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Court : Delhi

Decided On : Mar-03-1985

Reported in : ILR1985Delhi628

Judge : M.K. Chawla, J.

Acts : [Arbitration Act, 1940](#) - Sections 30

Appeal No. : Suit No. 1214A of 1981 and Interim Application No. 4368 of 1981

Appellant : Birla Coton Spining and Waiving Ltd.

Respondent : Delhi Electricity Supply Undertaking

Advocate for Pet/Ap. : B.R. Iyengar,; B.R. Sabharwal,; V.P. Singhal and;

Judgement :

M.K. Chawla, J.

(1) The dispute regarding the consumption of electricity over and above the sanctioned load by the petitioner, relate back to 5th November, 1979 when the petitioner preferred to file a petition under Section 20 of the Arbitration Act before this Court. Before the respondent undertaking filed the reply, S. N. Kumar, J. vide order dated 22-1-1980 appointed Shri K.L. Vijh, Advocate as the sole arbitrator to

enter upon the reference and decide the disputes and differences which have arisen between the parties and find incorporated in paragraph 34 of the petition. The said Para reads asunder: 'that the respondent undertaking has sent another notice dated 27-10-1979 demanding a sum of Rs. 40,251.98 which represents load violation charges and excess demand charges. It is submitted that the demand of the respondent undertaking for payment of 25% surcharge on the alleged connected load of 7117.55.H.P. is wrong and is not justified as contained in respondent's bill dated 1st August 1979. Like-wise the demand of the respondent Undertaking for additional demand charges as well as 25% surcharge for the months of April and May, 1979 contained in its letter dated 3-9-1979 and the demand of the Undertaking for Rs. 14,106.09 paise as load violation charges and Rs. 71,072.16 paise as demand charges on 3035.78 Dva contained in its bill for Rs. 74,380.51 paise and the demand of Rs. 42,251.98 P. as load violation charges and demand charges in its notice dated 27-10-79 are wholly unjustified and illegal. The petitioners repudiate their liability to pay the same and also deny that the respondent Undertaking can discontinue the supply of electricity to the petitioner Company in the facts and circumstances of this case'.

(2) Shri K.L. Viji entered upon the reference, entertained the statements of claims, the reply of the respondent undertaking along with documents and after hearing the parties at length made and announced his award on 11-9-81. In the award the learned arbitrator determined the load as on 11-4-1979 on the system of the respondent undertaking to be as 3904 KVA. On that basis the respondent undertaking was directed to prepare revised bills which should be submitted to the company and to be paid by them within 15 days of the presentation. The undertaking was also held entitled to levy a surcharge of 25% on the total amount of the bill for the period April to September, 1979. After giving notice to the parties, the award was filed in this court on 6-11-1981. Learned counsel for the parties accepted notice of the filing of the award. The petitioner company, within the stipulated period, filed the objections. The main preliminary grounds for the setting aside of the award as listed in the objection petition in brief are asunder : -

That the learned arbitrator misconducted himself in the proceedings in determining the load of the electricity from the petitioner's own generating set and that of the

supply from the respondent Undertaking as on 11-4-1979 and then gave directions to levy the aforesaid illegal surcharge of 25% on the amounts of the bill for the .period April to .September, 1979;

That it was incumbent on the arbitrator in the very nature of the dispute to find out the position of the connected load for each subsequent month; the learned arbitrator left under terminated the same. without determination of which he could not decide the real issue between the parties :

THAT at no point of time the connected load on the respondent undertaking exceeded the sanctioned load of 2500 KVA; - That the finding of the learned arbitrator that on 11-4-1978 the connected load on D.E.S.U. system was 4448.23 H.P. or 3313.57 Kv equal to 3903.93 (say 3904 KVA) is without any evidence and is liable to be set aside;

That the 'award of the learned arbitrator levying load violation surcharge of 25% per mensem and 300% per year for the period April to September, 1979 is in the nature of penalty and is unconscionable and is in clear violation of the provisions of .Section 74 of the Contract Act;

That the imposition of 25% surchargs. levied by the learned arbitrator with reference to the tariff on the total amount of the bills for April to September 1979 is without any authority of law being inconsistent with Section 23 of the Indian Electricity Act 1910:

That the learned arbitrator has not given a speaking or reasoned award which he was to give particularly when. the learned arbitrator asked . the parties to file written arguments; That the learned arbitrator has left undecided a number of points raised by the petitioners in the written arguments ; In the strength of these grounds the petitioners parry that the award of the learned arbitrator dated 11-9-1981 be set aside and the same be remitted back for reconsideration.

