

(1991) 04 DEL CK 0021
In the Delhi High Court
Case No : Suit No. 1373A of 1984

Parmeshwari Das Shanti Perakash

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 29-04-1991

Acts Referred:

Citation : (1991) RLR 408

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : D.P. Sharma and A.P. Aggarwal, for the Appellant;

Judgement

P.K. Bahri, J.

(1) [ED. facts : Petitioner was given a construction contract. It was completed on 10.3.76. He accepted final bill under protest mentioning 2 Claims of total value of about Rs. 45 thousand. Petitioner then asked for reference to arbitrator and filed 5 claims of total value of more than Rs. 21 lakh. Arbitrator in his award did not give finding on each disputed question but merely awarded certain sums against different claims. Award was of more than Rs. 5 lakh. Govt. Challenged the award of the ground of judicial misconduct]. After detailing facts. Judgment is :

(2) Counsel for the Union of India has argued that the arbitrator has committed judicial misconduct in not giving his findings on the various disputes raised before him it respect of various claims and he had only awarded the particular amounts against the claims whereas condition 65 of the General Conditions of Contract clearly provided that the arbitrator in addition to awarding the sums in respect of the claims shall give his findings. So, it is urged that the award suffered from this illegality on the face of it and is liable to be set aside. It is also argued by the learned counsel for the respondent that the arbitrator exceeded his jurisdiction in entertaining claims which were beyond the two claims set up by the petitioner while accepting the final bill prepared by the petitioner. Reference has been made to condition No. 70 of the contract which clearly laid

down that while preparing the final bill the claims must be set up and no other claim could be entertained later on.

(5) The learned counsel for the petitioner, on the other hand, has argued that while the arbitrator was not required to give any reasons in support of his award and awarding particular sums against particular claims it should be inferred that the arbitrator has given findings and thus, the arbitrator has not committed any judicial misconduct. He has also argued that the mere fact that the petitioner had set out only two claims at the time of making of the final bill by the Union of India does not debar the petitioner from setting up additional claims for reference of arbitrator and the same was a matter which could be decided by the arbitrator.

(6) Counsel for the petitioner has made reference to Union of India (UOI) Vs. D. Bose and Others, , in support of his contention that the court should hold that as no finding has been given by the arbitrator as was required under the arbitration clause, the award is vitiated. In this judgment it has been held that the expression "finding" has been explained in O. Xx R. 5 of the CPC . and that it appears that the term "finding" is different from the term "reasons". The finding is the conclusion arrived at and reasons are the grounds for such conclusion. In the said case the arbitrator had given findings on each dispute but had not given reasons. In the present case, it is urged that the arbitrator had only awarded the sums against different claims and had not given findings. It is evident that the findings have to be given on the disputed issues raised before the arbitrator. The disputed questions which were raised before the arbitrator were : whether the U.O.I, was guilty of breach of the terms of the contract leading to any hold up of the work and as to whether the petitioner was entitled to claim any amount due to increase in the rates of minimum wages and if so, what were those minimum wages and whether the claimant was entitled to have any extra payment due to use of any oversize and overweight M.S. Bars and whether, in fact such oversize and overweight M.S. Bars had been used ?

(7) No conclusions have been given by the arbitrator on these disputes. He has only awarded the sums. It cannot be, hence, said that the arbitrator has given any finding on the disputed questions of facts which were raised before him as was required to be given in accordance with the arbitration clause. It is not possible to hold that the arbitrator has impliedly given any findings when he awarded certain sums. The arbitration clause clearly requires that besides awarding certain sums the arbitrator has to give his findings which the arbitrator, in the present case, failed to give, and thus, the arbitrator has committed judicial misconduct.

(8) The arbitrator was also bound to give a finding as to whether despite condition No. 70 of the contract, the petitioner could raise any claims which were not set up at the time of making of the final bill. No finding has been given by the arbitrator on this disputed question of law which could be deemed to be referred to the arbitrator. In Union of India (UOI) and Another Vs. L.K. Ahuja and

Co., , the facts were that a contractor had accepted payments and had given a no claim declaration but later on he set up the claims. The question arose whether such claims are referable for arbitration. The Supreme Court held that such a dispute is referable to arbitration and it is for the arbitrator to decide whether the claims could be raised or not despite the fact that the contractor had given no claim declaration at the time he accepted the payments. So, this particular issue was also raised before the arbitrator in the present case, still the arbitrator had failed to give any findings. It is true that there was no requirement in the arbitration clause that arbitrator should give any reasons in support of his findings but the arbitration clause did require giving of findings by the arbitrator which the arbitrator has failed to give in the present case. Hence, I hold that the award is liable to be set aside. Issue is decide in favor of the respondent U.O.I.

(9) Objection petition is liable to be allowed and the award is liable to be set aside. But the question which now arises for decision is whether the award should be remitted to the the arbitrator or not for giving findings. I think it would not be fair to the U.O.I, to remit the award to the same arbitrator for giving any findings.