
(1994) 09 DEL CK 0070
In the Delhi High Court
Case No : Suit No. 2642 of 1989

Amar Nath Satya

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-09-1994

Acts Referred:

Limitation Act, 1963 — Section 3

Citation : (1994) 55 DLT 683

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Advocate : S.K. Mittal, Sharad Aggarwal and Dalip Singh, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) The petitioner had entered into a works contract with the respondent. Disputes having arisen between the parties, the same were referred to adjudication by arbitration. The Arbitrator has given his award dated 30.6.1989. On the award having been filed in the Court, proceedings for making it a rule of the Court were initiated. The parties were noticed. The respondent Union of India has filed its objections to the award. The controversy raised is confined to the award made by the Arbitrator under claim No. 4.

(2) The petitioner had claimed an amount of Rs. 40,000.00 under Clause 10-C of the Contract on account of increase in labour rates. The Arbitrator has given a reasoned award. The gist of his finding is summarised in the next para.

(3) According to the Arbitrator, the document Exhibit C-30, which is a notification dated 25.4.73, proves the statutory increase in wages. Tender was accepted on 23.6.1973. The increase had taken place prior to acceptance of the tender but after the submission of the tender. Clause 19-B of the contract referred to a fair wage schedule, wherein the labour rates, were quoted. If increase in wages had taken place, the claimant was entitled to reimbursement. The Arbitrator has assessed the claimant entitled to an award of Rs. 20,000.00 and not Rs.

40,000.00 as claimed .Accordingly, Rs. 20,000.00 have been awarded under Claim No. 4.

(4) The objection of the respondent-Union of India is that the increase in rates of wages had taken place prior to the acceptance of the tender and certainly not during the progress of the work and so the Arbitrator could not have awarded any claim on account of increase in labour rates. The award made by the Arbitrator runs contrary to the terms of the contract.

IT is not only an error apparent on the face of the award but also misconduct on the part of the Arbitrator. It is also submitted by the learned Counsel that if only the Arbitrator would have applied his mind to the documents available on record, he could not have allowed the impugned claim to the petitioner.

(5) In reply, the contractor-petitioner has submitted that the provisions of Clause 10-C of the contract were applicable to the case and the claim of the petitioner was justly upheld by the Arbitrator.

(6) Clause 10-C of the contract provides as under:

"IF during the progress of the work, the price of any materials incorporated in the works (not being a materials supplied from the Engineer-in-charge's stores in accordance Clause 10 hereof) and / or wages of labour increases as a direct result of the coming into for of any fresh law, or statutory rule or order(but not due to any changes in sales tax) and such increase exceeds ten per cent of the price and/or wages prevailing at the time of receipt of the tender for the work ,and the contractor thereupon necessarily and properly pays in respect of that material (incorporated in the works) such increased price and/or in respect of labour engaged on the execution of the work such increased wages, then the amount of the contract shall accordingly be varied ,provided always that any increase so payable is not, in the opinion of the Superintending Engineer (whose decision shall be final and binding) attributable to delay in execution of the contract within the control of the contractor."

(underlining by me)

(7) The letter dated 22.6.76 issued by the petitioner himself to the respondent constitutes a part of the contract. Therein itself, the petitioner has mentioned the date of tender as 18.5.93.

(8) Exhibits C-30 filed before the Arbitrator is the notification dated 25.4.1973 issued by the Government of India, Ministry of Labour and published in the Gazette of India (Extra-ordinary) which has entailed revision in labour rates.

(9) A bare perusal of the contract and the notification dated 25.4.73 puts it beyond any shadow of doubt that revision in labour rates, the benefit whereof was claimed by the petitioner had taken place before the date of tender. The wages of labour had not increased during the progress of the work. The increase in the wages of labour was not occasioned as a direct result of the coming into

force of any fresh law or statutory rule or order during the progress of the work. If the increase had taken place before the date of entering into the contract between the parties, then it was not a dispute arising out of the contract. It was certainly not a dispute referable to Clause 10C of the Contract. The Arbitrator could not have Therefore, awarded the claim by reference to Clause 10C above said.

9A.Placing reliance on M/s. Hind Builders Vs. Union of India, , Sudarsan Trading Co. Vs. Government of Kerala and Another, and Hindustan Tea Co. Vs. K. Sashikant Co. and Another, Counsel for the petitioner submitted that merely because the Arbitrator might have reached a wrong conclusion or might have committed a mistake in appreciation of facts or even if he might have formed a wrong opinion on question of facts or law that would not be enough for this Court to interfere with the award of the Arbitrator. Each of the cases cited by the Counsel for the petitioner proceeds on its own fact and law laid down therein does not apply to the facts of the case at hand.

(10) The Arbitrator has clearly recorded a finding that increase had taken place prior to the acceptance of the tender. He has nowhere upheld the entitlement of the petitioner to the award of the claim by reference to Clause 10C of the Contract. On the contrary, as the award shows he has proceeded to apply his own reasoning an equitable one, that if any increase in wages had taken place the claimant was entitled to reimbursement. This is not permissible.

(11) In Associated Engineering Co. Vs. Government of Andhra Pradesh and another, , their Lordships have held that if there be an error in the construction of a contract then the error was within the jurisdiction of the Arbitrator; however, if he goes outside the contract, he commits jurisdictional error. Their Lordships have held -

"A dispute as to the jurisdiction of the arbitrator is not a dispute within the award ,but one which has to be decided outside the award. An umpire or arbitrator cannot widen his jurisdiction by deciding a question not referred to him by the parties or by deciding a question otherwise than in accordance with the contract."

