

(2005) 12 DEL CK 0022
In the Delhi High Court
Case No : CS (OS) No. 940A of 1996

Continental Construction Ltd.	Vs	APPELLANT
Chief Engineer (Constructions) N.E. Railway and Others		RESPONDENT

Date of Decision : 05-12-2005

Acts Referred:

Arbitration Act, 1940 — Section 14(1), 14(2), 30, 33
Limitation Act, 1963 — Article 119

Citation : (2005) 12 DEL CK 0022

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : R.K. Das, for the Appellant; Jagjit Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—Before we proceed to examine the issues involved, few salient facts may be noted first.

2. The petitioner was awarded a contract by the respondents/Northern Eastern Railway, Gorakhpur. Some disputes arose between the parties and the arbitration clause contained in the agreement was invoked. Vide memo dated 5th December, 1994 the General Manager, Northern Eastern Railway, Gorakhpur nominated two arbitrators to adjudicate the disputes and claims of the petitioner. The arbitral tribunal heard the matter on various dates and reserved the award. The petitioner was informed vide letter dated 25th January, 1996 by the arbitrators that the award had been finalized and it was asked to submit the requisite stamp papers which it did on 29th January, 1996. The arbitrators signed and published the award on 31st January, 1996 and sent the copies to the parties. The petitioner received a copy of the award on 3rd February, 1996. It made a request vide letter dated 24th February, 1996 to the arbitrators to cause the original award together with depositions and arbitral documents file before this court u/s 14(2) of the Arbitration Act, 1940 (for short 'the Act'). However, the arbitrators did not file the original award along with arbitration records pursuant to the

aforesaid request.

3. After waiting for some time, the petitioner filed the present application u/s 14(2) of the Act seeking direction to the arbitrators to file the award in this court with prayer that after the filing of the award, notice be issued to the parties of the filing of this award. The petitioner has annexed copy of the award received by it along with the application. The Chief Engineer (Constructions), Northern Eastern Railway, Gorakhpur is arrayed as respondent No. 1 and the two arbitrators are impleaded as the respondents 2 and 3. On 12th December, 1996, it was directed that notice of the petition be issued to the respondent No. 1 for 17th March, 1997. This notice was duly served and the respondent No. 1 through counsel entered appearance on 17th March, 1997 on which date notice was issued to the arbitrators to file the award and the proceedings. The award was filed pursuant to this direction and on 21st July, 1997 time was allowed to both the parties to file their objections, if any, within statutory period, if not already filed.

4. The petitioner has filed objections (IA No. 2349/1997) under Sections 30 and 33 of the Act to this award with prayer that the award be set aside. On the other hand, the respondents have filed reply to the petition u/s 14(2) of the Act contesting the maintainability of this petition u/s 14 on two grounds, namely, (a) the petition u/s 14(2) is time barred having not been filed within 30 days of the receipt of the intimation from the arbitrators of making and publishing the award and (b) this court has no territorial jurisdiction to entertain this petition as no part of cause of action had arisen in Delhi.

5. I have heard learned counsel for the parties on the aforesaid issues. RE: LIMITATION:

6. Admittedly, the copy of the award was received by the petitioner on 3rd February, 1996. Petition u/s 14(2) was filed on 12th April, 1996. Undoubtedly, it is beyond 30 days from the date of receipt of the copy of the award which is the limitation period prescribed under Article 119 of the Limitation Act. However, learned counsel for the petitioner submitted that since after the receipt of the copy of the award the petitioner had vide its letter dated 24th February, 1996 requested the arbitrators to file the original award with depositions and arbitral documents in this court, the petitioner had diligently pointed out/requested by making request to the arbitrators within 30 days of the award and, Therefore, the petition should not be treated as time barred and in any case there is sufficient ground to condone the delay.

7. In order to appreciate this contention, I may reproduce Sub-Sections (1) and (2) of Section 14 of the Act: 14. Award to be signed and filed-

(1) When the arbitrators or umpire have made their award, they shall sign it, and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

8. Sub-Section (2) mandates that the arbitrators or umpire shall cause the award or sign a copy of it, together with depositions and documents etc. to be filed in the court in the following eventualities:

(a) At the request of any party to the arbitration agreement; or

(b) At the request of any person claiming under such party; or (c) If so directed by the court.

9. Thus when a request is made by any party to the arbitration agreement, it is a duty case on the part of the arbitrator to file the award. He is thus bound to file the award in court, if so requested by the party. [See: Sankata Prasad v. Jagannath, AIR 1922 Oudh 276.

