

(1996) 11 DEL CK 0011
In the Delhi High Court
Case No : Suit No. 526A of 1986

Bhushan Industrial Co. (P) Ltd.		APPELLANT
	Vs	
Union of India		RESPONDENT

Date of Decision : 06-11-1996

Acts Referred:

Citation : (1997) 40 DRJ 235

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Rajesh Banati and Raman Kapur, for the Appellant;

Judgement

M.K. Sharma, J.

(1) This is a petition u/s 14,17 & 29 of the Arbitration Act filed by the petitioner seeking for filing of the award dated 11.2.1986 passed by the Arbitrator, respondent No.2 and upon such filing of the award to pass a decree in terms of the award Along with interest till actual payment at 18% per annum.

(2) In response to the invitation of tender the petitioner submitted its tender for the supply of M.S.Rounds. The said tender of the petitioner was accepted by respondent No.1. However, disputes and differences having arisen between the parties the matter was referred to the sole arbitration of respondent No.2. The Arbitrator, after hearing the parties made/published his award on 11.2.1986. On filing of the aforesaid award in this court and in pursuance of the notice issued by this court, the respondent No.1 filed an objection within the statutory time limit under Sections 30 & 33 of the Arbitration Act.

(3) The respondent No.1 is represented by Mr. Raman Kapoor, who submits before me that the arbitrator misconducted himself and the proceedings and Therefore, the award is liable to be set aside. The counsel submits that the Arbitrator has wrongly awarded the difference of price variation inspire of the specific condition of non- availability of such benefit where extension of delivery period was granted at the request of the petitioner. According to the counsel

there was novation of contract and the petitioner was not entitled to claim for any difference in respect of price variation and under such circumstances the arbitrator misconducted himself in awarding the difference of price variation and balance price to the petitioner.

(4) The next submission of the learned counsel for the respondent No.1 is that since there were various claims raised by the petitioner before the Arbitrator the arbitrator could not have passed a lumpsum award. In other words, as the award is unintelligible to the extent that it cannot be deciphered as against which claim what is the amount awarded by the arbitrator, the award is liable to be set aside. The next submission of the learned counsel for the Respondent No.1 is that there was a prohibition for payment of interest in the contract and Therefore, the arbitrator was not justified and competent to award any interest and having done so in the instant case the arbitrator has misconducted himself and award is liable to be set aside. The learned counsel also submits that the respondent No.1 under the contract was empowered to recover liquidated damages from the contractor and the said power having been exercised by the respondent No.1 the arbitrator was not justified in awarding the amount recovered by the Railways from the contractor towards the liquidated damages. The learned counsel appearing for the petitioner, on the other hand, took me through the award passed by the arbitrator and submitted that the award passed in the instant case is not a speaking award and Therefore, this court can interfere with such an award only under very limited and special circumstances. According to him none of the objections raised by the respondent No.1 is maintainable and that the award is liable to be upheld.

(5) I have been taken through the award passed by the arbitrator and also the statement of claims filed on behalf of the parties. On perusal of the statement of claims filed on behalf of the claimants/petitioners. it appears that it has claimed difference of price on account of price variation at Rs.1699.20 per Mt on the base price of billet tested to Is 2830 as on 20.8.1980 and Stockyard price of billets tested to Is 2830 as on the date of supply and effective from 24.2.1981 as per Sail certificate. Extension to the delivery period at the request of the petitioner was given to the petitioner w.e.f. 23.3.1982. The letters issued by the respondent No.1 granting extension are part of the records of the arbitration proceedings. A bare perusal of the award passed by the arbitrator would show that the award is a non- speaking award and the arbitrator has recorded that after having heard and duly considered all arguments and considering the documents of the parties and having gone through all the material, papers and documents and having considered all the matters submitted to him in connection with the aforesaid disputes and differences he has awarded Rs.6,50,000.00 to the petitioner in full and final settlement of their claims referred to him. The arbitrator has also recorded that on failure on the part of the respondent No.1 to pay the aforesaid amount awarded by the arbitrator amounting to Rs.6,50,000.00 on or before 1.6.1986 simple interest at 15% per annum would be payable after 1.6.1986.

