
(1991) 03 MAD CK 0055
In the Madras High Court

Jyoti Kumar, Deputy Chief Mechanical Engineer/Plant,
Integral Coach Factory

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 26-03-1991

Acts Referred:

Arbitration Act, 1940 — Section 14(2), 30

Citation : (1991) 1 MLJ 500

Hon'ble Judges : Lakshmanan, J

Bench : Division Bench

Judgement

Lakshmanan, J.—O.P. No. 96 of 1989 was filed by the sole arbitrator u/s 14(2) of the Arbitration Act (hereinafter referred to as "the Act") to receive the Award dated 15.12.1986 and to issue notice of the filing of the Award to the respondents.

2. Since the Original Award has been filed in this Court as per the Order of this Court, dated 29.8.1990, no further orders are necessary in O.P. No. 96 of 1988.

3. O.P. No. 392 of 1989 was filed by M/s. Shriram Fabricators, a proprietary concern against Union of India and the Sole Arbitrator, under Secs.30 and 33 of the Arbitration Act, 1940, to set aside the Award dated 15.12.1986 passed by the sole arbitrator and for costs.

4. In respect of the purchase order bearing No. ICF/30/7/83/1/2710/4, dated 30.3.1984 which is governed by the Indian Railways Standard Conditions of Contract for the supply of frame for lower luggage rack disputes arose between Union of India and M/s. Shriram Fabricators to supply the materials as per the purchase Order and a claim was made by the Union of India to supply the materials as per the Purchase Order and for damages for failure to supply the materials by the contractor. The Union of India alleged that there was an extra expenditure incurred by them consequent on the failure of the contractor to supply the materials in terms of the Indian Railways Standard Conditions of

Contract. In terms of the Indian Railways Standard Conditions of Contract, the dispute between the parties have to be referred to arbitration and in terms of Clause 2900 of the said conditions of contract, MrJyothikumar, Deputy Chief Mechanical Engineer (Plant), Integral Coach Factory, Madras-38, was nominated as the sole Arbitrator by the General Manager/Integral Coach Factory, Madras-38, to decide the dispute between the parties.

5. The Union of India made a claim before the Arbitrator. The contractor disputed the claim and the matter was enquired into by the Arbitrator. The Arbitrator after considering the evidence adduced before him in regard to the claim made by the Union of India and after hearing the arguments of the parties, the Arbitrator passed an Award dated 15.12.1986. Pursuant to the request made by the Union of India, the Arbitrator produced the Award in this Court in O.P. No. 96 of 1988 along with annexed papers.

6. The sole Arbitrator passed the Award in the following terms:

Whereas after considering the Statements of claims, counter statements, additional statement, documents, etc. filed by the parties hereto, and also after hearing the arguments of both the parties during the hearing on 21.11.1986 and after considering the documentary evidence produced before me by them, I do hereby make my Award as under in respect of the Purchase Order in question:

(1) The second party viz., M/s. Shriram Fabricators, 50/1, General Patters Road, Madras-600 002, do hereby pay a sum of Rs. 1",09,580 (Rupees one lakh nine thousand five hundred eighty) to the first party viz., The Union of India represented by the Controller of Stores, Integral Coach Factory, Madras-600 038.

(2) The cost of Arbitration viz, a sum of Rs. 19275 (Rupees one hundred ninety-two and paise seventy-five) towards Arbitrator's fees and expenses shall be borne equally by both the parties.

(3) Each party will bear its own cost.