10. In the instant case, though the petitioner acted promptly in making the request to the arbitrator, the arbitrator failed to act on this request and thus did not discharge his obligation cast upon him vide Sub-Section (2) of Section 14 of the Act. Since the arbitrator was expected to act on this request and file the award, the petitioner could not presume that the arbitrator would be failing in his duty. Therefore, when the petitioner came to know that the award is not filed, it moved the present petition on 12th April, 1996. In these circumstances, even if the petition is to be treated as time barred, there is sufficient ground to condone the delay and oral request of the petitioner which is based on the facts already on record, should not be rejected as otherwise injustice would be caused to the petitioner. Delay, if any, in filing the petition is accordingly condoned. RE: JURISDICTION:

11. The undisputed facts which may have bearing on this issue are that the contract was awarded by the Chief Engineer (Construction), Northern Eastern Railway, Gorakhpur. It is also not in dispute that tenders were issued by the said office at Gorakhpur. The contract in question was also executed in the State of Uttar Pradesh. Request of the petitioner, after the disputes arose, was made to the General Manager, Northern Eastern Railway, Gorakhpur seeking appointment of the arbitrators. The arbitrators conducted the proceedings at Gorakhpur and Allahabad. The award in question also published at Allahabad. However, the petitioner's attempt to confer the jurisdiction on this court is on the ground that the Northern Eastern Railway comes under the Ministry of Railway which is situated at New Delhi which accepted the tender. It is submitted that merely because internal demarcation has been made for the purpose of administrative bifurcation the same cannot be made a ground to divest the jurisdiction from this

court when the respondent No. 1 is under the Ministry of Railway which has its office at New Delhi. It is also contended that notice of the award was received by the petitioner on 3rd February, 1996 at their office in New Delhi.

12. No doubt, merely because Northern Eastern Railway comes under the Ministry of Railway would not be sufficient to clothe this court with territorial jurisdiction. Had the matter rested there, probably this court might not have territorial jurisdiction to entertain this petition in view of the Full Bench judgment of this court in the case of Gupta Sanitary Stores Vs. Union of India and Another, In another Full Bench decision of this court in Hindustan Metal Works v. Union of India reported as 1987 (1) Arb.L.R. 6, this court held that since the headquarters of Northern Railway was at Delhi, the courts at Delhi will have territorial jurisdiction even though tenders were issued by the office of the Divisional Superintendent, Lucknow and the tenders for whitewashing and annual repairs of the staff quarters coming within the operational jurisdiction of the Divisional Superintendent, Lucknow. The Full Court observed as under: "Principal place of business cannot be made to depend on each tender for it is well known that tenders are issued by various authorities depending upon their respective financial powers. Principal place of business must be a regular, fixed place independent of each tender. It may be noted that u/s 80 of the CPC where a notice has to be given it is provided that in the case of the suit where it relates to the railways the General Manager of that railway is the competent authority to receive notice. In that view if any suit is to be filed notice has to be given to the General Manager of the concerned railway. The General Manager's office which is the headquarter of each railway must, Therefore, be taken to be the place where the General Manager and control is exercised. It is common case that the headquarters of Northern Railway is at Delhi."

13. Aforesaid two cases were considered by a learned Single Judge of this court in another case arising between the same parties, which are the parties here. In this case entitled Continental Construction Works v. Chief Engineer (Construction) Northern Eastern Railway, Gorakhpur, AA No. 22/1997 decided on 26th November, 2001, which was also a case between the same parties, the tenders were invited by the General Manager, Northern Eastern Railway, Gorakhpur and the contract was also executed outside the territorial jurisdiction of this court. However, since the tenders were accepted by the Ministry of Railway for and on behalf of the President of India, the court opined that it was sufficient ground to confer territorial jurisdiction on this court as would be clear from the reading of paras 8 and 9 of the said judgment: " Para 8: Reverting back to the facts of the present case, it is not in controversy that the tenders were invited by the General Manager, North-East Railway, stationed at Gorakhpur. The contract had been entered into therein and the work even had been executed outside the territorial jurisdiction of this Court. If that was so, there was no controversy keeping in view the decision of this Court in the case of Hindustan Metal Works v. Union of India (supra). However, Annexure-14 is the letter that had been issued by the Chief Engineer, North-East Railway, Gorakhpur. Relevant

extract of the same reads:-

The tender has been accepted by the Ministry of Railways for and on behalf of the President of India and the acceptance has been communicated under Chief Engineer (con)/CBP, N.E.Railway, Gorakhpur's letter no. W/CON/362/741/(III)/W-3 dated 03.07.1992.

Para 9: It is abundantly clear from the aforesaid that though the General Manager, North-Eastern Railway was the person who had to enter into the contract and if he had done so, this court would not have the jurisdiction to entertain the petition. Herein, the above said letter clearly shows that the tender, in fact, was accepted by the Ministry of Railways and this fact had been communicated to the Chief Engineer, North-Eastern Railway. In other words, the Ministry of Railways, which is situated in Delhi, would confer the courts at Delhi the jurisdiction to entertain the suit. Keeping in view this fact, it must be held that the courts at Delhi have the jurisdiction to entertain the suit."

