
(2006) 07 P&H CK 0117
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1238 of 2005

Haryana State Agricultural Marketing Board	APPELLANT
Vs	
Dharam Pal and Another	RESPONDENT

Date of Decision : 20-07-2006

Acts Referred:

Arbitration Act, 1940 — Section 23, 28
Arbitration and Conciliation Act, 1996 — Section 24(2), 33(1), 34, 85

Citation : (2006) 63 ARBLR 285

Hon'ble Judges : P.S. Patwalia, J

Bench : Single Bench

Advocate : Alok Jain, for the Appellant; Naresh Markanda, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Patwalia, J.—The present revision petition has been filed praying for setting aside of the order dated 17.04.2003 passed by the learned Civil Judge (Sr. Division), Kaithal as well as the order dated 03.12.2004 passed by the learned Additional District Judge, Kaithal rejecting the application of the petitioner for setting aside the award dated 27.02.1998.

2. Briefly the facts of the case are that tenders for construction of a road for village Majra Nand Karan to purchase centre of village Sherda were invited by the petitioner-Board. The tender of respondent no. 1-Dharam Pal, was accepted by the petitioner. He was due to complete the work within 11 months. There were disputes between the parties, as a result of which the petitioner had to get the remaining work done by allotting the same to another contractor. As per the contract agreement, the petitioner approached the Chief Engineer of the Board at Panchkula for appointment of an arbitrator. An arbitrator was appointed but he could not give the award within time. Ultimately, it was the civil court which changed the arbitrator and a new arbitrator-respondent no. 2 also an employee of the Board was appointed as arbitrator and he gave his award on 27.02.1998. It is against this award that the objections filed by the petitioner have been

rejected by the Court of Civil Judge (Sr. Division), Kaithal and that order has been approved by the learned Additional District Judge, Kaithal, against which the present revision petition has been filed.

3. Notice was issued in this revision petition and respondent no. 1 has entered appearance.

4. At the time of hearing, three arguments were raised by Mr. Alok Jain, learned Counsel appearing for the petitioner. Firstly he argued that in the present case proceedings have been conducted by the courts below under the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as "the new Act"). It is his contention that the proceedings in the present arbitration had already commenced before the new Act was enforced. He, therefore, contends that it was the Arbitration Act, 1940 (hereinafter to be referred as "the old Act") which was applicable to the present proceedings. Therefore, the entire proceedings after the pronouncement of the award in the present case stand vitiated.

5. A reading of Section 85 of the new Act makes it apparent that notwithstanding the repeal of the old Act, proceedings which had commenced before the new Act came into force were to be in accordance with the old Act unless otherwise agreed by the parties (emphasis supplied). It has been brought to my notice by learned Counsel for the respondent that after the award had been made by the arbitrator, respondent no. 1 had filed an application u/s 33(1)(a) of the new Act before the arbitrator. Since the arbitrator did not dispose of that application within 30 days, the respondent then filed an application for execution of the award under the new Act. The objections to the said execution application were filed by the petitioner under the new Act on 19.02.1999. The executing court vide order dated 01.03.1999 dismissed the objections and directed the petitioner for implementation of the award. Against the said order, the present petitioner had filed a civil revision in this court being Civil Revision No. 1482 of 1999. The same came to be decided on 28.11.2000. In that civil revision, the present petitioner had referred to and based its case on the provisions of the new Act. In fact this court agreeing with the contentions had given two months time to the petitioner to file objections against the award under the new Act. The relevant part of the judgment reproducing the argument of petitioner's counsel is as hereunder:

4. Counsel for the petitioner referred to various provisions of the new Arbitration Act, and submitted since the application filed by the contractor before the arbitrator on 23.03.1998 has not been disposed of and till that application is not disposed of, the award does not attain the force of decree. He submitted that the award becomes the decree after the expiry of 90 days from the date of the dismissal of the application, if any, moved u/s 33(1)(a).

In fact under the old Act, the award had to be made "rule of the court". The petitioner did not raise any objection in the earlier revision petition to the effect that the old Act should apply and the respondent should be directed to initiate

proceedings for making the award "rule of the court". Rather they relied upon the provisions of the new Act and sought relief under the same. It is, therefore, clear that in the facts of the present case parties have agreed to be governed by the provisions of the new Act.

6. There is also another important aspect. The objections raised by the respondent have been reproduced in detail in the order of Civil Judge (Sr. Division), Kaithal. A reading of the same would show that no such objection has been raised by the respondent to the effect that in the present case the proceedings should have been initiated under the old Act.

7. Even otherwise, in the present case the first arbitrator was appointed in June 1994, i.e. 12 years ago and the proceedings have continued till then. Therefore, at this stage, when the entire proceedings have concluded under the new Act in which the petitioner had actively participated, I find no merit in this argument raised by the petitioner.

8. Secondly, it is submitted that respondent no. 2 was appointed as an arbitrator by the Civil Judge (Sr. Division), Kaithal on 10.11.1997. He was to make the award within three months. The intimation was received in the office of Shri Anand Parkash, arbitrator on 18.11.1997. In this way, the period of three months was to expire on 17.02.1998. However, the award was given on 27.02.1998. It is, thus, argued that the award was beyond the period of three months and was, therefore, liable to be set aside on this ground alone. It is to be noted here that under the old Act, Section 23 provided that where the court was to appoint an arbitrator, it would specify the time as it thinks reasonable for the making of the award. This time could be extended u/s 28 by the court only. However, counsel for the respondent submits that there is no such corresponding provision in the new Act. Still further it is also pointed out that even this objection has not been raised in the objections filed against the award.

