

(1992) 01 DEL CK 0026
In the Delhi High Court
Case No : Suit No. 1565 of 1988

Food Corporation of India

APPELLANT

Vs

T.R. Behl

RESPONDENT

Date of Decision : 24-01-1992

Acts Referred:

Citation : (1992) 2 ARBLR 456 : (1992) 22 DRJ 220

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : D.R. Mahajan, for the Appellant;

Judgement

(1) Food Corporation of India (hereinafter called as F.C.I.) filed a petition under Sections 14, 15, 16 and 17 of the Arbitration Act, pursuance to which the direction was issued to respondent No.2, Shri B.N. Maini, Additional Legal Advisor, Government of India, the sole arbitrator to file his award. The award along with the proceedings was filed in December, 1988. Counsel for the petitioner accepted the notice of the filing of the award on 8th December, 1988 whereas notice to respondent was issued for 9th February, 1989. The petitioner as well as the respondent both have filed the objections to the award. Objections of the petitioner were filed vide is No. 1111/89 and the objections of the respondent were filed vide I.A.3849/88. Both the parties filed the objections within time.

(2) is 1111/89 I have perused the objections filed by the petitioner, Food Corporation of India. I find no merits in the objections filed by the petitioner. The objection petition is accordingly dismissed.

(3) is 3849/88 The brief facts of the case are that the petitioner-corporation, entered into an agreement with the respondent No. 1 i.e. M/s. T.R. Behal & Co. for construction of 10,000 metric tonnes (Rail-Head). Under the Contract the date of commencement of the work was to be reckoned from 20th February, 1978 and the work was to be completed within period of ten months. The said

Agreement contained an arbitration clause. The dispute arose between the parties as result of which the respondent asked the petitioner to appoint an arbitrator. When the petitioner-corporation did not appoint an arbitrator inspire of reminders, the respondent filed a petition u/s 20 of the Arbitration Act for appointment of an arbitrator. The said petition was listed as Suit No.32/82. In that petition in para 8, the respondent made 7 claims. The petition was accepted and while delivering the judgment, the Court opined that the claims of the Contractor set out in paragraph 8 of the application be referred to arbitration. Directions were issued to the petitioner, Food Corporation of India, to appoint an arbitrator to decide the claims or the disputes referred to by the contractor. There was no counter claim of the Food Corporation of India before the Court nor the same was referred. The food Corporation of India appointed Shri R. Laxhman as the arbitrator, who resigned and in his place, the respondent No.2, Shri B.N. Mani, was appointed as the sole arbitrator who has made and published his award on 29th April, 1988. While publishing the award, the arbitrator has also awarded an amount in favor of the food Corporation of India. It is on account of entertainment of counter claim, filed by the F.C.I, that objections have been filed by the claimant.

(4) The main thrust of claimant's objections are that the arbitrator could not have entertained the counter claim of the Food Corporation because the same were not referred by the Court, nor at the time when the directions were issued nor in the suit nor at any subsequent time. Hence the arbitrator misconducted himself by enlarging the scope of the disputes. He has acted beyond the scope of reference. Thus according to the petitioner the award against the counter claim is liable to be set aside.

(5) This position has been contested by the F.C.I, on the ground that the objections are outside the scope of Section 16(3) of the Arbitration Act, and that the award cannot be split into two because it is a composite award. The arbitrator had the jurisdiction to entertain the counter claim pursuance to the provision of the arbitration Agreement.

(6) I have heard the counsel and perused the direction given by this Court in S.32/89 dated 20th September, 1984 which is reproduced as under:

"THE claims of the petitioner fall under three categories, namely, refund of security deposit, payment for the work done and claim for damages besides interest and costs. The said claims would arise out of the contract and are covered by the arbitration agreement. For the aforesaid reasons, the issues are decide in favor of the petitioner. Respondent No.2 is directed to file the arbitration agreement and to refer the disputes to arbitration in accordance with the terms of the agreement. The said reference should be made within two months from today."

(7) A perusal of the court direction clearly shows that the Court had referred the disputes which had risen by then and which were asked to be referred to by the

petitioner i.e. the present respondent. Those fell in three categories namely refund of security deposit, payment for the work done and claim for damages besides interest and cost. By then, there was no claim made by the Food Corporation before the Court. Therefore, no directions were given by the Court that the counter claim of the Food Corporation should also be entertained by the arbitrator. The perusal of the award shows that the arbitrator had entertained the counter claim of the Corporation. It would further show that it is not a composite or interlinked claim of the claimant as well as the counter claim of the Corporation. They are distinct. These are not overlapping. Mere observation by the arbitrator that the respondent can adjust or recover the amount awarded in their favor in claim of the petitioner does not mean that it is a composite award.