(3) The respondents contested the objections and in the reply denied each and every ground taken by the petitioner for the setting aside of the award and took up the stand that learned arbitrator was perfectly justified in allowing 25% surcharge

for the period from April to September, 1979, it being an additional charge provided in the tariff and not by way of penalty or liquidated damages. The provisions of Section 74 of the Contract Act are not attracted in this regard. It is also alleged that the petitioner cannot challenge the factual finding of the learned arbitrator as the award is not a reasoned one. On this ground it is contended that the objections merit dismissal and the award be made a Rule of the Court.

(4) I have heard the arguments of the learned counsel for the parties and with their help .have gone through the record carefully.

(5) Most of the facts are not in dispute. The existence of the agreement dated 15-1-1979 whereby the Undertaking was required to supply electricity to the petitioner company up to a contract demand of 2500 KVA. The company had also its own generating plant which was meeting a part of the requirement for the purpose of running the petitioner company's mill. On 11-4-1979 the factory premises of the claimant were inspected by the officers of the respondent undertaking; On inspection the total load connected on the system of the undertaking was found to be 7117.55 H.P. against the sanctioned load of 2500 Kva which is equal to 2848..5 H. P. On thee basis of this report the undertaking started sending the bills to the claimant, claiming excess demand charges as well as 25% surcharge on the entire amount of the bill, which according to the undertaking was In terms of the Schedule of Tariff applicable to the period in question. The petitioners immediately objected to the reading and sent the letter dated 11-6-1979 in which the quantity of connected Horse Power load found out by the Inspectors was disputed. According lo them the petitioner company has not been taking more load than the sanctioned load of 2500 KVA. The respondent undertaking however, sent a supplementary bill for the months of April and May. 1979 Along with 25'o surcharge. The petitioner company again raised various objections but the respondent Undertaking continued sending the bills for the subsequent months of July, August and September, 1979 on the basis of the load of 7117.55 H.P. However, on the instance of the petitioner company the Officers of the respondent undertaking agreed to re-inspect the factory. Admittedly, the re-inspection was carried out by the officers of the respondent Undertaking on 24-10-1979. On re-inspection the Officers found that the total connected load was 6059.26 H.P. out of which the

connected load on the system of the undertaking was 2477.01 H.P. As the load on the undertaking was found to be within the contracted load as per the agreement, the respondent undertaking stopped sending bills claiming excess demand charges.

(6) Except the two inspection reports the respondents did not produce any other material. The present proceedings however, relate to the demand of. load violation, surcharge and excess demand charges for the period from April 1979 to September, 1979. On this material the learned arbitrator held:

On 11-4-1979 a total load of 7117.55 Hp was not the connected load on the respondent's system but it was. the total connected load of the factory including the load supplied from the factory's own generating plant;

On 11-4-1979 the claimant's own generating unit was running having a load of 520 Amps. at 3.3 Kv and 0.67 power factor. This works out to 199132 Kw corresponding to 2669.32 H.P.;

On 11-4-1979 the connected load on the system of the respondent was 4448.23 H. P. i.e. 3318.37 Kw equal to 3903.96 (say 3904) Kva at 0.85 factor. On the basis of this finding as already stated earlier directions were issued to' the undertaking for preparation of the revised bill and its submission to the company for payment of the amount within 15 days

(7) The contention of the learned counsel for the petitioner is that the figures of consumption of electricity arrived by the learned arbitrator are imaginary and not based on any evidence. Infact it goes against the documentary evidence placed and proved before the learned arbitrator by the petitioners'. On the other hand the learned counsel for the respondent objects to the examining of the documentary or oral evidence on record for the purpose of finding out whether or not the arbitrator has committed an error on the face of the award. in view of the non-speaking nature of the award.

