
(2001) 03 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 702 of 2000

Hanuman Prasad and Brothers

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Arbitration Act, 1940 — Section 16(1)
Limitation Act, 1963 — Section 5

Citation : (2002) 1 RLW 144 : (2001) 4 WLN 464

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Hanuman Prasad Sharma, for the Appellant; B. Bagri and Ram Gopal Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

Verma, J.

(1). This Civil Misc. Appeal is directed against the order dated 15.5.2000 passed by the District & Sessions Judge, Jaipur City, Jaipur by which order the District Judge, Jaipur had set aside the award dated 18.3.1998 passed by the Arbitrator and had remanded the case to the Arbitrator for fresh decision,, after hearing the counsel for the parties on each item, within the stipulated period of four months.

(2). The facts as stated in the impugned order are that one Shri K.D. Bali was appointed as Arbitrator who had given the award on 18.3.1998.

(3). Objections were filed by the respective Parties, but the objections filed by the respondent were late by 18-20 days. Application u/s 5 of the Limitation Act was also filed. The Court vide its order dated 23.1.1999 had made the award as rule of Court by rejecting the objections of the respondents for being barred by limitation, which order, having been challenged in the High Court, was set aside on 5.8.1999. The order of the High Court was once again challenged by filing SLP in the Supreme Court in Civil Appeal No.15569/2000 which appeal was accepted

by the Apex Court with the direction that the objections filed by the Union of India be treated as within time and be decided.

(4). Earlier on claim No.33 and 34, the appellant had filed the objection to the effect that even though an amount of Rs. 8 lacs was demanded, but the Arbitrator had granted only Rs. 5 lacs and that, too, without interest and no reason had been given as to why interest was not being awarded. On claim No.33 and 34 interest was being claimed from 1.1.1988. Union of India had taken up the objection that the award of the Arbitrator was a total illegality and is based on irrelevant facts. It was further objected that the Arbitrator had given different awards on one claim application and is vague. On the items No.33 and 34, claim of Rs. 8 lacs was made on the ground that because of the loss suffered for completing the work with delayed time and award made by Rs. 5 lacs was not adequate, it should have been increased and interest should have also been granted. The objections, so raised by the applicant Hanuman Prasad, were not pressed and were, therefore, dismissed. In regard to objections raised by the respondent Union of India, it was pleaded and argued that the award made was beyond record and definitely was falling within the definition of misconduct. It was stated that on the claims of item No. 1, 3, 4, 18, 19, 22, 23, 29 and 31 an amount of Rs. 7,63,436.36 had been awarded and interest awarded on claim Nos. 36 @ 12% from 1.1.1988 was against the conditions of the agreement. Finding on claim Nos. 33 and 34 were also challenged.

(5). As per the facts, the work was to be completed within 18 months from 26.2.1982, but instead of completing it upto 26.8.1983 within the stipulated time, the work was completed in May, 1986. The Arbitrator had not gone into the fact as to who was responsible for such a delay, but had straight way, without there being any evidence on record for the delay caused in exercise of the work, had held such responsibility on Union of India.

(6). As per agreement, it was mentioned that any award of the claim of an amount of Rs. 50,000/- would be given with reasons, the civil court had held that because of the fact that no reasons had been given, therefore, it was violation of the terms of the agreement.

(7). It was held by the Court below that duration of the work period, the price of the material had increased or the salary of workers was increased by the Government and if such increase is more than 10% and in case the contractor was not responsible for any such delay, in such situation the Superintending Engineer had already passed the order that the contractor was entitled to get increase incorporated in the voucher and file the bill before the concerned Engineer. As per condition No. 19(b), the Contractor was supposed to keep the accounts in this regard in register with complete details of the number of workers. The court had observed that the Arbitrator had not gone into this aspect and had awarded Rs. 5 lacs without there being any record and that he has not given the reasons or the material details. On the above-said facts and award of the Arbitrator was set aside which is being challenged in the present civil misc.

appeal.

(8). Initially, the appellant had taken a contract to construct Doordarshan Kendra at Jhalana Doongri at Rs. 47,55,672/- which was to be completed within 18 months, but was completed within 33 months. According to the appellant because of non-supply of cement, steel and drawings, the delay had been caused. On the dispute having arisen, the matter was referred to the Arbitrator as mentioned above.

