
(2000) 07 DEL CK 0090

In the Delhi High Court

Case No : Suit No. 1432-A of 1985 and IA.6670/85

M/s. Ram Kishan and Sons

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-07-2000

Acts Referred:

Arbitration Act, 1940 — Section 16, 30

Citation : (2000) 3 ARBLR 595

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Mr. Girish Aggarwal, for the Appellant;

Judgement

Mukul Mudgal, J.—The brief facts of the case are that the petitioner is a Regd. Partnership Firm and is carrying on the business of construction works for the Union of India. The petitioner-Firm was awarded Contract Agreement No. IV/EE. IV/UNIDO/79-80 by respondent No.1/UOI for the work of renovation, carpeting and re-furnishing of Vigyan Bhawan SH: Supply of Chairs. That certain differences and disputes had arisen between the parties and as per the Arbitration Clause No.25 in the Contract Agreement between the parties, Mr. G.V.G. Krishnamurthy was appointed as the Sole Arbitrator who later on resigned on 4.3.1983 and thereafter Mr. Ch. Prabhakara Rao, the Respondent No.3 herein, was appointed as Sole Arbitrator by the Chief Engineer (NDZ), C.P.W.D., New Delhi under the letter dated 15.9.1983 of respondent No.1/UOI to adjudicate upon the disputes between the parties. The Arbitrator made and announced his award by granting a sum of Rs.1,002.50/- to the claimants/petitioners herein on 9th July, 1985 after hearing both the parties.

2. The present suit is filed by the petitioners, seeking a direction to the Arbitrator/respondent No.3 herein to file the original award. Thereafter the present Objections were filed by the claimants/Petitioners herein by IA. 6670/85 to the Award dated 9th July,1985.

3. In so far as the challenge to an arbitration award is concerned 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 justiciable 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."

6. A similar view has been 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."

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

"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."

8. 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."

9. 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."

10. 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."

11. 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 in respect of an award.

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*, .

12. The Hon"ble Supreme Court in *Army Welfare Housing Organisation Vs. M/s. Gautam Construction and Fisheries Ltd.*, 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."

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."

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. I have gone through the Award and the Objections. The Award is a reasoned one and gives cogent reasons for the amount awarded to the petitioners. The main plea raised by the petitioner is about the sum of Rs.1,62,532.66 qua Claim No.1 towards extra work done for longer and heavier crosses to the base stand. The Arbitrator has declined the claim for the above amount on the ground that at the time of tendering, the claimants were fully aware of the process of cutting required. The Arbitrator has found that for little deviation, the claimants have come forward with unsustainable rates. The Arbitrator further found that the first objection came from the claimants only two months after the date of completion. Accordingly, the Arbitrator found that the labour involved as claimed by, the petitioner was within the terms of agreement and claim for extra payment was not justified. These are the findings of fact not amenable to challenge in these proceedings. Accordingly, this objection to the Award is dismissed. The other objection raised by the petitioners as to Claim No.5 seeking a sum of Rs.37,323.00 from the respondent for providing removable casters in place of welded stand. This was denied on behalf of the respondents by saying that the respondents had never asked the claimants/petitioners herein to do any welding and the drawing also does not disclose that welding was done. The Arbitrator found that the drawing did not disclose anything about the welding or the renewal arrangements and there was no document to show that the respondents had directed the claimants/petitioners to do the aforesaid arrangements and consequently the petitioner's Claim No.5 was dismissed. The aforesaid finding again is a pure finding of fact based on appreciation of documents and cannot be impugned in the present proceedings.

14. Moreover in view of the above position of law, I am, Therefore, satisfied that the Objections (IA.No.6670/85), filed on behalf of the petitioners have no merits and are accordingly dismissed.

Accordingly, the Award dated 9th July, 1985 is made a Rule of the Court.

Interest awarded by the Arbitrator on the awarded amount of Rs.1002.50 from the date of reference, i.e., with effect from 26.5.1980 till the date of decree be paid within three months from today. 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 three months from today, the awarded amount shall carry future interest at the rate of 12 per cent per annum from the date of decree till realization. There shall be no orders as to costs.

Decree sheet be drawn up accordingly.

Suit & is are accordingly disposed of.