
(1990) 11 SHI CK 0025
In the High Court Of Himachal Pradesh
Case No : Civil Suit No. 65 of 1988

Madho Singh Ahuja	Vs	APPELLANT
The State of Himachal Pradesh		RESPONDENT

Date of Decision : 24-11-1990

Acts Referred:

Arbitration Act, 1940 — Section 16, 16(1), 30, 33, 6

Citation : (1991) 2 ShimLC 138

Hon'ble Judges : D.P. Sood, J

Bench : Single Bench

Advocate : M.C. Mandhotra, for the Appellant; R.M. Bisht, Law Officer, for the Respondent

Judgement

D.P. Sood, J.—In case the award is set aside and an order u/s 6 of the Arbitration Act, 1940 is made, should the matter go back to the same Arbitrator who gave the award, is the short but nevertheless an interesting question that has fallen for determination of this Court.

2. The facts of this suit are almost undisputed. The Plaintiff is a H.P., P.W.D. Contractor. He undertook to execute the laying gravity main work in between Khaliar and Purani Mandi area known as "Augmentation of Water Supply Scheme of Mandi Town (H.P.)" The work order was given on February 19, 1985 pursuant to an agreement entered into in between the parties to the instant lis. The Plaintiff was required to start the said work on March 6, 1985 and it was to be completed within three months therefrom. In other words, it was a time bound work entrusted to the Contractor. However, this work was not completed within the stipulated period and ultimately the same was rescinded on 28-1-1987 by the Defendant pursuant to the final notice issued by the Department on 23-9-1986. The contractor raised various disputes and claimed the appointment of an Arbitrator pursuant to Clause 25 of the Arbitration Agreement.

3. Claims and counter-claims were filed by both the parties, evidence was also adduced and the learned Arbitrator after hearing both the parties made the

impugned award dated 31-1-1988

4. The Department through the State of Himachal Pradesh raised various objections to the aforesaid award, one of them being that the award of the Arbitrator pertains to subject matter of the claim, the value of which is more than Rs. 50,000 and under Clause 25 of the Agreement, he was bound to make a speaking award which he has failed to do so. Thus, according to then the aforesaid award is otherwise invalid, the error being transparent on the face of it.

5. The claimant resisted and contested the averments so made by the State of Himachal Pradesh in their application under Sections 30 and 33 of the Arbitration Act. According to their contention the aforesaid impugned award is a speaking one

6. I have heard Shri R.M. Bisht, Law Officer on behalf of the Defendant and Shri M.C. Mandhotra, Advocate, appearing on behalf of the Plaintiff at length and I have also gone through the record carefully.

7. Clause 25 of the Arbitration Agreement reads as under:

Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions hereinbefore mentioned and as to the quality of workmanship of materials used on the work or as to any other question, claim, right matter or thing whatsoever, in any way arising out of relating to the contract designs, drawings, specifications estimates, instructions orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the completion abandonment thereof shall be referred to the sole arbitration of the person appointed by the Engineer in-Chief/ Chief Engineer, Himachal Pradesh. Public Works Department. It will be no objection to any such appointment that the arbitrator so appointed is a Government servant, that he had to deal with the matter to which the contract relates and that in the course of his duties as Government servant, he had expressed views on all or any of the matters in dispute of difference The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reasons the Chief Engineer, H.P., PWD at the time of such transfer, vacation of office or inability to act, shall appoint another person to act as arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the state at which it was left by his predecessor. It is also a term of this contract that no person other than a person appointed by the Chief Engineer, H.P, PWD, should act as arbitrator and, if for any reasons, that is not possible, the matter is not to be referred to arbitration at all. In all cases where the amount of the" claim in dispute is Rs. 50,000 (Rupees Fifty Thousands) and above, the arbitrator shall give reasons for the award.

Subject as aforesaid provision of the Arbitration Act, 1940 or any statutory modification or re-enactment thereof and the rules made thereunder and for the

time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of the contract that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of such dispute.