14. In the instant case also, acceptance of the petitioner's tenders vide letter dated 23rd June, 1992 is almost in identical terms clearly mentioning that the petitioner's tender "has been accepted by the Ministry of Railway for and on behalf of the President of India". Since the contract is accepted by the Ministry of Railway on behalf of the President of India, which is situated in New Delhi, the Delhi courts would have the jurisdiction to entertain the petition.

15. The two preliminary objections of the respondent are accordingly rejected. is No. 2349/1997

16. Let me now deal with the objections to the award filed by the petitioner vide this application. The objections are under Sections 30 and 33 of the Arbitration Act, 1940. As already noted above, both the parties had nominated one arbitrator each. It may be mentioned that the two arbitrators had appointed an umpire also. However, the question of reference of the matter to the said umpire did not arise as both the arbitrators have given unanimous award.

17. The award is primarily challenged on the ground that the learned arbitrators have misconducted themselves in the proceedings and the award is otherwise invalid. Allegation is that they have violated the express provision of arbitration clause 63(3) which, inter alia, provides:- " 63 (3) (a) (iii) "the Arbitrator/ Arbitrators/Umpire so appointed as the case may be shall give the award on all matters referred to arbitration indicating therein break-up of sums awarded separately on each individual item of disputes."

18. According to the petitioner, the requirement of the aforesaid clause was that the arbitrators were supposed to give the award on all matters referred to the arbitration indicating their break-up of sums awarded separately on each individual item of dispute. It is not done. The arbitrators have awarded the claim of the petitioner only against claim no. 2. According to the petitioner, this claim itself consisted of three main items, namely, depreciation cost of truck, DPOL and

driver and helper (wages). But the lump sum amount of Rs. 10 lacs is awarded. The grievance is that specific amount should have been awarded against each of three items. This contention of the petitioner is without any basis. Clause 63(3) cannot be read to mean that in respect of each item and sub-items of a particular claim, separate amounts are to be indicated in the award itself. The clause would only mean that the arbitrators were supposed to indicate the amount awarded against each claim separately, i.e. not to award lump sum figure against all claims but award was to be given claimwise. This has been so done. The arbitrators were not expected to separately indicate as to how much amount is awarded against different items/sub-items of a particular claim. This is the accepted position of law as dealt with by the Supreme Court in number of cases. A Division Bench of this Court in the case of Delhi Development Authority v. Bhagat Construction Co. (P) Ltd. and Anr., 2004 (3) Arb. LR 548, after examining all the relevant case law took the following view:- "8. We have given our careful consideration to the arguments advanced by the learned counsel for both the parties. In order to appreciate the contentions of the parties, it is important and relevant to see as to how the Arbitrator has dealt with the matter. It is now well established principle of law that the Court will not substitute its own opinion for that of the arbitrator. In the instant case, the Arbitrator was a retired Chief Engineer of the CPWD, he was very well conversant with the kind of disputes on which he was adjudicating. It is also well settled that for the opinion taken and the decision rendered by the Arbitrator, this Court will not substitute its own view, even if this Court comes to a different conclusion, until and unless the decision of the Arbitrator is manifestly perverse or has been arrived at on the basis of wrong application of lawxxxxx.

12. The well settled principle of law is that the Arbitrator need not to disclose the mathematical calculations in the Award. If the Award shows that application of mind and a view which is plausible by the Arbitrator, it can be taken as correct."

19. In Delhi Development Authority v. Bhagat Construction Co. (P) Ltd. and Anr., 2004 (3) Arb. LR 481, following observations are relevant:- "From the above, it would be clear that the Arbitrator who was well versed in the matter before him as a former Director General of CPWD on the basis of his experience took into consideration the various aspects and that is why instead of awarding a sum of Rs. 16 lakhs 50 thousand as claimed by the claimant restricted the said claim to Rs. 3 lakhs 50 thousand. Arbitrator has not to disclose the basis or the mental process for arriving at such figure. Even otherwise Arbitrator when called upon to give a reasoned Award is still not required to write a detailed Judgment as the Judges do. It is sufficient that he has indicated his trend and given outline to indicate the basis on which he has arrived at such figure."

20. Therefore, I do not find any merit in this petition. The claims were considered by the two arbitrators who are technical persons. One of the arbitrators was petitioner's nominee, it is an afterthought plea raised now to the effect that the arbitrators were the officials of the respondent. Similar plea in respect of other

claims is also misconceived, more so when those claims are rejected.

21. The other plea raised is that additional documents filed by the petitioner were not considered and award is on extraneous consideration by excluding the material placed on record. The plea is far-fetched and is only a vain attempt to show that the arbitrators have not considered the material in proper perspective. This Court, it is trite law, is not sitting as appellate Court over the decision of the arbitral tribunal. It has not to dig into the record to find out as to whether any particular documents were considered or ignored, as that enquiry is not permissible when there is error apparent on the face of record. I, Therefore, do not find any merit in these objections to the award which are accordingly dismissed. CS(OS) No. 940-A/1996

22. The award published by the arbitrators is hereby made rule of the Court.

Decree to follow in terms of the said award.