The said Award of the arbitrator is challenged by the contractor M/s. Shriram Fabricators by filing O.P. No. 392 of 1989. According to the contractor, the Union of India had floated a tender for the supply of 10355 frames for lower luggage racks. In response to the said tender enquiry, the contractor had made a specific offer to supply frames for lower luggage rack at the rate of Rs. 126.50 each. The contractor's offer/quotation dated 6.1.1984 was received by the Railways and the tender was opened by the Railways on 6.1.1984. The Railway authority wrote to the contractor on 2.3.1984 stating that their offer to supply at the rate of Rs. 126.50 per number was accepted and that the quantity required to be supplied is 3200 numbers. Therefore the offer and acceptance culminating in a contract was only in respect of 3200 numbers. However, the Railways wrote to the contractor on 15.3.1984 that the contractor is required to supply 4,200 numbers i.e., an increase of 1,000 numbers over and above the quantity for which the contract was made. According to the contractor this was a deliberate violation of the

terms of the contract and the Union of India is not justified in saying that as per the option clause they were entitled to ask for the supply of an increased quantity upto 30% of the originally ordered quantity. The contractor however disputed the correctness of the stand taken by the Union of India. It is contended by the learned Counsel for the contractor that even assuming that the Union of India was entitled to ask for additional quantity to be supplied, the additional quantity ordered by the Railways was over and above the 30% limit and hence the order for additional quantity was invalid. It is seen from the records that the contractor was able to supply 2,506 numbers as against the contracted quantity of 3,200 numbers resulting in a shortfall of 694 numbers. The contractor pleaded with the Railways that in view of the non-availability as well as steep increase in the price of raw-materials and the non-issuance of essentiality certificate by the Railways as provided in the contract, the penalty clause in the contract in regard to the shortfall in supply 694 numbers ought not to be in force. But on the other hand the Railways carted upon the contractor to make good the risk purchase cost in regard to 1,694 numbers, which was disputed by the contractor and the matter was referred to the sole Arbitrator.

7. I have heard the arguments of Mr. Harry J. Davidar, on behalf of the contractor and Mr. B.T. Seshadri, on behalf of the Railways

8. In O.P. No. 392 of 1989 the contractor has raised two points for determination by this Court:

(a) As regards the selection of the Arbitrator, it is stated that the contractor had absolutely no choice at all since according to Clause 2990 of the Indian Railways Standard Conditions of Contract governing the purchase order, the arbitration was to be done by the sole arbitrator, appointed by the Railways, is in fact an employee of the Railways, could not adjudicate upon the dispute in a fair, independent and unbiased manner. Learned Counsel contended that this is an important factor that has to be taken into consideration for deciding whether the award passed by him is without prejudice against the contractor in view of the position held by him.

(b) The Arbitrator was influenced by the Legal Adviser of Union of India in the matter of passing an award in favour of the Railways. The contractor also has reasons to believe that the award passed by the Arbitrator was in fact prepared by the Legal Adviser of the Railways. It was therefore, submitted that the Arbitrator has miscondacted himself as well as the proceedings.

9. However, at the time of hearing, learned Counsel for the contractor has raised a plea that the contractor has not signed in the Annexure-A attached to the tender schedule. I may straightway reject this contention since this contention has not been specifically raised in the Original Petition and in the absence of specific plea, it is not open to the contractor to raise this plea at the time of hearing of the Original Petition. The contractor has not stated that he has not accepted the Annexure-A. However on a verification of the Original Petition, it is

seen that the contractor has signed in the front portion and also accepted the terms and conditions therein. It is to be noted that the contractor is aware of all the Clauses in the Tender conditions which are subject to Indian Railway Standard conditions of Contract. Indian Railway Standard conditions of Contract which was in force at the time of entering into the contract in question by the parties was produced before this Court by the learned Counsel for the Railways. It is also not in dispute that the Tender conditions are subject to Indian Railways Standard Conditions of Contract.

10. Clause 0704 of Indian Railway Standard Conditions of Contract clearly mentions that the Purchaser/Railways, shall be entitled, at any time before 90 days of the date of delivery or the extended date of delivery as stipulated in the contract to increase or decrease the ordered total quantities of each description of stores shown in the contract by not more than 30% of the ordered total quantity at the same price, terms and conditions as stipulated in the contract by giving a notice in writing of 90 days to that effect to the contractor and the contractor shall be bound to supply the quantities so ordered according to the revised delivery schedule advised by the Purchaser. The revised delivery schedule shall be fixed by the Purchaser on the basis of the original offer of the contract.

