

(1986) 05 DEL CK 0007

In the Delhi High Court

Case No : Suit No. 537-A of 1980, I.A. No's. 1180 and 3135 of 1981

M/s. Bombay Ammonia Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-05-1986

Acts Referred:

Citation : AIR 1987 Delhi 148

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : J.L. Puri, for the Appellant; C.L. Chaudhary with Vimal Goel, for the Respondent

Judgement

Sultan Singh, J.—The respondent Union of India invited tenders for an air-conditioning plant for telephone exchange building at Manglore in June, 1964. M/s Bombay Ammonia (P) Ltd. petitioner submitted a tender dated 15th July, 1964. The Union of India issued acceptance of tender dated 10th November, 1964. Disputes arose between the parties and Mr. S. K. Bahadur, Joint Secretary and Legal Advisor to the Government of India, Ministry of Law, and Justice was appointed as sole arbitrator by the Director General of Supplies and Disposal. The petitioner submitted his claim. The Respondent Union of India filed its counter claim. The arbitrator by his award dated 28th July, 1980 rejected the claims of the petitioner and the respondent. The Union of India in its objections has alleged that the arbitrator misconducted himself and the proceedings, that there is an error apparent on the face of the Award, that the arbitrator has misread and mis-interpreted the relevant conditions of the contract especially Clause No. 12 of the Conditions of Contract governing supplies of plant and machinery (Form No. DGS & D 71). The petitioner/claimant has also filed objections (I.A. No. 3135 of 1981) raising various questions on merits of the controversies between the parties. The petitioner also alleges that the arbitrator misconducted himself and the proceedings, that the award is based on no evidence, that the arbitrator has not applied his mind to the matters before him,

that there is an error apparent on the face of the award.

2. There were six issues before the arbitrator and his award on these issues reads as under:

Issue No. 1

Whether the contract was executed in terms of the agreement.

The contract was not executed by the claimant contractor in terms of the agreement.

Issue No. 2

Whether the rejection of the plant was unjustified

The rejection of the plant was justified.

Issue No. 3

Whether the claimant contractor is entitled to receive from the respondent Rs. 69,488.50 as balance due after the execution of the contract.

Claim rejected.

Issue No. 4

Whether the respondent is entitled for the refund of Rs. 1,67,743.50 from the claimant contractor.

No. The Department did not follow the correct procedure laid down in the conditions of contract for getting the balance work done at the risk and cost of the contractor. Apart from this, there is no provision for the refund of the amount of the contract.

Issue No. 5

Whether the claimant is entitled for interest pendente lite and future interest till final realisation

Claim rejected.

Issue No. 6

Whether the respondent would be entitled for any other relief against the claimant contractor in the circumstances of the case.

Claim rejected.

From the pleadings of the parties before the arbitrator it is apparent that one of the points in dispute was about the capacity of the air-conditioning plant. According to the petitioner the capacity was only 32 TR while according to the respondent the capacity of the plant, to be installed, was 45.2 TR. The petitioner submitted his tender besides other persons. The petitioner applied to the

arbitrator for production of various offers/tenders with all technical details, received by the Union of India in respect of the tender in question in response to the invitation to tender. It is in the proceedings of the arbitrator dated 15th March, 1980 that the DGS & D undertook to produce the relevant papers for the inspection of the arbitrator on the adjourned date of hearing. Mr. C. P. Dua, Director Incharge of the petitioner company filed his affidavit dated 26th April, 1980 before the arbitrator who directed the Union of India to file a reply. It appears that Union of India did not file any counter affidavit. The Union of India also did not produce before the arbitrator the tenders submitted by other contractors regarding the installation of the air conditioning plant in question. Learned Counsel for the petitioner submits that the arbitrator was required to obtain the documents from the respondent Union of India before deciding the matters in dispute. He submits that the arbitrator misconducted by not procuring the said documents from the respondent Union of India. His submission is that if the arbitrator had obtained the tenders submitted by other contractors showing the capacity of the air-conditioning plant, which according to the petitioner cannot be more than 32 TR, the arbitrator would have been in a position to determine what was the contracted capacity of the air-conditioning plant. He submits that in the absence of these documents, the arbitrator failed to perform his duties and thus there was miscarriage of justice and the arbitrator is guilty of legal misconduct.

