Final award of 3 August 2000, case no. 154/2000

Arbitrators: Three Egyptian Arbitrators

Claimants: Two African printing companies; Defendant: An African printing authority

Place of Arbitration: CRCICA

Subject Matter: administrative contract for providing printing paper

Applicable Law: Egyptian law

Language of Arbitration: Arabic

Held

The principle of good faith which governs the execution of contracts in accordance with Article 148 of the Civil Code, is not only applicable to the civil contracts, but also to the administrative contracts.

Facts

The Respondent used to launch tenders for purchasing imported paper for printing, and one of the Claimants was the successful offeror during ten years. In the year 1998/99 a new bid was launched requesting the provision of white paper of high quality for coloured offset printing with different measurements. The successful bidder was the same Claimant in its capacity as a commercial agent of an Asian paper company and the contract was executed between the Respondent and this Claimant jointly and severally with the second Claimant.

In this contract, the parties agreed that the Respondent shall open a revolving documentary credit for the payment of the prices of five periodic shipments. The credit must be irrevocable and confirmed. Claimants were required to lodge a bank letter of guarantee of 5% of the value of the deal to be reduced partially after three months from the date of receipt of each shipment.

The contract contained an arbitration clause:
Any dispute arising out of this contract shall be settled by arbitration with Cairo Regional Centre for International Commercial Arbitration.

The Respondent requested the Claimants (after the conclusion of the contract) to submit a new letter of guarantee of 20% of the value of one of the shipments. Although this was not provided for in the contract, the Claimants submitted it through a different bank.

Some time later a civil war broke out in the Asian country and a case of force majeure exempting the exporter existed. The agent upheld the same force majeure and offered to furnish paper from another Asian country and a new contract was executed.

The time limit of shipment was extended by the Respondent, but it claimed the value of the two letters of guarantee from the issuing banks. The Respondent also abstained from paying the price of other shipments.

The Claimants said that they were faced with other exceptional events, such as a decision from the Ministry of Economy considering the other Asian paper as prohibited because it dumped the African market, and the exporter refused to send shipments unless the decision on dumping was lifted. The Claimants notified the Respondent asking for provision of a permission of import, despite the decision of dumping, stating that the goods were in a port near the African country, but the Respondent did not answer and began to launch a new procurement, to implement the import with expenses to the side of the Claimants.

This caused great moral and substantial damage to the Claimants and this was why they filed this arbitration claiming for:

1. Recovering the value of the two LGs;
2. Payment of two invoices related to other shipments;
3. Payment of moral damages.

The Respondent requested the Arbitral Tribunal to dismiss the claim, and substantiated the request saying that there was a delay in providing the goods which resulted in a fine of delay against the Claimants and in rendering a decision for implementation with expenses to the side of the Claimants.

The Respondent submitted a counterclaim requesting damages, and to order the Claimants to pay all arbitration costs and lawyers fees.

Award

The Arbitral Tribunal said that all contracts are subject to the principle of good faith whether in conclusion or execution thereof. This principle is provided for in Article 148 of the Civil Code (see the text: volume 1 of this book, p. 256). This principle is not only applicable to the civil contracts, but also to administrative contracts. Accordingly the administrative authority (Respondent) was not bona fide in doing business with the Claimants because it ought to have given proper attention to the exceptional circumstances which faced them. So many judgments of the Counsel of State (conseil d'Etat) applied the bona fide principle upon all administrative authorities, and said that one of the main results is that each party may not abuse its rights.

[...]

Referring Principles:

I.1.1 - Good faith and fair dealing in international trade