
(2000) 02 DEL CK 0012

In the Delhi High Court

Case No : Suit No. 2558 of 1992 and IA. 9124/96

K.S. Randhawa

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-02-2000

Acts Referred:

Citation : (2000) 3 AD 285

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Mr. Raman Kapur, for the Appellant; Mr. Y.D. Nagar, for the Respondent

Judgement

Mukul Mudgal, J.—The brief facts of the case are that the petitioner is a Contractor and is carrying on the business of construction works for the Union of India. The petitioner was awarded contract No. 1/MRMVI/75-76 for provision of road at Butwal Nepalganj, Sector of MRM (Central Sector of EWH) Nepal Subhead. That certain differences and disputes had arisen between the parties and as per the Agreement Clause Mr. S.S. Juneja (respondent No. 3), Ministry of Urban Development was appointed as an Arbitrator, who made and announced his award granting a sum of Rs. 1,20,258/- to the petitioner on 13th April, 1992 after giving full opportunities to both the parties.

2. The present suit is filed by the petitioner for making the Award a Rule of the Court. Objections (IA. 9124/96) were filed by the Union of India/respondents to the Award dated 13.4.1992.

3. In Union of India (UOI) Vs. A.L. Rallia Ram, it was held :

"The award is the decision of a domestic tribunal chosen by the parties, and the Civil Courts, which are entrusted with the power to facilitate arbitration and to effectuate the awards, cannot exercise appellate powers over the decision. Wrong or right the decision is binding if it be reached fairly after giving adequate opportunity to the parties to place their grievances in the manner provided by

the arbitration agreement."

4. It has been observed by the Hon"ble Supreme Court that if there is error of fact, the court cannot go into it. In Coimbatore District Podu Thozillar Samgam Vs. Balasubramania Foundry and Others, the Court observed:

"It is an error of law and not mistake of fact committed by the arbitrator which is justifiable in the application before the Court. If there is no legal proposition either in the award or in any document annexed with the award which is erroneous and the alleged mistakes or alleged errors, are only mistakes of fact and if the award is made fairly after giving adequate opportunity to the parties to place their grievances in the manner provided by the arbitration agreement, the award is not amenable to corrections by the Court."

5. In Sudarsan Trading Co. Vs. Government of Kerala and Another, , it has been observed that :

"This is our opinion, the Court had no jurisdiction to do, namely, substitution of its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties.

It may be stated that if on a view taken of a contract, the decision of the arbitrator on certain amounts awarded, is a possible view though perhaps not the only correct view, the award cannot be examined by the court in the manner done by the High Court in the instant case."

Similar view is taken by the Supreme Court in Food Corporation of India Vs. Joginderpal Mohinderpal, while holding that :

"It cannot be said that such a construction is a construction which is not conceivable or possible. If that is the position assuming even for the sake of argument that there was some mistake in the construction, such a mistake is not amenable to be corrected in respect of the award by the Court. This was a fair order after considering all the records. The construction arrived at by the arbitrator is a plausible conclusion."

It has further been held in M/s. Hind Builders Vs. Union of India, :

"In a matter on which the contract is open to two equally plausible interpretations, it is legitimate for the arbitrators to accept one or the other of the available interpretations and, if the Court may think that the other view is preferable, the Court will not and should not interfere."

In Jawahar Lal Wadhwa and Another Vs. Haripada Chakroberty, , it has been observed :

"The Court reiterated that it was now firmly established that an award was bad on the ground of error of law on the face of it only when in the award itself or in a document actually incorporated in it, there was found some legal proposition which was the basis of the award and which was erroneous."

6. In *Bijendra Nath Srivastava (Dead) through LRs. Vs. Mayank Srivastava and others*, , it has been held that:

".....Merely because the arbitrator has mentioned the municipal annual rental value of the property before indicating the market value of the property before indicating the market value of the same does not mean that the value is fixed on the basis of the rental value and the award is a reasoned award justifying the court to examine whether the award suffers from an error. It is settled law that it is not open to the court to deduce reasons in the award or in the record accompanying the award and proceed to examine whether those reasons were right or erroneous. This is what appears to have been done by the High Court in the present case. This was impermissible. We are Therefore, of the opinion that the High Court was in error in going into the question of valuation of immovable properties by the arbitrator in the award."

