
(1989) 09 DEL CK 0026

In the Delhi High Court

Case No : Interim Application No. 7981 of 1987 and Suit No. 1591A of 1987

Kuldip Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-09-1989

Acts Referred:

Citation : (1990) ILR Delhi 113 : (1989) RLR 490

Hon'ble Judges : P.N. Nag, J

Bench : Single Bench

Advocate : Jagjit Singh, for the Appellant;

Judgement

Nag, J.

(1) The disputes having arisen between the parties relating to "Zone Contract for Zone No. 4/HQ under AEN? 1/Lucknow for the period ending 30-6-1978 staff colony, in Grp Lines, Cash & Pay colony Multi storeyed quarters .Hyder canal, old and new sick line colonies, Railway Institute & colony opposite goods shed, Lucknow station building goods shed area and whole of station yard, under Agreement No. 48/WA/Z4/CB/77-78 dated 29-7-77". the matter was referred to the sole arbitration of Shri J.S. Mundrey, then working as Chief Engineer (Construction) Northern Railway, now working as Executive Director, Civil Engineering, Railway Board, New Delhi by the General Manager. Northern Railway, New Delhi under his letter No. 63-W/44/158-D dated 20-11-1985 The arbitrator after having considered the statement of facts, counter statement of facts, all other papers filed before him heard the parties, considered all arguments and evidences and gone through all material papers and documents placed before him announced and published the award dated 29th October, 1986 awarded a sum of Rs. 23,750 in full and final settlement of all claims, referred to arbitration in favor of the claimant i.e. Kuldeep Singh contractor. He also awarded simple interest @ 15 per cent per annum on the awarded amount.

(2) The arbitrator filed the award dated 29th October, 1986 and the proceedings

into this court and the same has been registered as suit No. 1591-A of 1987, i.e. the present suit. After the filing of the award in court notices were ordered to be issued to the parties. Notice of the filing of the award was served on the claimant-contractor on 28th August, 1987 whereas the Union of India was served with the said notice on 15th September, 1987. No objections were filed on behalf of the claimant-contractor. However, objections (IA 981/87) were filed on behalf of the Union of India. The claimant-contractor has not chosen even to appear in the court. Hence he is proceeded ex-parte.

(3) The Union of India was allowed to file affidavit by way of evidence in support of objections on 27th October, 1988. The Union of India has filed the affidavit of Shri Budh Prakash, Divisional Superintending Engineer (C) Northern Railway Lucknow Division. Lucknow who has stated that the award is bad in law. The arbitrator has not given the break up of the sum awarded against the each item of claim which he was required to do under the terms of reference dated 29th November, 1985. The arbitrator has awarded Rs. 20,000 against contractor's claim of items two or six including the arbitration expenses. It cannot be ascertained as to what amount has been awarded against each claim and which claim has been accepted or rejected. The affidavit further states that the award is beyond the jurisdiction of the arbitrator as he has stated in the award that payment, if any, made on the labourers through the agency of Labour Enforcement Officer (Central) Lucknow will be made by the Uoi being the principal employer over and above the awarded amount. The said finding of the arbitrator is not within the scope of jurisdiction of the terms of reference based on the Delhi High Court judgment dated 10th July, 1985. The arbitration leaves jurisdiction from the terms of reference. "The affidavit further states that the Uoi had also submitted to the arbitrator counter claims of Rs. 44,958.81 being financial loss due to non-completion of work by the contractor and getting the said work done from the other contractor. The arbitrator while giving the award has not considered the counter claims of the Union of India which is a mistake apparent on the face of the record and against the facts. It is further stated in the affidavit that the arbitrator has; travelled beyond his jurisdiction by allowing future interest and is. Therefore, guilty of breach and neglect of duty and responsibility which has resulted in miscarriage of justice. Lastly it is prayed that the award may be set aside and/or remitted to the arbitrator for reconsideration.

(4) During the course of arguments, Mr. Jagjit Singh, counsel for the Uoi, has vehemently attacked the award on the same grounds as the Uoi has taken in the objections. He has reiterated that the arbitrator has not given the break up of the sum awarded against the each items of claim and has challenged the award on the ground that the counter-claim of Rs. 44,958.81 has also not been considered. The contention of counsel for the Uoi cannot be upheld and must be rejected in view of the law laid down by the Supreme Court in Smt. Santa Sila Devi and Another Vs. Dharendra Nath Sen and Others, The Supreme Court in that case has observed"

"Where an award given by the arbitrator is filed in Court and it is challenged on the ground of its incompleteness, the Court, has to bear in mind certain basic position. These are: (1) a Court should approach an award with a desire to support it, if that is reasonably possible, rather than to destroy it by calling it illegal; (2) unless the reference to arbitration specifically so requires the arbitrator is not bound to deal with each claim or matter separately, but can deliver a consolidated award. The legal presumption is clear that unless so specifically required an award need not formally express the decision of the arbitrator on each matter of difference, (3) unless the contrary appears the Court will presume that the award disposes finally of all the matters in difference; (4) where an award is made de premises (that is, of and concerning all the matters in dispute referred to the arbitrator), the presumption is, that the arbitrator minded to dispose finally of all the matters in difference; and his award will be held final, it by any intendment it can be made so." "Where, Therefore, after taking into consideration the arbitration agreement, the statements filed by the parties and the document produced, the arbitrator proceeds to give his "award in writing as to all disputes" referred to him, the court will assume that the arbitrator has considered and disposed of every claim made or defense raised. Since the award states that it is made of and concerning all the matters in dispute referred to the arbitrator, there is a presumption that the award is complete. In such a circumstance, the silence of the award as regards a particular claim must be taken to be intended as a decision rejecting the claim to that relief."

(5) In the present case the arbitrator after having duly considered the statement of facts and counter-statement of facts, all other papers filed before him, having heard the parties and duly considered all arguments and evidence and gone through all material papers and documents placed before him by the parties has given the award. Therefore, the court will assume that the arbitrator has considered and disposed of every claim made or defense raised. There is, Therefore, presumption that the award is complete and the silence of the award as regards a particular claim must be taken to be intended as a decision rejecting the claim to that relief.

(6) Counsel for the UOI next contended that the arbitrator had no jurisdiction to award future simple interest @ 15 per cent p. a. in case the payment of the awarded amount is not made by 31st July, 1987. This contention of the learned counsel for the UOI is also to be rejected on the ground that the future interest can be awarded by the court with effect from the date of the award till the date of the decree. In this connection reference may be made to *Jagdish Chander v. Hindustan Vegetable Oils Corporation* and another 1989 Delhi 407(2) wherein B. N. Kirpal, J. has awarded future interest in exercise of powers u/s 3 of the Interest Act read with Section 29 of the Arbitration Act with effect from the date of the award till the date of payment.

(7) The last contention urged by counsel for the UOI that the award in so far as it

relates to the payment, if any, to be made to the labourers, through the agency of Labour Enforcement Officer (Central), Lucknow will be made by the UOI being the principal employer over and above the awarded amount is concerned is vague and uncertain and without jurisdiction and deserves to be set aside. There seems to be good deal of force in his contention. No doubt this part of the award is vague and uncertain and does not give any precise directions and is also not within the scope of jurisdiction of the terms of reference. Therefore, this part of the award is set aside.

(8) In the light of the above discussion the award dated 29th October, 1986 is made a rule of the Court except that part of the award which relates to the payment, if any, to be made to the labourers, through the agency of Labour Enforcement Officer (Central), Lucknow to be made by the UOI being the principal employer over and above the awarded amount is set aside. A decree shall be drawn up accordingly and the award shall form part thereof. No costs.