11. Thus it is seen that the Railways shall be entitled at any time before 90 days of the date of delivery or extended date of delivery as stipulated in the contract to increase or decrease the ordered total quantity for each description of stores shown in the order by not more than 30% of the ordered total quantity on the same price, terms and conditions as stipulated in the contract by giving a notice in writing to that effect to the contractor. It is seen from the records that the quantity which was indicated in the letter of indent dated 2.3.1984 was amended to read as 4,200 numbers exercising the option clause, the contractor was communicated of the same by letter dated 13/15.3.1984 and the Purchase Order for that quantity was issued on 30.3.1984. The contractor however by letter dated 27.3.1984 stated that it will not be possible for them to accept the additional quantity at the same price. The contractor was however advised that inasmuch as his quotation is for a total quantity of 10,355 numbers and that the order has been issued only for 4,200 numbers, the contractor was requested to complete the order as per delivery schedule. The contractor did not supply the quantity as per the Purchase order within the delivery period and the delivery period was extended from time to time. Ultimately, the contractor supplied a quantity of 2,506 numbers as against the ordered quantity of 4,200 numbers, resulting in a shortfall of 1,694 numbers.

12. Inasmuch as the contractor did not supply the balance number as per the Purchase Order, the Railways has invoked the Risk Purchase Clause and accordingly the remaining quantity was purchased by placing Risk Order. By reason of the breach of contract committed by the contractor, i.e., failure to supply the balance quantity, the Railways has purchased the remaining materials at a higher cost and in that process incurred an extra expenditure of Rs.

1,12,406.03. Thus the Railways has invoked the Arbitration Clause contained in the agreement and the dispute relating to the said claim was referred to the Arbitrator for decision. The Arbitrator after hearing both parties, after considering the records submitted by both parties, and the rival submissions of both parties, passed the Award holding that the Railways is entitled to recover a sum of Rs. 1,09,580 being the loss sustained by the Railways on account of the breach committed by the contractor. It is also seen from the records that the delivery is to be commenced after six weeks from 23.1984, the date of acceptance. The Railways had increased the quantity to be supplied, by their letter dated 15.3.1984, which is well within the period of commencement of delivery.

13. It is also not alleged by the contractor that the additional Clause in the Indian Railways Standard Conditions of Contract is not binding on them. No case has been made out by the contractor on that point. As stated above, only two points have been raised in the petition and the other points which have been raised at the time of hearing as mentioned above, do not merit any consideration whatever. It is also seen from the terms of the optional clause contained in the Purchase Order of which the contractor had noticed that the Railways has got power to increase the quantity by 30%. It is also seen from the Original offer made by the contractor was for 10355 numbers and at the time when the contractor submitted his quotation, the contractor had not restricted any quantity and offered to supply the entire quantity, that is mentioned in the tender. Therefore, the contractor was not prejudiced in any manner by reason of increase in quantity from 3,200 to 4,200 numbers, which in my opinion, the contractor was not justified in refusing the supply as per amended order. Let me now deal with the two points raised by the contractor in his Original Petition.

14. The first point relates to nomination of the Arbitrator by the General Manager of the Railways as per the Indian Railway Standard Conditions of Contract. Having accepted the said conditions, it is not now open to the contractor to say that the Arbitrator who is an employee of the first respondent, cannot adjudicate the point in dispute, and that the arbitrator being an employee of the Railways could not adjudicate the dispute in a fair, independent and unbiased manner. I may straightaway reject the contention in view of the decision in *Secretary to Government Transport Department v. Munuswamy Nudaliar* 1988 S.C.C. (Supp.) 651. In the above case, the work was entrusted to one National Company, which did not even commence the work and despite the extension of time, the said firm failed and neglected even to commence the job. Consequently, the contract in favour of the said firm was cancelled absolutely. The respondent before the Supreme Court in his individual capacity as the Managing Partner of the said company filed civil suit in the City Civil Court, Madras claiming damages alleged to have been caused as a result of the said termination of the said contract and for refund of earnest money deposit. In view of the arbitration clause in the agreement between the parties, the Secretary to Government, Transport Department filed a petition for referring the dispute to the arbitrator and the City Civil Court accepting the prayer, passed orders directing both the parties to refer

