

(1964) 12 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 159-D of 1963

Hindustan Construction Company Limited	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision : 17-12-1964

Acts Referred:

Arbitration Act, 1940 — Section 17

Citation : (1964) 12 P&H CK 0007

Hon'ble Judges : J.S. Bedi, J

Bench : Single Bench

Advocate : Ved Vyas and C.L. Pandhi, for the Appellant; S.N. Shanker, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Bedi, J.—The facts giving rise to this revision are as under: Hindustan Construction Company Limited, Bombay, the petitioners in this case, entered into a contract with the Union of India, the respondent, for construction of Highway Bridges over the Rivers Kaghjuri and Kaukhai in Cuttack (Orissa). Some disputes arose between the parties and the matter was referred to joint arbitration of Shri B.K. Guha and Shri N.P. Gurjar. The arbitrators above-mentioned could not come to unanimous decision as a result of which the matter was referred to Shri Dildar Hussain, Ex-Chief Engineer, Hyderabad, as an Umpire. He recorded the evidence of the parties and gave his award on 27th of May, 1961. The petitioners thereafter filed the present application under sections 14 and 17 of the Indian Arbitration Act with the request that the Umpire be asked to file the award in Court and the same may be made the rule of the Court. The award was filed by the Umpire in pursuance of the order of the Court and notice of filing the award was also served upon the parties. The Union of India raised certain objections against this award on the 1st of November, 1961. Some evidence on the objections raised by the respondents was recorded when on the 27th of August, 1962, the respondents moved another application alleging that the document

filed by the Umpire purporting to be the award is not the original award but only a typed copy of the original award and, therefore, no action can be taken on that document by the Court. It was mentioned therein that the original award is not duly stamped and therefore cannot be acted upon and hence the application of the petitioners made under sections 14 and 17 of the Indian Arbitration Act should be rejected. Notice of this application was given to the petitioners who in their reply dated 3rd October, 1962, pleaded that the Umpire inadvertently or by an oversight did not send the original award to the Court but the petitioners should not suffer for it. The petitioners made another application on 3rd of October, 1962 reiterating the previous position and added that the Umpire be directed by the Court to send the original award dated 27th May, 1961, which he due to inadvertence or oversight failed to file. The respondents, Union of India, filed a reply to that application on 15th October, 1962 contesting the above plea. The question, therefore, to be decided is whether the award put in by the Umpire in Court was the original award and secondly whether under these circumstances it was incumbent or necessary for the Court below to direct the Umpire to send the original award as requested by the petitioners. In this connection it will be helpful to reproduce section 14 (2) of the Arbitration Act, which runs as under:

The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

The point, therefore, which requires determination is whether the award in question is a signed copy of the award. It is clear from the perusal of this document that it is not a signed copy of the award but it is certified as correct copy of the award dated 27th of May, 1961, although it is attested by Shri Dildar Hussain, the Umpire, on the 25th of July, 1961, while the award was made on the 27th of May, 1961.

2. The counsel for the petitioners submitted lengthy arguments and stated that this award, which was certified to be the correct copy by the Umpire himself, although on a later date, should be treated as the original award. This argument, however, cannot be accepted in view of the clear wording of section 14(2) of the Arbitration Act. The counsel for the petitioners then submitted in the Court below and also here that the Umpire should be directed by the Court, as required u/s 17 of the Arbitration Act, to put in the original award in Court presuming that the Umpire still had the original award with him. The Umpire was examined in this case through interrogatories and the relevant portion of his evidence has been brought in the judgment of the Court below from which it is evident that he had no other document left with him relating to the award including the original award itself. Moreover, it is an admitted proposition of law that after an arbitrator

submits his award in Court he becomes functus officio: (See Rikhabdas Vs. Ballabhdas and Others, Under the circumstances, that question now would not arise. The petitioners' counsel then submitted that copies of the original award were sent to the parties by the Umpire which have been brought on the record by the petitioners counsel and the Court therefore should have acted on the strength of that award as required u/s 17 of the Arbitration Act but there is hardly any material on the record on the basis of which it could be said that the Umpire had caused the award or a signed copy of it in this case to be filed in Court as required u/s 14 (2) of the Arbitration Act. (See Kumbha Mawji Vs. Union of India (UOI), . It was then submitted by the learned counsel for the petitioners in view of Khatiza Bee Bee v. Abowath AIR 1927 Rang. 127 and Nursing Chunder Dawn v. Nuffer Chunder Dull ILR 17 Cal. 832 that when the attention of the Court was drawn to irregularities in this case the Court in the exercise of its inherent jurisdiction was bound to take steps to rectify matters and the proper procedure was to start from the beginning again. The Supreme Court, however, in Rikhabdass" case¹, at page 554 has taken a different view and lays down that-

Section 151 of the Code cannot give the Court power to direct the arbitrator to make a fresh award; that would be against well-established principles of the law of arbitration. It would again be useless to have another copy of the award prepared and stamped for the copy would not be the award and no action in a Court can be taken on it.

The learned counsel for the petitioners also quoted Hazi Rahmetulla Vs. Chaudhari Vidya Bhusan, , in support of his contention. It was also urged that the objection taken by the respondents was not taken in time. In this case it is to be seen that objections to the award were first filed on 1st November, 1961, and the first objection raised in paragraph No. 1 was that the award said to have been filed by the Umpire had not been validly and legally filed u/s 14 and as such no proceedings in pursuance of the said filing could be taken in Court. It is true that it was not specifically mentioned therein as to why the filing of the award in this case was defective but it is not necessary for the party to give an argument in favour of the objection in such petitions. Anyhow, in the second petition filed on the 27th of August, 1962, this objection had been specifically taken in paragraph 2 of the application. According to the petitioners counsel, this objection was taken after considerable delay and after 30 days of the filing of the award which should not be taken into consideration. The counsel for the respondents, however, on the other hand, submitted that the Court has found as a fact that the so-called award filed in the Court was defective and did not fully comply with the provisions of section 14(2) of the Arbitration Act and evidently therefore there was no valid award before the Court and, therefore, the argument raised by the petitioners counsel is untenable. The main argument of the petitioners counsel, however, was that if the Court below had refused to exercise its inherent powers in the case, the same should be now exercised by this Court. This is a case in revision u/s 115 of the Civil Procedure Code. Section 115 runs as under :

The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.

We cannot say in this case that the lower Court either has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. The Court below has refused to exercise its inherent powers even if it had any under the circumstances. This court cannot use the same in such cases. (See AIR 1949 156 (Privy Council) and *Ramnikal Pitambardas Mehta Vs. Indradaman Amratlal Sheth*, . It is true that on account of this technical mistake the petitioner-company will probably suffer considerable loss, but the law is technical. It was also submitted by the petitioner's counsel that never before the Union of India had taken such technical objections in cases of this type. May be it is true, but when the Union of India has taken such a stand the Courts have got to decide the case according to law. Under the circumstances, this revision petition is dismissed but taking all the facts and circumstances into consideration, I leave the parties to bear their own costs.