
(1993) 11 P&H CK 0128
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3123 of 1988

Janta Brick Kiln Co.

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 12-11-1993

Acts Referred:

Arbitration Act, 1940 — Section 39, 41A
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1994) 106 PLR 509

Hon'ble Judges : Ashok Bhan, J

Bench : Single Bench

Advocate : I.S. Balhara, for the Appellant; S.S. Kheterpal, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhan, J.—Petitioner entered into a contract for installation of brick kiln in village Nangal Mundi, Tehsil Rewari with the Executive Engineer, Jawahar Lal Nehru Canal, during the year 1979-80. Dispute arose between the parties and ultimately the matter was referred for arbitration to the sole arbitration of Shri R.K. Bhatia, Superintending Engineer. Petitioner as well as the State of Haryana filed their claim and counter-claim. Petitioner claimed a sum of Rs. 10,79,404/- 43 paise against the respondent-State. State of Haryana filed a counter-claim for a sum of Rs. 2,67,953/-. The Arbitrator after considering the claim and counter-claim, gave an award of on September 27, 1985. It awarded a sum of Rs. 1,70,384/- to the petitioner with interest @ 6 percent per annum.

2. The award was filed in the Court by the Arbitrator suo moto. Petitioner filed an application for making the award a rule of the Court for issuing a decree in accordance with the award. Notice was issued to the State of Haryana. Objections were filed under Sections 30, 31 and 33 of the Arbitration Act (hereinafter referred to as "the Act"), raising various pleas including that the arbitrator had misconducted himself in the proceedings.

3. On the pleadings of the parties, the following issues were framed by the trial Court:-

1. Whether the impugned award is liable to be set-aside or remitted to the Arbitrator as alleged in the objection petition ? OPO.
2. Whether the objection petition in the present form is not maintainable? OPR.
3. Whether the objection petition is not properly Stamped? OPR.
4. Whether the petitioner is stopped from bringing the present petition by his own act and conduct? OPD.
5. Relief.

4. No evidence was recorded by the trial Court as the same was not produced. The parties relied upon the facts and circumstances contained in the arbitration file and they argued thereon. Trial Court vide order dated October 29, 1987 made the award given by the arbitrator to be a rule of the Court. The objection petition filed by the State of Haryana was dismissed.

5. State of Haryana being aggrieved, filed an appeal before the first Appellate Court. The Appellate Court set-aside the judgment and decree of the trial Court making the award a rule of the Court. The matter was remitted to the Arbitrator. A further direction was given that arbitration proceedings be conducted by another Arbitrator i.e. Superintending Engineer (Canal), Narnaul.

6. Petitioner being aggrieved has come up in revision to this Court. I have heard the counsel for the parties.

7. I find no merit in the first contention of the counsel for the petitioner that no appeal was maintainable against the order of the trial Court making the award a rule of the Court. Contention of the counsel for the petitioner is that u/s 17 of the Act if a judgment is made in terms of the award given by the Arbitrator then no appeal lies against such a judgment. Reliance was placed on two judgments of this Court reported in Punjab Small Industries and Export Corporation Ltd., Chandigarh Vs. Sardul Singh and Others, and Union of India v. Shibbo Mal and Sons, Chandigarh (1981) 95 P.L.R. 264. It was further argued that an appeal lies against the decree of the trial Court under the Arbitration Act only if stipulations set out u/s 39 of the Act are satisfied namely;(i) superseding an arbitration; (ii) On an award stated in the form of a special case; (iii) modifying or correcting an award; (iv) filing or refusing to file an arbitration agreement; (v) staying or refusing to stay legal proceedings where there is an arbitration agreement, (vi) setting aside or refusing to set aside an award; that neither of these conditions stood satisfied in the present case and, therefore, the appeal not maintainable.

