
(2004) 05 DEL CK 0060

In the Delhi High Court

Case No : IA 3819 of 1987 in CS (OS) 2216A of 1986

Devi Dayal (Sales) Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 24-05-2004

Acts Referred:

Citation : (2004) 05 DEL CK 0060

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

Bench : Single Bench

Advocate : Saleem Hasan, for the Appellant; Dalip Singh, for the Respondent

Judgement

Mukundakam Sharma, J.—The petitioner entered into a contract with the Union of India through Director General of Supplies and Disposals, New Delhi for supply of 2000 metric tons BHC (6.5% Gamma Isomer) water soluble powder. The said contract was subject to the general conditions of contract. Disputes arose between the parties in respect of the aforesaid agreement. Since the agreement contained an arbitration clause, the said disputes arising between the parties were referred to an arbitrator, namely, Dr.P.C.Rao for his adjuration and decision in terms of the arbitration clause. The parties filed their claims and counter claims before the sole arbitrator. However, Dr.P.C. Rao resigned as the arbitrator upon which Ms.R. Lakshmanan was appointed as the sole arbitrator. A the time of appointment as the sole arbitrator, Ms.Lakshmanan was First Addl. Legal Adviser and was also working as an arbitrator as D.G.S.andD arbitrator.

2. During the pendency of the aforesaid arbitration proceedings, she was promoted as a Joint Secretary and posted at Bombay Ministry of Law Secretariat. She, Therefore, resigned as she was no longer working as D.G.S. and D. arbitrators. However, subsequently she was again appointed as the arbitrator. Therefore, she continued to hold the proceedings and passed her award on 10th of September, 1986. Being aggrieved by the aforesaid award passed by the arbitrator, the petitioner herein has filed objections under Sections 30 and 33 of the Arbitration Act. I have heard the counsel appearing for the parties and also

have perused the records.

3. One of the main objections that is raised by the petitioner against the award passed by the arbitrator is that there was a defect in the appointment of the arbitrator as according to the counsel for the petitioner, the arbitrator could not have been re appointed for the second time after she had resigned after her first appointment. The circumstances under which Ms. Lakshmanan was appointed for the second time have already been explained in the preceding paragraphs. It is also revealed from the records that the petitioner at no stage of the arbitration proceedings raised any objection as against the subsequent appointment of Ms. R. Lakshmanan as the arbitrator. The petitioner continued to participate in the arbitration proceedings even after her second appointment as the sole arbitrator without any demur or protest. The petitioner not only submitted to the jurisdiction but also continued to participate in the proceedings without any protest or objection and took a chance and when the award has gone against the petitioner, the petitioner thought it fit to raise such an objection for the first time in the petition filed under Sections 30 and 33 of the Arbitration Act. Therefore, the aforesaid objection of the petitioner on the face of it is found to be barred under the principles of waiver and acquiescence. In this connection reference may be made to the decision of the Privy Council in *Donald Campbell v. Jesrej Girdhari Lal* reported in AIR 1920 PC 123 wherein it is clearly observed by the Privy Council that if there was a defect in the appointment of an arbitrator, the failure to raise the objection at the earliest opportunity amounted to waiver of such objection. In *N. Chellappan Vs. Secretary, Kerala State Electricity Board and Another*, the Supreme Court has observed that a party who submitted to the jurisdiction of the Umpire and took part in the proceedings before him without any demur cannot turn around after the award is made to challenge the jurisdiction of the Umpire. It was held that he would be precluded by his acquiescence from challenging the award for lack of jurisdiction. In *M/s Neela Kanthan and Bros. v. S.E. National Highways* reported in (1998) 4 SCC 462, the Supreme Court has held that if the parties to the reference either agree before hand or afterwards acquiesced in the appointment made they would be precluded from objecting to such appointment as invalidation in subsequent proceedings.

4. In my considered opinion, the ratio of the aforesaid decisions clearly applies to the facts of the present case. In that view of the matter the first objection raised by the petitioner as against the award passed by the arbitrator is found to be without any merit and is rejected.

5. The next contention of the counsel for the petitioner is that the arbitrator has failed to give any reason for the award passed by her. I have carefully examined the aforesaid contention. The arbitration clause, which was applicable to the contract, as entered in 1977. The said clause did not stipulate or require the arbitrator to give any reason for the award. The said clause is clause 24 of the agreement. In respect of the clause of the aforesaid nature, it is not obligatory

for the arbitrator of give any reason in support of his award. If it is not mandatory to give any reasoned award in terms of the arbitration agreement the arbitrator is free to record only the conclusions without giving any reason in support of the conclusions arrived at. In a case where the award does not contain any reason and where the award is a non-speaking award, 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 conclusions. In *State of Orissa and Others Vs. Lall Brothers*, , the Supreme Court has already observed that the validity of such award cannot be questioned unless there is an error of law apparent on the face of the award. In *State of Andhra Pradesh and another, etc. Vs. R.V. Rayanim etc.*, and *State of Maharashtra Vs. M/s. Nav Bharat Builders*, , it was held by the Supreme Court that where no reasons are given it is not open to the Court to probe the mental process of the arbitrator to speculate as to what impelled the arbitrator to arrive at his conclusion.

6. In the present proceedings the award given by the arbitrator is devoid of any reason and, Therefore, it is a non-speaking award. The conclusions have been arrived at and recorded by the learned arbitrator without giving any reason in support of the sa d conclusions.

7. In view of the aforesaid position, this Court is not in a position to probe the mental process of the arbitrator as to what impelled the arbitrator to arrive at her conclusions. It is submitted by the counsel for the petitioner during the course of hi submissions that even in spite of evidence on record the arbitrator failed to appreciate the same and, Therefore, the conclusions arrived at are required to be set aside. I am unable to accept the aforesaid contention for the simple reason that the arbitrator has not given any reason and, Therefore, Court is not in a position to re-appreciate the same. It is also not permitted to do so in absence of any finding recorded by the learned arbitrator.

8. In that view of the matter, the objections filed by the petitioner are found to be without any merit and the same are dismissed. The award filed by the arbitrator is made a rule of the Court. Let a decree be drawn up in terms of the award.