
(1991) 08 DEL CK 0006
In the Delhi High Court
Case No : Suit No. 1143A of 1985

Pesticides India

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-08-1991

Acts Referred:

Citation : (1991) 45 DLT 646

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : R.C. Gupta, for the Appellant;

Judgement

Usha Mehra, J.

(1) M/S. Pesticides India, plaintiff, entered into an agreement with the Union of India through the Director General of Supplies and Disposal, New Delhi. the respondent invited/tenders for supply of 50 M.T. of Malathion 96% u l.v. vide enquiry dated 17th March, 1979 due on 7th April, 1979. The petitioner/objector submitted the quotation at the rate of Rs. 26,800.00 per M.T. The first supply against the tender was to commence after 15 days of the receipt of the respondents' firm acceptable order. The respondent informed the petitioner to withdraw some conditions and wanted the petitioner to treat the date of dispatch as the date of delivery. This proposal of the respondent was not acceptable to the petitioner. However, on 18th May, 1979, the tender was accepted. Petitioner found some conditions at variance with their offer and indicated the same to the respondent. Respondent accordingly agreed to amend the accepted tender, but again made some contrary terms which were objected to. However when the respondent did not respond to the petitioner's offer, the petitioner withdraw his offer on 18th June, 1979. Subsequent thereto the respondent indicated on 21st June, 1979 that they had amended the acceptance of their tender. This was not agreed to by the petitioner. The correspondences were thereafter exchanged and ultimately the petitioner was directed to meet the Deputy Director General on 15th July, 1979. The petitioner accepted the respondent's request on 13th

August, 1979, not to withdraw the offer. Accordingly petitioner gave delivery schedule for the supply and for offering for inspection. This was accepted by the respondent. Thus a concluded contract including the amendments issued by the respondent/ Uoi which form part of the contract came into existence on 18th May, 1979.

(2) The said agreement contained an arbitration clause which provides that in the event of any dispute or difference arisen between the parties, it shall be referred to an Arbitrator.

(3) The disputes and differences arose between the parties. The respondent was asked to appoint an Arbitrator but as the respondent did not appoint an Arbitrator, the petitioner was forced to move this Court and filed a petition u/s 20 of the Arbitration Act. This was listed as Suit No. 62/80. This Court after considering the merits of the case directed the respondents to appoint an Arbitrator who was to adjudicate upon the disputes as referred in the petition. Arbitrators had been relinquishing the posts and lastly Mr. R.N. Misra, Additional Legal Adviser, was appointed as the Arbitrator who made and published his Award on 26th March, 1985. In this connection it may be mentioned that none of the party led any evidence before the Arbitrator. They only submitted their statements of claims and the counter-claims, adduced documents and argued the case before the Arbitrator.

(4) The impugned award has been assailed by the claimant Inter alia on the grounds that the Arbitrator has made and published his award beyond the statutory period of four months, Therefore, the award is liable to be set aside. / Even otherwise the Arbitrator has not taken into consideration the admitted documents filed by the objector and also the documents filed by the respondent/ Uoi which strengthen the case of the petitioner. Arbitrator having ignored the admitted documents has misconducted himself and the proceedings.

(5) In order to appreciate the contention of the learned Counsel for * the objector it would be worthwhile to note that Sh. R.N. Misra was appointed as the Sole Arbitrator by respondents on 18th September, 1984. The Arbitrator entered upon the reference on the same date i.e. 18th September, 1984. Vide the said letter he directed the objector to file the documents by 29th September, 1984 and directed the Uoi to file the counter-claims of facts and documents by " 15th October, 1984. He listed the case for hearing on 22nd October, 1984. From the perusal of the proceedings dated 19th .October, 1984 it appears -that on the joint request the case was adjourned" to 20th November, 1984. Thereafter the proceedings were adjourned from time to time. It is a fact on record that the Arbitrator neither sought for the extension of time nor the parties gave any consent for enlarging the same to the Arbitrator for making and ^ publishing his award. Admittedly the Arbitrator entered upon the reference on 18th September, 1984 but the award has been made and published by the Arbitrator on 26th March, 1985, i.e. beyond the stipulated period of four months. There is no application moved by the Uoi or by claimant seeking enlargement of the time.

Nor any such application was moved before the Arbitrator. Even the Arbitrator has not sought enlargement of time. Therefore the point for consideration is whether such an award made and published after the expiry of the stipulated period of four months is sustainable.