4. Legal misconduct means and includes some honest though erroneous breach of duty causing miscarriage of justice. If there has been mishandling of the arbitration proceedings or serious neglect of duties on the part of the arbitrator which is likely to lead substantial miscarriage of justice, the Court is justified in setting aside the award.

5. In *K.P. Poulose Vs. State of Kerala and Another*, it has been held that if an arbitrator ignores material documents he is guilty of legal misconduct. It has been further observed that even if the Department did not produce the documents before the arbitrator it was incumbent upon him to get hold of all the relevant documents in question for the purpose of just decision. It was held that the arbitrator had misconducted himself.

6. In *Mehta Teja Singh and Co. Vs. Union of India and Another*, it has been held that an arbitrator must follow the principles of natural justice and if he mishandles the arbitration proceedings likely to cause substantial miscarriage of justice he misconducts the proceedings. In that case, the arbitrator had failed to order the production of document which was a material document. The award was thus partly set aside on that ground holding that the arbitrator had misconducted. In *Union of India Vs. Mehta Teja Singh and Co.*, it has been observed that if an arbitrator had made the award without looking at a vital document, he misconducts himself and the award was liable to be set aside.

7. In the instant case, the arbitrator had directed the respondent Union of India to produce the documents sought to be produced by the petitioner but he did not

pursue the matter further. The documents sought to be produced by the petitioner before the arbitrator are not available on the record of the proceedings of the arbitrator. In other words it means that the arbitrator failed to do his duty and his failure or negligence has resulted in substantial miscarriage of justice to the petitioner. On this ground, alone the award is liable to be set aside.

8. Learned Counsel for the petitioner next submits that the award is based on no evidence and, therefore, it should be set aside. His argument is that the main dispute was about the capacity of the air-conditioning plant. He submits that there is no evidence on behalf of the respondent Union of India in support of its plea that the capacity of the air-conditioning plant was agreed to be 45.2 TR. If there is no evidence on record the arbitrator has no jurisdiction to hold on issue No. 1 that the contract was not executed by the claimant/contractor in terms of the agreement. In *Bashesar Nath & Co. v. Union of India*, 1978 Rajdbani LR 65 it has been held that if an award is based on no evidence, then it may be set aside, that Court can go into the question but Court cannot go into the sufficiency of evidence. There is prima facie no evidence on record of the arbitrator that the capacity of the plant was to be 45.2 T.R.

9. Learned Counsel for the parties submit that the instant award dated 28th July, 1980 is the result of non application of mind by the arbitrator. The argument is that if the claimant had not executed the contract in terms of the agreement, the respondent Union of India would be entitled for the refund of Rs. 1,67,743.50 under issue No. 4 and if the Union of India is not entitled for the refund of the said amount the arbitrator ought to have held that the contract was executed by the claimant/contractor in terms of the agreement. In short, the argument is that the decision of the Arbitrator on issues Nos. 1 and 4 is contradictory. There is an error apparent on the face of the award. Under issue No. 1, the Arbitrator has held that the contract was not executed by the claimant in terms of the agreement, and therefore, under issue No. 4 he ought to have held that the respondent was entitled for the refund of the amount claimed by it. The arbitrator has held under issue No. 4 that the respondent was not entitled for the refund of the amount claimed by it and, therefore, he ought to have held under Issue No. 1 that the contract was executed by the claimant in terms of the agreement. The decision of the arbitrator on the two issues, namely, issue Nos. 1 and 4 is contradictory which is the result of non application of mind to the facts and matters placed before the arbitrator. An award which is the product of non application of the mind of the arbitrator cannot be permitted to be sustained in law. This ground for setting aside the award would be covered within the expression "otherwise invalid" used in S. 30 of the Arbitration Act. Non application of mind to the materials on record suggests absence of fair play and indicates that the arbitrator did not function in a manner befitting his role.

10. It is, therefore, held that the arbitrator has misconducted himself and the proceedings, that the award is the product of non application of mind of the arbitrator and the same is, therefore, liable to be set aside. I, therefore, set

aside the award leaving the parties to bear their own costs.

11. It is stated by the Learned Counsel for the parties that Shri S. K. Bahadur arbitrator Joint Secretary in the Ministry of Law has since been suspended. The Director General of Supplies and Disposal is hereby directed to appoint a new arbitrator in terms of Clause 24 of the General Conditions of Contract within three months from the date of this order. No order as to costs.