already been put out in public domain in the month of July 2009 itself which in the eventuality is squarely covered by Note No 4, for the April 2010 wage to apply rather than wages prevalent in the month of March 2010.

21. The AT referred to Section 5 of the MW Act and concluded that revision of minimum wages is preceded by appointment of committees to for fixation/revision of minim wages. It also envisages publication of proposals in the official gazette for public response and feedback. AT held that the draft proposal dated 09.07.2009 was part of the statutory revision/fixation of MW exercise undertaken by the authorities under the MW Act.

22. AT found the notification dated 25.02.2011 and preceding draft proposal dated 09.07.2009, as the reliable piece of evidence over notifications exhibited as CD -7 and CD-8 relied upon by the Petitioner, which the AT found to be riddled with discrepancies and unreliable. AT also observed that in view of explanation provided in Note No 4 of Clause 127, the notification dated 25.01.2011 was the only reliable piece of evidence to conclude that the MW for the month of April 2010 was available in public domain since 09.07.2009.

23. The AT was rightly doubtful of the exhibits CD-7 and CD-8, which it found to be discrepant with each other, the two being the same notifications bearing No KAE 14LMN 99 issued on 07.06.2003 and Gazetted on 15.12.2003, but stipulating MW and VDA rates for two different periods. In CD-7 the stipulated period is 01.04.2010 to 31.03.2011 whereas in the CD-8 version of the same notification, the stipulated period covered in 01.04.2009 to 31.03.2010. Cost of Living Index in CD-7 is mentioned as 1453 whereas in CD-8 version it is 1037. According to CD-7, the MW for the month of



April 2010 is fixed at Rs 131.60 whereas in CD-8 version, month of April 2010 is not covered in the notification period of 01.04.2009 to 31.03.2010.

24. AT found the two exhibits suffering from printing error since it was unlikely that a notification gazetted in Karnataka Labour Law Journal in 2003 would lay down the MW for the periods way too far ahead in future i.e. 1.04.2009 to 31.03.2010 or 01.04.2010 to 31.03.2011. In the absence of any credible explanation to explain the discrepancies, the AT, which is the master of quality of evidence required by it to reach its findings, refused to take CD-7 and CD-8 into account.

25. The reasoning adopted by the AT to evaluate evidence is reasonable and judicious. The AT's interpretation of Clause 127 is only judicious interpretation that could be conceived since the text of the Clause does not seem to be open to diverse interpretation.

26. Regarding the applicability of indices for calculating escalation pertaining to Steel, Cement, Fuel and Lubricants (FOL), and other material, the AT, observed that Clauses 125, 126 and 130, which deal with the escalation in these components, are unambiguous in their intent. According to the plain language of these clauses, the indices prevalent on the last day of submission of tender would be applied for calculation. AT rightly rejected any attempt to interpret the said clauses by borrowing the explanatory Notes from Clause 127-which pertain to labour escalation, into the above clauses to change the plain meaning of the language of these clauses.

27 AT's interpretation of the Clauses 125, 126 and 130 seems to be the only obvious interpretation, since the language of the clauses does not permit diverse interpretations. In any case, the present challenge has only been confined to the finding with respect to the labour component.



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28. In view of the above discussion, this court does not find any judicially recognized reason or ground for interfering in the award.
29. Petition is dismissed alongwith pending applications.

MANOJ KUMAR OHRI
(JUDGE)

30 MAY, 2025/ry