It is also a term of the contract that if the Contractor(s) do/does not make any demand for arbitration in respect of any claim(s) in writing within 90 days of receiving the intimation from the Government, that the bill is ready for payment, the claim of the Contractor (s) will be deemed to have waived and absolutely beared and the Government shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitrator(s) may from time to time with consent of the parties enlarge the time, for making and publishing the award.

Indisputable the value of the claim of the disputes put forth by the Plaintiff before the Arbitrator is much more than Rs. 50,000. According to Clause 25 referred-to-above, in view of the value of the subject matter under adjudication before him, the arbitrator was required to give reasons for making his award.

8. 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. There is also no dispute to the legal preposition that if parties set limits to action by the Arbitrator, then the Arbitrator has to follow the limit set for him. In that view of the matter he must conform to any direction which may be contained in the Arbitration Agreement and in case he ignores such limits or restrictions, the award then becomes liable to set aside.

9. The facts of the instant case are peculiar inasmuch as despite the existence of the restrictions put upon the Arbitrator, he has failed to comply with it while making the impugned award. Non-speaking award means that the Arbitrator did not go into the merits of the case and as such, did not assign the reasons. The expression, "reasons" in Clause 25 of Arbitration Agreement envisages the consideration of the entire evidence oral as also documentary adduced by both the parties and thereafter concluding the truth therefrom after having satisfied himself with respect to its authenticity. In fact how, in what manner and on what basis the conclusion had been arrived at, is required to be stated in respect of each item of the dispute. In case the impugned award is read in that perspective, the Arbitrator is not found to have conformed to the limits or the restrictions put upon him by Clause 25 of the Arbitration Agreement entered into between the parties to the instant lis. That is to say the impugned award suffered from an error which is transparent. I am, therefore, of the opinion that the instant case is one which is covered under Clause (c) of Section 30 under the expression, "is otherwise invalid." This being so, setting aside of the award fell within that clause. I order accordingly.

10. As discussed above an objection to the legality of the award which is apparent on the face of it having been raised by the Defendant within the meaning of Section 16(1)(c) of the Arbitration Act, the order with respect to the remission of the award can be passed. Both parties have raised no objection to this course being followed by this Court. In my opinion, the provisions contained in Section 30 and Section 16 are not mutually exclusive. Section 30 is mandatory in character. Award can be set aside in the circumstances enumerated therein and in no other way. The same is, however, not the case with Section 16 on account of the use of the word "may". The position that emerges is that the Court may by acting u/s 30 set aside an award and leave it to the parties to have the course to arbitration in case the Arbitration Agreement survives. The Court may go further and remit the award for reconsideration if the matter also falls u/s 16. This is the conclusion which follows by adopting the rules of harmonious interpretation of the two provisions.

11. Section 16 reads that Court may from time to time remit the award or any matter referred to arbitration to the Arbitration or Umpire for reconsideration upon such terms as it thinks fit. The use of the word "may" and "Arbitration or Umpire" acquire significance and the only reasonable conclusion that should be placed upon said expression, would be that it is the Arbitrator who gave the award who shall reconsider the matter on remittance. In case such an Arbitrator is found to be no longer in existence or for some other reasons he shows his inability to act, then parties are to be bound by the arbitration clause entered into between them.

12. In the instant case Clause 25 of the Arbitration Agreement specifically gives an alternative solution to the Appointing Authority for appointing another Arbitrator in case the Arbitrator to whom the matter is originally referred shows his inability to continue with the proceedings on account of his transfer or due to having vacated his office or being unable to act for any reasons. In other words one has to go through the agreement of the arbitration, if need be, the provisions of the Arbitration Act to get another Arbitrator appointed. The Arbitration clause in the instant case would show that in the abovesaid eventualities the aggrieved party can seek his remedy by approaching the competent forum for the appointment of another Arbitrator in case of need.

13. For the reasons foregoing, the impugned award is set aside and the arbitration proceedings are remitted to Shri Y.R. Kashyap, the original Arbitrator so appointed with the direction to re-hear the parties by giving an opportunity to both of them and proceed to make a reasoned award in the light of the observations made above within four months from the date of receipt of this order. Order accordingly. Parties are left to bear their own costs in the instant suit. Decree sheet be prepared and the file be consigned to the Record Room after its due completion.