
(2014) 11 DEL CK 0044
In the Delhi High Court
Case No : CM (M) 1830/2005

Airports Authority of India

APPELLANT

Vs

Jagson Airlines Ltd.

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Arbitration Act, 1940 — Section 28, 30, 33
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : (2014) 11 DEL CK 0044

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Anjana Gosain, Advocate for the Appellant; Harish Malhotra, Sr. Adv., R. Sudhinder and Prerana Amitabh, Advocate for the Respondent

Judgement

Valmiki J Mehta, J.—This petition under Article 227 of the Constitution of India impugns the judgment of the first appellate court dated 24.5.2005. The first appellate court by the impugned judgment set aside the judgment of the original court/Civil Judge dated 7.7.2004 by which the Civil Judge had dismissed the objections under Section 30 and 33 of the Indian Arbitration Act, 1940 filed by the respondent/objector against the Award of the arbitrator dated 28.10.1998. First appellate court set aside the judgment of the original court/Civil Judge and the Award firstly on the ground that the Award has been passed after the period of four months statutorily prescribed for passing of the Award and secondly that the arbitrator relied upon a document being a circular/office order dated 11.2.1994 although the same was not brought to the notice of the objector/respondent in the arbitration proceedings.

2. At the outset, I must state that since the present petition under Article 227 of the Constitution of India is not maintainable, inasmuch as a civil revision petition will lie under Section 115 of the Code of Civil Procedure, 1908 (CPC), at the request of counsel for the petitioner, this petition is converted into a petition under Section 115 CPC.

3. The disputes between the parties pertained to the petitioner- Airport Authority of India licencing out to the respondent-company a hangar space admeasuring 300 sq. mts., first floor space admeasuring 48 sq. mts and ground floor space admeasuring 39.27 sq. mts. in terms of an agreement dated 28.8.1993. This agreement dated 28.08.1993 contained the following Clause-2 with respect to increase of licence fee charges:-

Clause 2. That the licence fee of Rs.38.65 per sqmt. p.m. (for 147.50 sqmts) shall be paid by the Licensee in advance on or before the 10th of each month. The licence fee is subject to revision at the discretion of the Authority from time to time and such increase of licence fee shall be paid by the Licensee without any protest or dispute.

4. The arbitrator after hearing the parties passed the Award dated 28.10.1998 awarding to the petitioner a sum of Rs.31,22,468/- alongwith interest at 18% per annum to be paid by the respondent/claimant/objector.

5. The first issue before this court is whether the first appellate court is justified in holding that the Award passed by the arbitrator is without jurisdiction because the arbitrator had no power to give the Award beyond a period of four months.

6. Learned senior counsel for the respondent has in support of his arguments placed reliance upon the judgment of the Supreme Court in the case of State of Punjab Vs. Hardyal, to argue that in the present case, since the extension of time was given after the agreed extended time had expired, therefore, there is no valid extension as required by law.

7. At the outset I must note that the admitted factual position is that during the arbitration proceedings time was extended with consent of both the parties on various occasions. The arbitrator lastly vide his letter dated 28.10.1998 referred to earlier communications of extension of time and sought time for continuing of the arbitration proceedings till 29.11.1998. The present respondent through its Advocate's letter dated 27.10.1998 admittedly did give extension. Along with the letter dated 27.10.1998 the Advocate of the respondent Mr. Vinod Wadhwa attached the extension letter extending time with respect to the arbitration proceedings.

8. The issue is whether the time for arbitration proceedings can be extended after the time extended with consent has expired, inasmuch as, learned senior counsel for the respondent argues that time cannot be extended after the extended agreed time has expired.

9. I have gone through the judgment in the case of Hardyal (supra) relied upon by the respondent, and in my opinion, the said judgment in fact goes against the respondent in view of para 14 thereof. Para 14 of the said judgment reads as under:-

"14. The policy of law seems to be that the arbitration proceedings should not be unduly prolonged. The arbitrator therefore has to give the award within the time

prescribed or such extended time as the court concerned may in its discretion extend and the court alone has been given the power to extend time for giving the award. As observed earlier, the court has got the power to extend time even after the award has been given or after the expiry of the period prescribed for the award. But the court has to exercise its discretion in a judicial manner. The High Court in our opinion was justified in taking the view that it did. This power, however, can be exercised even by the appellate court. The present appeal has remained pending in this Court since 1970. No useful purpose will be served in remanding the case to the trial court for deciding whether the time should be enlarged in the circumstances of this case. In view of the policy of law that the arbitration proceedings should not be unduly prolonged and in view of the fact that the parties have been taking willing part in the proceedings before the arbitrator without a demur, this will be a fit case, in our opinion, for the extension of time. We accordingly extend the time for giving the award and the award will be deemed to have been given in time."