(6) It is well-settled principle of law that the Courts power u/s 28 of the Arbitration Act to extend the time are discretionary and are not limited. The Court can enlarge the time for making the award either before or even after the time for making the award has actually been made or even after the award has been made. What is necessary for the Court in Its proper exercise of discretion is to consider the facts & circumstances of the case before enlarging the time. The policy of the law is that arbitration should not be unduly prolonged. The Court can extend time in fit cases even after the award has been made. But at the same time the Court can extend time only for cogent reasons. A party who has been negligent or guilty of dilatory tactics cannot get extension. ^

(7) The Counsel for the object" r/claimant drew my attention to the proceedings held before the Arbitrator. He contended that at no stage the claimant gave the consent for the enlargement of time nor the Arbitrator sought for the same. Therefore the award is vitiated having been made after the expiry of the period. Earlier view had been that an award made beyond time was not invalid or void on that account alone and if the parties had taken a willing part in the proceedings they could not challenge the award on the ground of award having been made out of time. But Supreme Court in the case of State of Punjab Vs. Hardyal, has taken a contrary law when It observed:

"It need be hardly emphasized that the Act has enjoined the Arbitrator to give an award within the period of four months unless the same is extended by the Court. The Arbitrator had no jurisdiction to make an award after the fixed time. If the award beyond the time is invalid the parties are not estopped of their conduct from challenging the award on the ground that it was made beyond time merely because of their having participated in the proceedings before the Arbitrator after the expiry of the prescribed period."

(8) This shows that the Arbitrator has to make the award within the prescribed period under Schedule I Rule 3 or within such extended time as may be allowed by the Court u/s 28 of the Arbitration Act., However, if the agreement itself stipulates that the parties can give joint consent to the Arbitrator then of course the Arbitrator has the power to extend the time without coming to the Court. But for that the Arbitrator must have a joint consent of title parties before him for enlarging the time for making and publishing the award from time to time. In view of the position of law as explained above, the Court has the power to extend the time suo motu". But at the same time this Court cannot overlook the fact that for exercising the discretion cogent reason must be forthcoming. In the case in hand, the Union of India has not given any reason what to talk of cogent reason as to why the Arbitrator could not make and publish the award within four months. Obviously the discretion cannot be exercised in favor of a party who has

been guilty of dilatory tactics. In order to exercise the suo motu discretion this Court has to be guided by facts and circumstances but no facts have been placed on record by the Union of India as to why Mr. R.N. Misra, the sole Arbitrator, who entered upon reference on 18th September, 1984 could "not make and publish his award within four months. The claimant was directed by the Arbitrator to file the documents on 29th September, 1984 and the Union of India was to file counter-claim by 15th October, 1984. Thereafter the case was listed on 22nd October, 1984. It was, however, adjourned to 20th November, 1984. On 20th November, 1984 the Union of India again sought time for filing the documents as they were not ready. Time was allowed and hearing was adjourned to 14th January, 1985. Union of India did not file the documents within the time prescribed. Therefore the claimant issued a telegram on 25th December, 1984. The Arbitrator on 3rd January, 1985 again directed the Union of India to file the documents. But on 7th August, 1985 Union of India in filing the documents intimated to the Arbitrator that hearing fixed on 14th January, 1985 again be adjourned to some other date in the middle of next month. On 8th January, 1985 the Arbitrator on the request of Union of India adjourned the case from 14th January, 1985 to 27th February, 1985 with further direction that Union of India should file the documents at least a week before the next date. On the request of the claimant the date was pre-poned to 25th February, 1985. On 25th February, 1985 admission/denial of the documents was done and the case was adjourned for arguments to 23rd March, 1985. But there are no proceedings of 23rd March, 1985 available on record. On 26th March, 1985 the Arbitrator made and published the Award.

(9) The period of four months from 18th September, 1984 expired on 17th January, 1985 but the Union of India on one pretext or the other had been seeking the adjournment from the Arbitrator for this period and even period subsequent to 17th January, 1985. Actually the case was fixed on 14th January, 1985 when the Union of India got it changed to 27th February, 1985. The claimant had raised objection in his objection petition but no reply to this objection nor any Explanation worth the name has been given by the Union of India as to why the Arbitrator adjourned the case and why Union of India could not get it decided within the stipulated period ? On the contrary from the proceedings of the Arbitrator as enumerated above, it is clear that the delay in concluding the arbitration proceedings was on the part of UOI. Therefore, Union of India being guilty of dilatory tactics cannot take advantage nor can Invoke the discretion of this Court for extension of time. Therefore, I find that it is not a fit case where the discretion should be exercised for extending the time. It was the Union of India which was mainly responsible for the delay in concluding the arbitration proceedings. Therefore, taking all the facts and circumstances of this case into consideration I am not inclined to extend the time for making and publishing the award particularly when I find that the respondent/UOI is to be blamed for the delay in making the award. Therefore, this Award given by Mr. R.N. Misra, Arbitrator, dated 26th March, 1985 having been made beyond the

prescribed/period of four months is liable to be set aside. In the absence of any Explanation I find no merits to exercise my discretion suo motu to extend time. The award dated 26th March, 1985 is accordingly set aside. However, in the facts and circumstances of the case the parties will bear their own costs.