(emphasise supplied)In Associated Engineering Co v. Govt of A.P., 1991 (2) Alr 180, also their Lordships of the Supreme Court have held that an award outside the terms of the contract would be an award without jurisdiction disclosing an error apparent on its face because the Arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract.

(12) The learned Counsel for the respondent-Union of India has rightly pointed out that the letter dated 22.6.73 affixed as an along with the contract and signed by the petitioner clearly indicates the tender having been given on 18.5.73 while the schedule of rates on the basis whereof extra charges were claimed was dated 25.4.73, the copy of the notification being available on record (marked C-30) and if only the Arbitrator would have noticed these documents, his award

would not have been what it is and this amounts to an error apparent on the face of the record.

(13) In K.P. Poulouse Vs. State of Kerala and Another, , their Lordships of the Supreme Court have held it to be a misconduct on the part of the arbitrator within the meaning of Section 30(a) of the Arbitration Act if he arrives at a decision by ignoring very material documents. In Government of Kerala and Another Vs. V.P. Jolly, , a Full Bench of the High Court of Kerala has held that by ignoring the Arbitrator to refer to supplemental agreement in award which prohibited grant of additional compensation and extra rate amounted to misconduct on his part requiring setting side of the award. It has further been held :-

"EVEN non speaking award are liable to set aside if the award are contrary to the basic or rather obvious features of the contract or traverse beyond the obvious terms of such contracts and so long as such decisions can be arrived at without interpreting or construing the terms of the contract. The violation must be evident from a mere look at the terms of the contract."

(14) The award of Rs. 20,000.00 under claim No. 4 cannot Therefore be sustained .

(15) Faced with this situation, the learned Counsel for the petitioner attempted at setting up a stumble block to the entertainability itself of the objection petition filed by the Union of India by submitting that the objection having been filed beyond the period of limitation prescribed by Article 119 of the Limitation Act, this Court should dismiss the objection petition as barred by time without any adjudication on merits. Plea as to limitation has not been raised in the pleadings. It has been flung up during the course of hearing. By reference to Section 3 of the Limitation Act, the learned Counsel for the petitioner submitted that the objection petition was liable to be dismissed though the limitation was not set up as a defense and it was obligatory on the part of the Court to do so. Forceful reliance was placed by the learned Counsel on AIR 1935 85 (Privy Council) and Tek Chand Madan v. M/s. Shyam Kamal Agencies 1971 (1) Del 348.

(16) It is true that an application filed beyond the prescribed period of limitation shall have to be dismissed although limitation was not set up as a defense .However, the rule has application when the bar of limitation is attracted on admitted facts or facts beyond controversy. The rule is not attracted when the plea of limitation is founded on such facts as are disputed, without adjudication where of the Court cannot determine whether the bar of limitation was attracted or not .In such a case, the party relying on the bar of limitation has to allege the facts, on proof whereof, the Court shall apply the bar of limitation.

(17) In Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, their Lordships of the Supreme Court have held that a plea of limitation is a plea of law, which concerns the jurisdiction of the Court trying the proceedings and finding on the plea in favor of the party raising it would oust the jurisdiction of the Court. In

Banarsi Das Vs. Seth Kanshi Ram and Others, their Lordships have held that a plea of limitation which was not purely one of law, but was a mixed question of law and facts should not have been allowed to be raised for the first time at the stage of arguments. In Central India Chemicals Private Ltd. Vs. Union of India (UOI), a Division Bench of the High Court of Madhya Pradesh has drawn distinction on between a case where limitation is an arguable point and Therefore has to be pleaded and one where it is patent and non-controversial on the proved facts. In Mst. Imam Bandi v. Hargovind Ghosh 1848 (4) MI 403 also the question of limitation emerged out of the facts and the same not having been put in issue by the pleadings, was not allowed to operate upon the case. Order 8 Rule 2 CPC enjoins for a plea of limitation, if raising issues of fact, to be raised and facts pleade specifically failing which it shall not be taken note of.

(18) In the case at hand, the notice of filing of the award was issued to the respondent by the Court on 4.10.1989. On the backside of the notice, there is an acknowledgement made-""received, Sd/- 2,11,89". Below it is affixed the official seal of the respondent. This is followed by an endorsement of the process server dated 2.11.89 certifying the service. Somewhere at the top of the back side of the notice ,there appears an illegible unidentifiable signature dated 20.10.89 which, in the submission of the learned Counsel for the petitioner, must be deemed to be the date of service. This contention of the learned Counsel has to be rejected outright. There is absolutely no basis for assuming or holding this signature dated 20.10.89 to be of anyone receiving the notice or representing the respondent. If only a plea to that effect would have been raised by the petitioner, then it could have been inquired into. The objection on behalf of the Union of India was filed in the Court on 29.11.89. Calculated from 2.11.89, it was filed within limitation. In the facts and circumstances of the case, the plea of limitation raised by the petitioner without any foundation in the pleadings cannot be entertained.

(19) For the foregoing reasons, the objection petition is allowed. The award given by the Arbitrator under Claim No. 4 is set aside. The rest of the award, is made the rule of the Court. In terms of the award to the extent to which it has been maintained ,the respondent Union of India is directed to pay an amount of Rs.5,183.12p. with interest @ 12% p.a. from the date of award till the date of payment to the petitioner. Costs of these proceedings shall be borne by the parties as incurred .