(9). The Union of India had taken the objections; (1) that the work was below standard; (2) the security amount of Rs. 1,30,000/- was to be forfeited; (3) an amount of Rs. 4,612/- was deducted against the delivery of 123 bags of cement and Rs. 25,000/- was deducted against the electricity bills i.e. total amount of Rs. 1,59,612/- was deducted and the Arbitrator had awarded to refund this amount with interest @ 18% on item No.33 and 34, thus an amount of Rs. 5 lacs was awarded. It is the case of the appellant that the objections were taken in regard to item Nos. 33 and 34 only, but whereas the Court below had suo moto extended the objections upto 8 items. It is stated that the Court below had not looked into the record. It is the case of the appellant that the amount so awarded was in regard to nine items and not 8 items. It is further stated that in regard to agreement terms Nos. 10 and 19-B as discussed by the Court below, there was no such objection taken by the Union of India and as such the Court below had exceeded its jurisdiction.

(10). Per contra, it is submitted on behalf of the respondents that the Arbitrator was appointed by the intervention of the court and that under Clause (25) of the agreement, the award ought to have been the reasoned one and that the Arbitrator had no authority to go beyond the terms of the reference and for the reason that the construction was not made within the stipulated period, there was hardly any necessity for the Arbitrator to have given the award and the trial Court has rightly set aside the award.

(11). Certain material was to be supplied by the department itself and for the materials which were not to be supplied by the department, Clause 10-C provided the increase of price for the material in the circumstances mentioned therein and also the increase of labour charges which may be because of direct result of coming into force of any fresh law, or statutory rule or order etc. The clause also mentions that to claim such refund of increase because of the wages or the price, the contractor shall keep such books of accounts and other documents as are necessary to show the amount of any increase claimed or the same available and shall allow inspection of the same by a duly authorised representative of the Government etc.

(12). Clause 19-D had provided that the contractor shall submit within the period mentioned therein the list of number of labourers employed by him on the work, their working hours, the wages paid to them etc. etc.

(13). Clause 25 is the clause of appointment of Arbitrator which provides that the

Arbitrator shall give reasons for the award and that the parties invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each such dispute.

(14). In *Waverly Jute Mills Co. Ltd. v. Raymond & Co. Ltd.* (1), it was held that where, however, it is a term of the very contract whose validity is in question, it has no existence apart from the impugned contract and must perish with it. An agreement for arbitration is the very foundation on which the jurisdiction of the Arbitrators to act rests, and where that is not in existence at the time when they enter on their duties, the proceedings must be held to be wholly without jurisdiction. And this defect is not cured by the appearance of the parties in those proceedings even if that is without protest, because consent cannot confer jurisdiction. It was further held that if an award deals with a matter not covered by the agreement it could either be modified or remitted and where such matter is dealt with on the invitation of the parties contained in the statements, the Arbitrators must be held to have acted within jurisdiction.

(15). In *Union of India v. G.S. Atwal and Company* (2), it was held that the award of the Arbitrator can be set aside as Arbitrator misconducted himself if the Arbitrator enlarges the dispute unilaterally.

(16). In *Union of India v. V.K. Bahri and Anr.* (3), the Single Bench of Delhi High Court had held that in case the arbitration agreement providing that Arbitrator should state reasons for award and failure to give reasons, invalidates the award and the award is to be remitted to Arbitrator u/s 16(i)(c) of the Arbitration Act, 1940. It was a case where the arbitration agreement had specifically provided that in case the claim is in excess of certain amount, the Arbitrator shall mention his reasons for the award but the Arbitrator failed to give reasons while awarding amount in excess of specified amount. It was held that under the arbitration agreement, it is obligatory for the Arbitrator to state the reasons for the award. The requirement is binding on the Arbitrator. Failure to give reasons amounted to an illegality on the part of Arbitrator.

(17). In the case of *Continental Construction Co. Ltd. v. State of Madhya Pradesh* (4), it was held that if no specific question of law is referred, the decision of the Arbitrator on that question is not final, however, much it may be within his jurisdiction and indeed essential for him to decide the question incidentally; the Arbitrator is not a Conciliator and cannot ignore the law or misapply it in order to do what he thinks is just and reasonable. The Arbitrator is a Tribunal selected by the parties to decide their disputes according to law and so is bound to follow and apply the law, and if he does not, the award can be set right by the Court providing his error appears on the face of the record.

(18). Clause 25 specifically mentions that the Arbitrator is bound to give reasons for each of the claimed item. I agree with the finding given by the trial Court to the effect that the Arbitrator has not given any reasons and as such has

misconducted.

(19). With the above-said discussions, I do not find any fault with the order of the court below in setting aside the award by remit the same to the Arbitrator to pass a fresh award supported with reasons.

(20). The misc. appeal is dismissed.