

(2009) 05 DEL CK 0048

In the Delhi High Court

Case No : CS (OS) 523-A and 505-A of 1994

Foresight Shipping Corpn.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 04-05-2009

Acts Referred:

Citation : (2009) 05 DEL CK 0048

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Vijaykishan, Sanjeev Sharma and Vikram Jetly, for the Appellant;
Valmiki Mehta and Deepak Dewan, for the Respondent

Judgement

Shiv Narayan Dhingra, J.—By making an application u/s 14(2) of Arbitration Act, 1940, the learned Arbitrator filed an award signed by the Arbitrators on 22 and 29th October 1993 respectively, in the Court. Notice of this award was sent to the parties and respondent filed objections against the award that this Court had no territorial jurisdiction to entertain the application and that the Arbitrator mis-conducted in rendering a non-speaking award in spite of a specific request made by the Objector in the appointment letter that the Arbitrator should render a reasoned award. The other objections raised by respondent are that the Arbitrator erroneously awarded different amounts as stated in the award to the petitioner and erroneously rejected the claim of the Objectors. It is stated that allowing the claims of the petitioner and rejecting the claims of respondent tantamounted to misconduct on the part of the Arbitrator.

2. This Court on 17th January 1997 framed the following issues:

1. Whether the award passed by the Arbitrator is liable to be set aside in view of the objections filed by the respondents against the award.

2. Relief.

3. Issue No. 1: Counsel for the objector/respondent during arguments stated

that the Arbitrator in this case exceeded his jurisdiction by filing an application u/s 14(2) of Indian Arbitration Act with a prayer that this Court should make the award a rule of Court and should give further reliefs which it may deem fit. It is submitted that it was none of the duties of the Arbitrator to request the Court to make the award a rule of Court.

4. Filing of an award is a ministerial act. Section 14 of the Arbitration Act, 1940 is not exhaustive and it does not lay down how the award has to be filed by an Arbitrator. An award can be filed by the Arbitrator in the Court on the request of one of the parties or when none of the parties comes forward, suo motto. There is no bar on the Arbitrator on filing an award in the Court suo motto. It may be that the Arbitrator was not advised properly and he need not have filed award with an application and with a prayer that the award be made rule of court and should have left this to the parties; but merely because the Arbitrator filed the award with an application u/s 14 with a prayer that the award be made rule of court, does not tantamount to committing of any illegality or misconduct. Filing of an award is not a judicial or quasi judicial act of the Arbitrator. The Arbitrator could have sent the award to the Court by post instead of filing it in the Court through an advocate. An award cannot be set aside on the ground that it was filed by the Arbitrator in the Court through an advocate with an application u/s 14(2) of the Act.

5. Coming on merits, Counsel for the respondent argued that the award was a non speaking award and he drew my attention to the letter appointing the Arbitrator wherein it was mentioned by the objector (Union of India) that the Arbitrator should give a speaking award. In Food Corporation of India Vs. Jagdish Chandra Saha, , the Supreme Court observed that an award cannot be set aside on the ground that the Arbitrator has not given the reasons in the award made by him so long as the arbitration Clause does not contain that giving of reasons was necessary for the Arbitrator. This Court in Express Engg. Con. Co. v. Municipal Corporation 1982 RLR 88, dealt with the question whether one of the parties can require Arbitrator to make a speaking award. This Court observed that one party has no power to lay down such a condition at the time of appointment of an Arbitrator if the arbitration agreement does not provide for a speaking award. A party cannot unilaterally lay down that the award has to be a speaking award. I consider that the objection raised by the petitioner on the ground of award being a non-speaking award must fail.

6. The other contention is about misconduct of the Arbitrator. Merely because the Arbitrator has allowed a claim of the petitioner and rejected the claim of the objector does not amount to misconduct. The petitioner has failed to bring on record any other misconduct of the arbitrators, judicial or non judicial. A perusal of award would show that the Arbitrators passed the award on the basis of evidence led by the parties and have given calculations for the amount awarded in favour of the petitioner. Though no detailed reasons have been given by the Arbitrator but this Court and the Apex Court has time and again held that

reasonableness of reasons given by the Arbitrator cannot be challenged. It is not open to the Court to speculate where no reasons are given by the Arbitrator, as to what implied him to arrive at a conclusion. In *Sudarsan Trading Co. v. The Govt. of Kerala and Anr.* AIR 1989 SCC 890, the Supreme Court observed:

29. The next question on this aspect which requires consideration is that only in a speaking award the court can look into the reasoning of the award. It is not open to the court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. See the observations of this Court in *Hindustan Steelworks Construction Ltd. Vs. C. Rajasekhar Rao*, . In the instant case the arbitrator has merely set out the claims and given the history of the claims and then awarded certain amount. He has not spoken his mind indicating why he was done what he has done; he has narrated only how he came to make the award. In absence of any reasons for making the award, it is not open to the court to interfere with the award. Furthermore, in any event, reasonableness of the reasons given by the arbitrator cannot be challenged. Appraisement of evidence by the arbitrator is never a matter which the court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisement of the evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a judge on the evidence before the arbitrator. See the observations of this Court in *Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar and Another*, .

7. The other contention raised by the objector/respondent is that the interest @ 11% per annum awarded by the Arbitrator was on the higher side. I consider that it was not proper for this Court to modify the rate of interest as granted by the Arbitrator. Even otherwise, the interest awarded by the Arbitrator was not on the higher side.

8. Relief: I find no merits in the objections. The objections are hereby dismissed. The award is hereby made rule of Court.