7. It has further been held by the Hon"ble Supreme Court in *The Hindustan Construction Co. Ltd. Vs. Governor of Orissa and others*, :

"It is well known that the court while considering the question whether the award should be set aside, does not examine that question as an appellate court. While exercising the said power, the court cannot reappreciate all the materials on the record for the purpose of recording a finding whether in the facts and circumstances of a particular case the award in question could have been made. Such award can be set aside on any of the grounds specified in Section 30 of the Act.

According to us, no ground has been made out on behalf of respondents to set aside the award holding it to be invalid."

8. In a recent judgment of the Hon"ble Supreme Court reported as *B.V. Radha Krishna Vs. Sponge Iron India Ltd.*, it has been held that the Court cannot sit in appeal and cannot re-appraise or re-assess the evidence.

9. The same view is taken in *State of Orissa and Another Vs. Kalinga Construction Co. (P) Ltd.*, ; *Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar and Another*, ; *Indian Oil Corporation Ltd. Vs. Indian Carbon Ltd.*, ; *Puri Construction Pvt. Ltd. Vs. Union of India (UOI)*, ; *Food Corporation of India Vs. Joginderpal Mohinderpal*, .

10. The Hon"ble Supreme Court in *Army Welfare Housing Organisation Vs. M/s. Gautam Construction & Fisheries Ltd.* 1998(5) Scale 296 has held that :

".....it is not possible for the Court to reappreciate the evidence produced before the Arbitrator and thus come to a conclusion whether a certain amount claimed was towards one head or the other."

11. In *Trustees of The Port of Madras Vs. Engineering Constructions Corporation Limited*, , it has been held as follows:

"The above decisions make it clear that the error apparent on the face of the

award contemplated by Section 16(1)(c) as well as Section 30(c) of the Arbitration Act is an error of law apparent on the face of the award and not an error of fact."

12. This position of law has also been applied in a recent judgment of this Court in Suit No. 1993 of 1992 entitled M/s. Ultra Builders Vs. MCD (DWS & SDU).

13. These Objections (IA. 9124/96) filed by Union of India fall within the ambit of law laid down by the Hon''ble Supreme Court in catena of judgments listed in the foregoing paragraphs restricting the challenge to the award of the arbitrator as per the position of law laid down in the judgments mentioned hereinafter.

14. Insofar as claim No. 3 for refund of Rs. 48,200/- is concerned, the arbitrator concluded that the work was delayed due to the respondents and the work continued beyond the stipulated day without the respondents reserving any right to claim damages. The arbitrator thus held that the respondents were not entitled to rescind the contract and the petitioner was entitled to the refund of security.

15. Insofar as the other major claim No. 8 enhancement of the labour rates towards a claim for Rs. 69,132/- is concerned, it has been found that the claimant was entitled to reimbursement under Clause 10 (c) of the contract and since only the claim and not the rates were disputed by the respondent Rs. 45,000/- was awarded. The arbitrator relied upon the plea of the respondent that the actual number of labourers compared well with those required as per theoretical calculations. The arbitrator has upheld the claim up to the extent of Rs. 45,000/- and the learned counsel for the respondent has been unable to point out any legal lacuna in this portion of the award.

16. In view of the above position of law, I am Therefore, satisfied that the objections have no merits and are accordingly dismissed.

17. Accordingly the award dated 13th April, 1992 is made a rule of the Court and decree in terms thereof be drawn. If the amount due under the award is paid within 3 months from today, the award shall not carry any future interest. However, if the payment is not made within 3 months from today the awarded amount shall carry interest at the rate of 12 per cent per annum from the date of the decree till realization. There shall be no order as to costs. Decree sheet be drawn up accordingly.

18. Suit & is are accordingly stand disposed of.