the disputes to the arbitrator namely the Superintending Engineer (Highways and Rural Works), Trichy. During the pendency of the claim before the said arbitrator, the-Managing Director of the company filed another application seeking to change the arbitrator on the ground that the arbitrator being an employee of the State Government, an Engineer from any sector other than the sector of Tamil Nadu or a retired Engineer of the State Government might be appointed as Arbitrator. As stated above the Superintending Engineer (Highways and Rural Works), Trichy was previously appointed as Arbitrator. There was succession to that office by another incumbent and the succeeding Superintending Engineer wanted to continue the arbitration proceedings but before that an application was made u/s 5 of that Act for removal of the arbitrator, before the City Civil Court. The learned Judge of the City Civil Court by his order sought to revoke the authority of the named arbitrator, by observing that the apprehension of bias on the part of the arbitrator was made out. The City Civil Judge stated that the Chief Engineer of the Circle concerned was in favour of the cancellation of the contract in question and the contract entrusted to the Secretary to Government came to be terminated and the construction was sought to be entrusted at the risk and cost on the advice or the proposal of the Chief Engineer. The learned Judge of the City Civil Court came to the conclusion that there could legitimately be a bias in the mind of the arbitrator who was the Superintending Engineer. The High Court Madras dismissed the appeal in liine. Hence the appeal was filed before the Supreme Court. The Supreme Court held that the order made by the City Civil Court and the decision of the High Court cannot be sustained on the ground of vague suspicion and in the absence of reasonable evidence to satisfy that there was really a likelihood of bias. The Supreme Court allowed the appeal and remanded the case back to the City Civil Court to ask the Government to appoint the Superintending Engineer, Trichy, to be the arbitrator, in accordance with the arbitration agreement. The Supreme Court further directed the arbitrator to proceed according to the evidence of the parties and make an award after considering all the relevant facts according to the agreement.

15. The Supreme Court in the above judgment held reasonable apprehension of bias in the mind of a reasonable man can be a ground for removal of the arbitrator and a named arbitrator cannot be removed in exercise of a discretion vested in the Court u/s 5 of the Act, unless there is allegation against the named arbitrator either against his honesty or capacity or mala fide or interest in the subject-matter or reasonable apprehension of the bias.

16. In the instant case, excepting a vague and bald allegation of suspicion the contractor has not alleged or established anything against the Arbitrator. That apart, the contractor being a party to the contract cannot now raise that points at this stage, when the Award goes against him. Hence I have no hesitation in holding that the grievance now raised by the contractor has no merit and has been invented for the purpose of this case and only an afterthought.

17. In regard to the point No. 2 raised in the Original Petition by the contractor,

that the arbitrator was influenced by the Legal Adviser of the Railways in the matter of passing the Award in favour of the Railways. This Court is of the opinion that the contractor has miserably failed to prove the said contention. In my view such an allegation is totally unwarranted and uncalled for. The contractor has also not furnished any particulars with regard to the name of the Legal Advisor to Railways who influenced the arbitrator. It is high time that the parties should not be allowed to make such allegation against the arbitrator. In my opinion, the allegation that the Award was prepared by the Legal Adviser of the Railways, is absolutely false and none of the allegations is borne out by the fact as rightly contended by Mr. B.T. Seshadri, learned Counsel for Railways. It is argued by Mr. B.T. Seshadri that the Legal Adviser has nothing to do with the proceedings and he appeared before the arbitrator on behalf of Railways. The contention that the contractor did not act independently, in my opinion, is meaningless and the remarks made by the contractor is most uncharitable. The contractor is not able to point out and substantiate the said allegations. Hence this Court has no other option except to totally ignore and reject the said allegation.