8. The judgments cited by the learned counsel for the petitioner are distinguishable on facts. In both those cases petitions u/s 30 of the Act had not been filed for setting aside the award. It was held in these two cases that where the time for making an application to set aside the award had expired and the

trial Court makes a judgment in terms of the award then no appeal lies. But in the present case, the petitions under Sections 30, 31 and 33 of the Act for setting aside the award had been filed. Section 17 of the Act shall not be applicable, in such a case. The appeal in present case shall be maintainable under clause (vi) of Section 39 of the Act which provides an appeal against an order for "setting aside or refusing to set aside an award."

9. In this case, respondent State had filed their objections to set aside the award and since the trial Court has refused to set aside an award, an appeal was clearly maintainable under Section 39 of the Act.

10. Second contention of the counsel for the petitioner is on merits. A reading of the judgment passed by the lower appellate court would show that the appellate Court took four circumstances into consideration for -setting-aside the award given by the Arbitrator (i) That the Arbitrator did not take into consideration the counter-claim filed by the State (ii) that the Arbitrator before awarding the amount of sales-tax to the tune of Rs. 25,500/- should have associated the officiate of the Sales-tax department to verify as to whether the sales-tax has been paid to the department or not; thirdly that the Arbitrator has given no reasons for the award of Rs. 13,000/- to the contractor for the rejected tiles and fourthly the Arbitrator has not given any reason of allowing the amount of Rs. 15,000/- for import of additional sand in order to improve the quality of the bricks. That the Arbitrator had given an award of Rs. 15,000/- against the claim of Rs. 75,000/-, set up by the petitioner on this count. It was contended by the counsel for the petitioner that the Arbitrator had taken into consideration the counter-claim of the respondent-State while awarding the sum of Rs.1,70,384/-in favour of the petitioner-and further that the Arbitrator was not required under the law to give any reasons while making the award. I find force in the contention of the learned counsel for the petitioner. I have seen the original award given by the arbitrator. The arbitrator referred to the counter claim in his award which shows that he has gone through the records placed before it, statements as recorded in the proceedings; counter -claim filed by the department, and thereafter came to the conclusion regarding the actual amount to be awarded in favour of the petitioner. This shows that the Arbitrator had applied his mind to both the claim as well as the counter-claim of the respondent. The Arbitrator awarded a sum of Rs. 1,70,384/- against a claim of Rs. 10,79,404.43 paise to the petitioner. The Arbitrator has stated in the award that he has taken into consideration the counter-claim of the respondent-State, and the lower appellate Court has thus committed a factual mistake while recording a finding to the effect that Arbitrator did not take into consideration the counter-claim of the respondent-State. No doubt the Arbitrator has not given any reasons for awarding the various amounts under different heads. I have gone through the Arbitration clause. As per arbitration Clause, the arbitrator was not required to give reasons while making the award. It has been held in *Rajpur Development Authority v. Chokhamal Contractors* AIR 1990 SC 1426 and *S. Harcharan Singh Vs. Union of India*, that where the arbitration clause does not

require the arbitrator to give reasons, the award could not be questioned on the ground that the arbitrator has failed to give reasons while making the award. It was observed in M/s. Chokhamal's case (supra), as under:-

"An award passed under the Arbitration Act is not liable to be remitted or set aside merely on the ground that no reasons have been given in its support except where the arbitration agreement or the deed of submission or an order made by the Court such as the one u/s 20 or Section 21 or Section 34 of the Act or the statute governing the arbitration requires that the arbitrator or the umpire should give reasons for the award."

11. The judgment of the lower appellate Court being against the law laid down by the Supreme Court of India has to be set aside. Perusal of the award shows that the Arbitrator has applied his mind to each and every claim and also the counter-claim. The reasons are implicit though not explicit. The arbitrator was not required to give any reason for making the award as this was not the requirement of the arbitration clause.

12. For the reasons stated above, the revision petition is accepted. The order of the lower appellate Court is set-aside and that of the trial Court making the award a rule of the Court is restored. There shall be no order as to costs.