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**(2004) 09 DEL CK 0137**  
**In the Delhi High Court**  
**Case No : CS (OS) No. 1389-A of 1996**

G.L. Textiles Co.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision :** 30-09-2004

**Acts Referred:**

Arbitration Act, 1940 — Section 30, 33

**Citation :** (2005) 1 ARBLR 321

**Hon'ble Judges :** Ramesh Chand Jain, J

**Bench :** Single Bench

**Advocate :** Shiv Khorana, for the Appellant; Shires P. Singh, for Anil Grover, for the Respondent

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## Judgement

R.C. Jain, J.—Pursuant to a reference made by this Court u/s 20 of Arbitration Act, 1940, the sole arbitrator Mr. Ram Bahadur, Additional Legal Advisor to the Government of India, Ministry of Law, Justice and Company Affairs, Department of Legal Affairs entered upon the reference in relation to disputes arising out of a contract A/T No. TWL-3/101/62/657/3-3-76/PAOD/147/511/RP/1238/PAOD, dated 19.02.1982 and has made and published his award dated 30.10.1995. The arbitrator filed the said award in this Court along with the proceedings and notice was issued to the parties inviting objections, if any. The petitioner-contractor filed the objections under Sections 30 and 33 of the Act for setting aside the award of the sole arbitrator on a variety of grounds listed in the petition. A reply has been filed to the objections on behalf of the respondent denying that there are any ground(s) much less sufficient grounds for setting aside the award of the sole arbitrator. On the pleadings of the parties, following issues were framed:

(1) Whether the award dated 30th October, 1995 is liable to be set aside on the ground of objections filed on behalf of the petitioner ?

(2) Relief.

The parties were directed to lead their evidence by way of affidavits, but the

parties did not choose to file any affidavit and largely relied upon the arbitral proceedings and the documents and material brought on record.

2. I have heard learned counsel for the petitioner/objector and learned counsel for the respondent and have given my thoughtful consideration to their submissions.

Issue No. 1

3. Though in the petition under Sections 30 and 33 of the Act, the petitioner has pressed a number of grounds for setting aside the award of the sole arbitrator, but during the course of hearing, Mr. Khorana, learned counsel for the objector has confined his attack only to few grounds.

4. First and foremost ground pressed by learned counsel for the objector is that the arbitrator has derived personal knowledge by seeing the purchase file after closure of the case in a secret manner in the absence of the petitioner and without any notice to the petitioner and, Therefore, the principles of natural justice have been violated and the award is liable to be set aside. This is born out from the record, more particularly, the recitation in the award itself appearing on second page of the award where the arbitrator has mentioned, "I have also perused the purchase file brought before me on my directions" as also this fact is admitted by the respondent-Union of India in their reply to para 14. Therefore, the question which needs to be considered is as to whether this perusal of the purchase file by the arbitrator after the closure of the hearing and without any notice to the petitioner was a permissible course for the arbitrator and if not so, what is its consequences. Mr. Khorana in support of his contentions that the arbitrator was not empowered to peruse the purchase file by calling the same from the department after the hearing of the matter and without any opportunity to the petitioner has prejudiced the right of the objector, has relied upon two decisions of the Bombay High Court, one in the case of Arbitration Petition No. 157/2000-Ahuja Plastic Works v. Union of India and Anr. and another Division Bench judgment in Appeal No. 959/2000-Pancham International v. Union of India, wherein that Court on identical facts and circumstances laid down that if the appellant did not have an opportunity to peruse the purchase file brought before the learned arbitrator as there was no endorsement to that effect that the purchase file was called or as reflected from the papers and proceedings in the arbitration, the proceedings were required to be remitted to the arbitrator for afresh consideration.

5. In the case in hand not only that the arbitrator had perused the purchase file after calling the same, without notice to the petitioner, but on earlier occasions on such a request having made from the petitioner's side, specifically through an application, the arbitrator did not call for the said records nor called upon the respondent to answer the requisite interrogatories. The award of the arbitrator and in particular the finding that the contract had been validly terminated by the Union of India, are based on the documents and correspondence which he might

have perused in the purchase file. The arbitrator ought not to have considered the said material at least without a notice to the petitioner/objector. Therefore, having regard to the entirety of the facts and circumstances and the material on record, this Court is of the considered opinion that the impugned award cannot be upheld and is liable to be set aside on the sole ground that the arbitrator has looked into material, which was not before it during the course of arbitral proceedings and that too after conclusion of the proceedings. This Court, Therefore, need not go to into grounds. The impugned award of the sole arbitrator Mr. Ram Bahadur dated 30.10.1995 is hereby set aside. As Mr. Ram Bahadur is no longer continuing as the arbitrator in the Ministry of Law, Department of Legal Affairs, the respondent is called upon to appoint a new arbitrator within 30 days from receipt of copy of this order to adjudicate the disputes between the parties.

6. The petition stands disposed of accordingly.

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