(underlining added)

10. I do not find in this judgment that parties cannot extend the time retrospectively and after the time has expired and to the contrary and in fact the underlying reason for the Supreme Court laying down the ratio in Hardyal's case (supra) of court extending time even at the stage of proceedings in the Supreme Court is to ensure that arbitration proceedings are not rendered infructuous, and which have gone on for many years, simply because parties have not extended the time. The Supreme Court has clearly observed that even if parties do not extend the time, courts have ample power under Section 28 of the Indian Arbitration Act, 1940 to extend the time period.

11. In the facts of the present case, in my opinion, once it is not disputed that respondent vide his letter dated 27.10.1998 did in fact extend the time, even if it is done for a period which has expired, there is no illegality in the same. In any case I would as a matter of abundant caution, adopting the ratio in Hardyal's case (supra) extend the time exercising my powers under Section 28 of the Indian Arbitration Act, 1940.

12. The first argument urged on behalf of the respondent, and the judgment of the first appellate court holding that the Award is illegal as it was not passed within the prescribed statutory period or a valid extension, is accordingly held not a valid ground for setting aside the Award. It is held that there is no illegality in the award dated 28.10.1998 on the alleged ground that it has been passed after expiry of the period agreed to by the parties for conduct of the arbitration proceedings.

13. The second issue vehemently argued by the learned senior counsel for the respondent is that the petitioner cannot arbitrarily exercise powers as per clause 2 of the Agreement dated 28.08.1993 and increase the licence fee to any rate. While considering this argument raised before this Court, I must note that the

respondent raises no argument that the arbitrator has wrongly relied upon a circular/office order dated 11.2.1994, inasmuch as, admittedly this document was filed by the respondent itself in the arbitration proceedings. The argument urged on behalf of the respondent is that the petitioner being a Governmental authority had no powers to "arbitrarily" exercise discretion to increase licence fee to any rate.

14. The second argument urged on behalf of the respondent is also misconceived for various reasons. Firstly, courts which hear objections against the Award including the higher courts in such proceedings, do not sit as appellate courts to substitute its own views for that of the arbitrator. An Arbitrator is legally justified in taking one possible and plausible view and unless the view is totally perverse and against the established law, courts cannot interfere with the Award in objections under Section 30 and 33 of the Indian Arbitration Act. Once the agreement between the parties did contain the Clause 2 which did give the petitioner a right to increase the licence fee, then arbitrator was justified in taking one possible view that the petitioner was entitled to increase the licence fee charges. The second reason for rejecting this argument is that it is not the case of the respondent that petitioner has discriminated against the respondent whereby the other persons have been charged lower licence fee but respondent has been charged a higher licence fee. Once the petitioner has uniformly charged from all the licensees of the hangars the same licence fee in terms of the circular/office order dated 11.2.1994, I do not find any reason that this court should interfere allegedly because the higher licence fee is "arbitrary". The third reason why this court cannot interfere with the Award on the ground which is urged by the respondent is because before the ground as argued before this court here had to be a factual foundation led before the arbitrator that actually licence fee charges should not have been at the figure which is claimed by the petitioner in terms of the circular dated 11.2.1994 as it is "arbitrary". Once there is no evidence on record before the arbitrator that how the licence fee is charged by the petitioner in terms of the circular dated 11.2.1994 is illegal, I do not find any reason to interfere with the Award of the arbitrator.

I must hasten to add that the I have given the third reasoning while rejecting the argument urged on behalf of the respondent as an additional reasoning, and in my opinion, the first two reasons are enough to reject the argument urged on behalf of the learned senior counsel for the respondent inasmuch as admittedly there is a Clause 2 in the agreement entitling the petitioner to charge licence fee at such rate as it thinks fit, and which is taken with the fact that there is no issue of discrimination against the respondent of it being charged higher licence fee and other licensees are being charged a lower licence fee.

15. At the conclusion I must also state that the learned senior counsel for the respondent sought to argue that the rate of interest as awarded by the arbitrator is excessive, however, when we read the objections which were filed by the respondent the ground urged was that the arbitrator ultimately could not award

interest and not that the rate of interest awarded is excessive. Now there is a catena of judgments that the arbitrator always has the power to award interest and hence I do not find any merit in the objection raised on behalf of the respondent that the arbitrator has no power to award interest. The judgment of a Constitution Bench of the Supreme Court in the case of Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, is the leading judgment on the power of the arbitrator to award interest.

16. In view of the above, this petition is allowed. The impugned judgment of the first appellate court dated 24.5.2005 is set aside. Award of the arbitrator dated 28.10.1998 is sustained. Parties are left to bear their own costs.