(8) The short question for determination is could the arbitrator entertain the counter claims which were not referred by the Court? The reference by the Court was in pursuance to the claims filed by the petitioner. To my mind, the answer will be that the arbitrator has exceeded his jurisdiction by entertaining the counter claim.

(9) It is a well settled principle of law that the arbitrator cannot enhance or enlarge the scope of reference. Even under Clause 25 of the Agreement, a party invoking the arbitration has to specify the disputes to be referred to arbitration. In this case no dispute was specified by the Food Corporation before the Court when the reference was made. Therefore, counter claim was beyond the scope of reference and the arbitration had no authority to entertain the same. In this regard, reference can be had to the decision of the Supreme Court in the case of Orissa Mining Corporation Ltd. Vs. Prannath Vishwanath Rawlley, . In the case before Supreme Court, the facts were that M/s. Pran Nath Vishwanath Rawlley, a partnership firm was carrying on business of transport, mining, loading and unloading etc. with its office at Rourkela. Orissa Mining Corporation Ltd. invited tenders for the work of raising of iron ore in Khandadhar Mines and transporting it to Barsuan Railway siding including wagon loading. An agreement was entered between the parties. Under the term of the Agreement, the respondent was required to work in quarry No.1 and 2 but during the progress of the work, on the directions of the appellant, the respondent worked in quarry No.5 also and thus had to cover distance between quarry No.1 and 2 for which he demanded extra cost for the transport. The dispute arose and when the Corporation did not appoint the arbitrator, it was forced to file the application u/s 20 of the Arbitration Act pursuant to which an arbitrator was appointed. While referring the dispute to arbitration, disputes to be referred were mentioned. However, during the course of arbitration, the respondent filed an additional claim before the arbitrator. Arbitrator awarded the amount on the basis of that additional claim. Aggrieved by this award, the appeal was filed in the High Court of Orissa who took the view that the extra claim had also been specifically referred to and the correctness of the reference order not having been challenged the same was not open to question. It also opined that it also-futile to argue that the reference made to the arbitrator was only confined to the respondent's claim and that the

arbitrator in awarding additional amount exceeded his authority and jurisdiction. These observations of the High Court were found by the Supreme Court amounting to misconstruction of the dims. Supreme Court observed that when the reference was confined to the claims made in the plaint, the arbitrator would have to restrict his award only to these dims. Since the arbitrator awarded additional claim hence he exceeded his jurisdiction. Therefore, there was an error apparent on the faces of the award. The arbitrator cannot enlarge the scope of the reference and entertain fresh claims without a further order of reference from the Court. To the same extent is the observation of our High Court in the case of Natwar Lal Shamal Das and Co. Vs. Minerals and Metals Trading Corporation of India, . While delivering the judgment, Justice Avadh Behari observed that the order, of reference defines the limits of the authority and the jurisdiction of the arbitrator. The arbitrator's authority had its source in the order of reference. He cannot traverse beyond the reference made by the Court. If he does so, he acts without jurisdiction. The arbitrator has necessarily to restrict his award only to the claim as put for award before the Court in Section 20 proceedings. It was further held that the arbitrator acted beyond the scope of the reference in taking into account the claim for loss of profit which was put forward before him for the first time.

(10) Therefore, from the law as settled by the Supreme Court referred to above, it is clear that the arbitrator had to confine himself to the order of reference made by the Court as already observed above. The Court while disposing of the petition of the respondent/Objector had restricted the reference to the claims as mentioned in paragraph 8 of that petition. Those were only the claims of the Contractor. No counter claims of the F.C.I, were referred. Therefore, to my mind, the arbitrator exceeded his jurisdiction by entertaining and awarding counter claim in favor of the Corporation.

(11) An argument was also addressed that the respondent/objector had not objected before the arbitrator regarding counter claims, rather respondent/objector participated in the arbitration proceedings, hence cannot raise this objection now. This argument has no force because there cannot be any acquiescence in the arbitration proceedings which are clearly beyond the Court's order of reference. The parties are not precluded from objecting to the award later on the ground that the award was in excess of jurisdiction and the entire proceedings were invalidated thereby. Attending and taking part in the proceedings will not cure the defect where the arbitrator lacked inherent jurisdiction.

(12) For all those reasons, I set aside the award of the arbitrator to the extent of the counter claim awarded in favor of the Food Corporation. So far as the award made in favor of the respondent/objector is concerned, the same is hereby made rule of the Court with interest at the rate of 9% from the date of the award till realisation and costs.