(8) Lam fully aware of the various authorities laying down the principle that the award is not to be set aside on the ground that it is erroneous infact or in law, and

that the court will not sit in appeal over the conclusion of the arbitrator and hold that the' conclusion so reached is wrong. It has also been observed that when an arbitrator has not given any reason for the award nor is there any legal proposition made he basis of the award, the same cannot' be set aside.

(9) Even applying this principle the impugned award of Shri K. L. Vijh, to my mind is liable to be set aside as the learned arbitrator misconducted the proceedings, inasmuch as. his conclusions are inconsistent even on his own findings. He arrived at a decision by ignoring very material documents which throw abundant light on the controversy to help a Just and fair decision. There were two inspection reports before the lamed arbitrator. In the first inspection report dated 11-4-1979 the total connected load of the factory was found as 7117.55 H.P. The re-inspection was carried out by-the officials of the respondent Undertaking on 24-10-1979. On that date the total connected load was found a-s 6059.25 H.p out of which connected load on the system of the respondent Undertaking was 2477.01 H. P. In between these two inspections, the officers of the respondent did not care to inspect the factory inspire of written reminders by the petitioner company. On the basis of these three readings of the connected load of the factory, it has not been made clear by the learned counsel for the undertaking, as to how and under what circumstances and on which basis or the calculation the learned arbitrator reached the conclusion that on. 11-4-1979 the claimant's own generating set was running having a load of 2679.32 H. P. Much exercise has been done during the course of the hearing of arguments, by both the learned counsel and their officers. Further more it also goes beyond one's comprehension as to how the learned arbitrator came to the conclusion that on 11-4-1979 the connected load or the system of the respondent undertaking was 4448.23 H. P. The whole of the calculations on the face of it are not only imaginary but are against the record. Even supposing fora moment the learned arbitrator took into consideration the re-inspection report dated 24-10-1979, how can be rely on the same of the period from April to September, 1979. Admittedly the petitioner company was generating its own power and it naturally varied from day today/month to month. Under no circumstances could the generating by the petitioner company be uniform.

(10) During the course of the proceedings before the learned arbitrator the petitioner company took care to file the statements showing the units produced by the generating set of the petitioner company as well as the units of electricity purchased from the respondent undertaking for the period 18-2-1978 to 23-10-1979. Item No. 14 to 18 related to the period from 31-3-1979 to 23-10-1979. The units of electricity supplied by the respondent undertaking during this period are far less than the sanctioned load. In compliance with the agreements such statements, according to the learned counsel for the parties, the petitioner company was duty bound to file before the Undertaking, every month. The learned arbitrator misconducted himself by not referring to the said statement and in any case if he was not satisfied with the same, it was his duty to have called the same from the respondent undertaking. This document was very material to arrive at a just decision to resolve the controversy between the parties. Under similar circumstances the Supreme Court in a Judgment reported as 'Misconduct under Section 30(a) has not a connotation of moral lapse. It comprises legal misconduct which is complete if the Arbitrator on the face of the award arrives at an inconsistent conclusion even on his own finding or arrives at a decision by ignoring very material documents which throw abundant light on the controversy to help a just and fair decision. In the instant case the Arbitrator has misconducted the proceedings by ignoring the two very material documents to arrive at a just decision to resolve the controversy between the Department did not produce those documents before the Arbitrator it was incumbent upon him to get hold of all the relevant documents including the two documents in question for the purpose of a just decision. Further, he arrived at an inconsistent conclusion even on his own finding. The award suffered from a manifest error apparent on the face of it.' The facts and circumstances of the above Judgment fully apply to the facts of the present case. The learned arbitrator in my opinion arrived at a conclusion which is inconsistent with his own finding. The award under these circumstances suffers from a manifest error apparent on the face of it.

(11) As a result of the above discussion I accept the objections of the petitioner company and set aside the award. However, I do not propose to remit the award in view of the fact that it relates to the year 1979 and the parties will not be in a position to lay their hands on any fresh evidence except the evidence which has

.already been produced before the learned arbitrator. No costs.

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