9. Having examined the matter, I am of the opinion that when the parties have been participating before the arbitrator and did not raise any objection regarding expiry of time and the award is ultimately passed, the party against whom the award has gone is estopped from challenging it on that ground. This is all the more so when no such objection has been taken in the written objections filed. The lower appellate court has also not found merit in this objection. While rejecting the objections, the rival contentions of the parties have been noted by the lower appellate court as hereunder:

It was next contended by learned Counsel for the objector/appellant that in this case award has been passed after the expiry of the extended period for passing the award. From Ex. R3/A, it is evident that on 10.11.1997, an intimation was sent by the court to Shri Anand Parkash directing him to submit award within three months of the receipt of this intimation. The office of Shri Anand Parkash entertained this intimation on 18.11.1997. As it was written on this very document that "steno, process case immediately please", thus, on 18.11.1997,

arbitrator received the intimation. He was to give the award within a period of three months. In this manner, the period of three months was to expire on 17.02.1998, whereas the award was given on 27.02.1998. Thus, on this point, learned Counsel for the appellant has also cited judgment *Sowaran Singh Vs. Municipal Committee, Pathankot and Another*, . On the other hand learned Counsel for the respondent contended that where time for making the award has been enlarged by the court in proceedings, the award filed after the expiry of the prescribed period is not invalid merely because there was no formal application made to the court for extending the time. Learned counsel for the respondent contended that there is plethora of case-law on this point. AIR 1936 Lah 446 (Arbitrator submitting award beyond the date fixed. Parties submitting to arbitration and conducting case before arbitrator after due date). Under those circumstances, it was held that the consent of parties can be inferred and award is valid though filed out of time....

10. I am of the opinion, therefore, that in the present facts and circumstances of the case, the very fact that the award was announced 10 days after the time fixed by the court, would not vitiate the same in any manner whatsoever.

11. Lastly, learned Counsel for the petitioner drew my attention to his objections to the award and particularly objections (b) to (g) to contend that on facts, a particular claim had been wrongly accepted by the arbitrator or the amount given by the arbitrator is more than justified. This objection has been repelled by the learned Civil Judge as hereunder:

I have given my anxious considerations to the arguments advanced by learned Counsel for the parties and I find force in the line of reasoning adopted by learned Counsel for respondent no. 1. By now, it is well settled that objections which could have been agitated for getting reduction of the amount as awarded by the arbitrator was a question purely on merits of award which could not be agitated in objection as the objections were not in the nature of appeal against the award. Reliance may be placed on the authority of Hon"ble Apex Court in case reported as *State of U.P. Vs. Harish Chandra and Others*,

By now, it is well settled that the award is final and conclusive except where the arbitrator has misconducted himself or the proceedings or has committed an error of law apparent on the face of the award. The court cannot approach on merits and sit in appeal over it. Normally, the arbitrator is given finality regarding his decision on facts. Reliance may be placed on the authority of Hon"ble Rajasthan High Court reported as *Union of India (UOI) Vs. Ajmer Construction Company*, ;

Admittedly, in the present case, respondent no. 2, Anand Parkash, S.E., HSAMB, Panchkula was a technical person. He, during the arbitral proceedings after appreciating the evidence led by both the parties, gave the findings regarding the work done by respondent no. 1 at the spot. I am of the view that this court should not interfere in the findings recorded by the arbitrator until and unless it

is proved that the arbitrator had misconducted himself. Reliance may be placed on the authority of Hon''ble Himachal Pradesh High Court reported as Hydel Construction Ltd. Vs. H.P. State Electricity Board, :

During the course of arguments, learned Counsel for the applicant could not show that in the facts and circumstances of this case any of the grounds mentioned in Sub-section (2) of Section 24 of the Act for setting aside the award dated 27.02.1998 (Ex. R2) was made out. It is not shown that any of the parties to the award was under some incapacity. Further, it is not shown that the arbitration agreement was not valid under the law. Further, it is not shown that no proper notice of appointment of the arbitrator was given to the applicant. Further, it is not shown that arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to the arbitrator, or it contains decisions on merits beyond the scope of the submission to the arbitration. It is further not shown that the composition of the arbitral tribunal or arbitral procedure was not in accordance with agreement of the parties. It is not shown that the arbitral award is in conflict with the public policy of India. In my opinion, the award dated 27.02.1998 (Ex. R2) cannot be set aside on the ground that the arbitrator did not appreciate the evidence led by the applicant in proper perspective. A perusal of the award and arbitration proceedings speaks that both the parties actively participated in the arbitration proceedings and led evidence. Respondent no. 2, Anand Parkash passed the award dated 27.02.1998 (Ex. R2) after hearing both the parties. He has given reasons in support of his findings. Respondent no. 2, Anand Parkash, S.E., HSAMB, Panchkula was a technical person and he appreciated the evidence of the parties regarding the work done by respondent no. 1 at the spot in a better way. There is no reason to interfere with the findings recorded by the arbitrator especially in the circumstances when it is not shown by the applicant that the arbitrator had misconducted himself during the arbitration proceedings. In these circumstances, there is no ground for setting aside the award dated 27.02.1998. This issue is accordingly disposed of against the applicant and in favour of respondent no. 1.

I entirely concur with the reasoning as aforementioned. Limited grounds of challenging the award have been set out u/s 34 of the new Act. It has rightly been concluded by the courts below that objections for reduction of the amount as awarded by the arbitrator being questioned purely on merits of the claim are not envisaged as one of the grounds for setting aside the award. I, therefore, find no merit in this contention raised by the petitioner as well.

12. No other point was raised.

13. For the reasons aforementioned, I find no merit in this revision petition and the same is accordingly dismissed.