18. Lastly, it was contended that the Award passed by the arbitrator is per se bad since the arbitrator has not disclosed his mind as to what impelled him to arrive at his conclusion.

19. In *Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others*, the Supreme Court held as follows:

The Court in dealing with an application to set aside an award has not to consider whether the view of the arbitrator on the evidence is justified. The arbitrator's adjudication is generally considered binding between the parties, for he is a tribunal selected by the parties and the power of the Court to set aside the award is restricted to cases set out in Section 30 of Arbitration Act, 1940. It is not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. On the assumption that the arbitrator must have arrived at his conclusion by a certain process of reasoning, the Court cannot proceed to determine whether the conclusion is right or wrong. It is not open to the Court to attempt to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of his award.

In *State of Rajasthan Vs. R.S. Sharma and Co.*, , the Supreme Court held as follows:

The law as it stands today is clear that unless there is an error of law apparent on the face of the award, the award cannot be challenged merely on the ground of absence of reasons. In the present case, the arbitrator gave no reasons for the award. There is no legal proposition which is the basis of the award, far less any legal proposition which is erroneous. There have been a large number of sittings before the arbitrators. Parties have been heard. There was no misconduct in the

proceedings. There has been no violation of the principles of natural justice. In such a situation interests of justice and administration of justice would not be served by keeping at bay final adjudication of the controversy in this case on the plea that the question whether an unreasoned award is bad or not, is pending adjudication by a larger bench. Justice, between the parties in a particular case, should not be kept in a suspended animation.

In *Sudarsan Trading Co. Vs. Government of Kerala and Another*, , Supreme Court held as follows:

It is not open to the court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. In the instant case the arbitrator has merely set out the claims and given the history of the claims and then awarded certain amount. He has not spoken his mind indicating why he has done what he has done; he has narrated only how he came to make the award. In absence of any reasons for making the award, it is not open to the court to interfere with the award. Furthermore, in any event, reasonableness of the reasons given by the arbitrator, cannot be challenged. Appraisal of evidence by the arbitrator is never a matter which the court questions and considers. If they have selected their own forum, the deciding forum must be conceded the power of appraisal of the evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a judge on the evidence before the arbitrator.

The above case relates to an unreasoned award given by the arbitrator. The Supreme Court said that such an award cannot be interfered with since the arbitrator is the sole judge of the quality as well as quantity of the evidence and it will not be for the court to take upon itself the task of being a judge on the evidence before the arbitrator. Latest ruling on the point is in *Raipur Development Authority v. Chokhamal Contractors* A.I.R 1990 S.C. 1426, (Five Judges) the Supreme Court held as follows:

It is now well-settled that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. The arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submission he is required to give such reasons and if the arbitrator or umpire chooses to give reasons in support of his decision it is open to the Court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the face of the record on going through such reasons. The arbitrator or umpire shall have to give reasons also where the court has directed in any order such as the one made u/s 20 or Section 21 or Section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so.

Having given our careful and anxious consideration to the contentions urged by the parties we feel that law should be allowed to remain as it is until the competent legislature amends the law. In the result we hold that 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. These cases will now go back to the Division Bench for disposal in accordance with law and the view expressed by us in this decision.

20. In the instant case, it is not pointed out by the counsel for contractor that the arbitrator is under an obligation to give reasons in support of the decision reached by him under the arbitration agreement which governs an arbitration requires him to do so. In my opinion faulty reasoning if disclosed does not by itself vitiate the award. It was not open to this Court to speculate where no reasons are given by the arbitrator as to what impelled him to arrive at his conclusion. The Law Commission also did not recommend inclusion of a provision in the Act requiring the arbitrator or an umpire to give reasons for the award. In the instant case the contractor has failed to substantiate any of his submissions made above. Therefore, the award of the Arbitrator is confirmed.

21. In the result, O.P. No. 392 of 1989 is dismissed. However, there will be no order as to costs.