(6) The agreement between the petitioner and the respondent does not require giving of any speaking or reasoned award. Admittedly, the arbitrator has given a non-speaking award. The law relating to a non-speaking award is by now well settled. Non-speaking award cannot be easily interfered with or set aside. It has been held in *State of Orissa and Others Vs. Lall Brothers*, that the fact that there is an unreasoned award is no ground to set aside the award. It has been further held that an award is conclusive as a judgment between the parties and the court is entitled to set aside an award only if the arbitrator has misconducted the proceedings or when the award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid u/s 35 of the Arbitration Act or where the award has been improperly procured or is otherwise invalid u/s 30 of the Act. Following the ratio of the earlier Supreme Court decisions in the said case the Supreme Court further held that it is not open to the court to speculate where no reasons are given by the arbitrator as to what impelled him to arrive at his conclusion.

(7) In the backdrop of the aforesaid settled law in respect of a non-speaking award let me consider the award passed by the arbitrator in the present case against the backdrop of the objections raised by the respondent No.1. Having regard to the submission of the learned counsel for the respondent No.1 in respect of the price variation it is found that the respondent No.1 extended the delivery period w.e.f. 23.3.1982. Therefore, if at all there was any novation of the contract it was w.e.f. 23.3.1982 and could not be stretched to an earlier date thereto. In the present case the petitioner has claimed the difference of price on account of price variation in between the period 20.8.1980 and 24.2.1981 which is admittedly prior to 23.3.1982 the date from which the respondent No.1 extended the delivery period. The counsel for respondent No.1 states that there was no delivery of goods till 24.2.1981. However, the said submission relates to factual position and even if there be any mistake of fact as is held by the Supreme Court this court has no power and jurisdiction to enter into the same and cannot exercise power. In the case of *Coimbatore District Podu Thozillar Samgam Vs. Balasubramania Foundry and Others*, it has been held that mistake of fact, if any, committed by the Arbitrator is not amenable to correction in an application u/s 30 & 33 of the Arbitration Act. Apparently, Therefore, the submission of learned counsel for respondent No.1 in respect of the price variation that there was novation of contract is without any merit and is rejected.

(8) Coming to the next submission of the learned counsel in respect of the award of interest by the Arbitrator, the jurisdiction of the arbitrator to pay interest in respect of pre-suit period and also as pendent elite and future interest cannot be disputed in view of the several decisions of the Supreme Court in that respect particularly the decision in the case of *Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy*, . The only ground that has been raised by respondent No.1 in this respect is that there is a prohibition for of payment of interest under the contract. In this connection the learned counsel

referred to clause 2400 of Isi Contract. However, in my opinion, the said clause is not applicable to the facts and circumstances of the case because the same is applicable to a case where an amount is withheld by the Railways for bills in respect of other contracts. The present is not a case of withholding of amount due to the contractor and Therefore, the said submission has also no basis at all. Coming to the next submission with regard to the award of the arbitrator giving a lumpsum award, it has been held by the Supreme Court in State of Orissa (supra) that a lumpsum award is not bad per se. It has been further held that the fact that a lumpsum award has been given is no ground to declare the award as bad. In this connection reference may also be made to several decisions referred to in para 9 of the aforesaid decision of the Supreme Court in State of Orissa (Supra). The aforesaid objection also, Therefore, is without any merit.

(9) This leaves me to deal with the last submission of the learned counsel appearing for respondent No.1 that the arbitrator was not justified in awarding the amount recovered by the respondent No.1 from the contractor towards liquidated damages. As pointed out hereinabove, the award of the arbitrator is a non-speaking award. The mental process of the arbitrator cannot be appreciated particularly when the award is a non- speaking one. Further, any mistake with regard to facts being not amenable to correction and the arbitrator having found the said amount to be due to the contractor this court does not have the power to re-appreciate the said findings and decision of the arbitrator. The aforesaid ground also in my considered opinion has no legal basis.

(10) In the result, the objections filed by respondent No.1 as against the award passed by the arbitrator are without any merit and the same are accordingly dismissed.

(11) Therefore, the award passed by the arbitrator is made a Rule of the Court. Let a decree be drawn up in terms of the award. The petitioner shall also be entitled to interest @ 12% per annum from the date of the decree till realisation in terms of Section 29 of the Arbitration Act. There shall be no order as to costs.