

(2010) 03 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : CIMA No. 107-A of 2001, CMP No. 368 of 2008, CMP No. 286 of 2001, CMP No. 249 of 2003, CMP No. 38 of 2004 c/w CIMA No. 108-A of 2001 and CMP No. 287 of 2004

Power Grid Corporation of India

APPELLANT

Vs

Pardeep Abrol and Others

RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

Arbitration Act, 1940 — Section 20

Citation : (2010) 3 JKJ 225

Hon'ble Judges : Virender Singh, J;Sunil Hali, J

Bench : Division Bench

Judgement

Sunil Hali, J.—Common questions of fact and law have been raised in these appeals, as such, we propose to dispose of these by this

common judgment.

2. In order to understand the controversy involved in these appeals, the facts are required to be noticed which are as under:

Two appeals u/s 39 of the J&K Arbitration Act have been preferred by the appellant against order dated 22.04.1999 passed in CMP No.345/94

(in AA No. 146/94) and order dated 14.09.1999 passed in CMP No.346/94 (in AA no.147/94).

CIMA No. 107-A/2001.

3. A contract for construction of Intake Structure for Pump House at Kishanpur was allotted in favour of the respondent-claimant-Shiv Lal Abrol

(since dead), whose legal heirs have been brought on record (hereinafter referred to as claimant-non-objectors). Certain disputes arose between

the parties which impelled the claimant to invoke Clause 55 of the Contract

Agreement for referring the matter to the Arbitrator. The matter came to be referred to the Arbitrator through the intervention of the Court in A.A. No.170/1991. It seems that an appeal (CIMA No.135/1992) came to be preferred against the order of reference, which finally came to be disposed of vide order dated 26.07.1993 with the directions to the Chief Engineer In-charge of the work to appoint one Arbitrator from the panel of three persons after obtaining consent from the parties and it was also directed that appointed Arbitrator shall enter upon the reference thereafter. The Court also directed that the parties shall be at liberty to file their claims and counter claims before the Arbitrator.

4. Reference was made to the appointed Arbitrator who, after examining the rival claims of the parties, passed an award of Rs.3,19,470 in favour of the claimant, which was required to be paid within a period of one month from the date of the award, failing which the claimant was held entitled to pendente lite interest @ 10% on the total awarded amount from the date of the award till its realization.

5. Thereafter, award came to be filed in this court for making it rule of the court. Notice u/s 14(2) of the Arbitration Act, 2002 came to be issued to the parties. Objections were filed by the Objector-Corporation. After hearing the parties, learned Single Judge of this Court, vide order dated 22.04.1999, rejected the objections filed by the Objector-Corporation under Sections 30/33 of the Arbitration Act and made the award rule of the court. Learned Single Judge also awarded interest on item Nos.1,2 and 3 of the said award from the date of decree till the date of payment. It is under these circumstances, the present appeal has been preferred by the appellant.

CIMA No. 108-A/2001.

6. The contract was allotted for construction of boundary wall at Grid Station, Kishanpur. Certain disputes were raised by the respondent-claimant-Shiv Lai Abrol (since dead) whose legal heirs have been brought on record (hereinafter referred to as claimant-non-objectors), regarding the aforementioned work as a result of which reference was sought to the Arbitrator for resolving the disputes through the intervention of the Court. Arbitration Application No.168/91 came to be filed in the court and, accordingly, reference was made to the Arbitrator by the learned Single

Judge vide order dated 29.09.1992. As the objector-Corporation was not satisfied with such appointment, an appeal came to be filed, which

came to be disposed of by setting aside the appointment of earlier Arbitrator with a direction to the Chief Engineer In-charge of the work to

appoint one Arbitrator from the panel of three persons after obtaining consent from the parties and it was directed that the appointed Arbitrator

shall enter upon the reference thereafter. It was also directed that the parties shall be at liberty to file their claims and counter claims before the

Arbitrator.

7. Reference was made to the appointed Arbitrator, who, after examining the rival claims of the parties, passed an award of Rs.9,07,300/- in

favour of the claimant, which was required to be paid within a period of one month from the date of the award failing which the claimant was held

entitled to pendente lite interest @ 10% on the total awarded amount from the date of the award till its realization.

8. The award came to be filed in this Court for making it rule of the Court. Notice u/s 14(2) of the Arbitration Act, 2002 came to be issued to the

parties. Objections were filed by the appellant-Corporation. After hearing the parties, learned Single Judge of this Court vide order dated

14.09.1999 rejected the objections filed by the appellant-Corporation under Sections 30/33 of the Arbitration Act and made the award rule of the

Court. It is under these circumstances, the present appeal has been preferred by the appellant.

9. In both these appeals, the awards were questioned by the Corporation on the following grounds:-

(i) That the Arbitrator had travelled beyond the scope of reference;

(ii) That the award was not supported by any reasoning;

(iii) That the award suffers from an error which is apparent on the face of the record; and

(iv) That lump-sum interest was awarded without referring the period for which it has been awarded.

10. While dealing with the question raised before the learned Single Judge, in Arbitration Application No.146/1994, the learned Single Judge held

as under :

(a) That with regard to the plea raised by the appellant-Corporation that, the

Arbitrator had travelled beyond the scope of reference by entertaining the claims, which were not mentioned in the Arbitration Application, the learned Single Judge, while disagreeing with the contention, held that during the pendency of the A.A. No.146/1991, CMP No. 339/92 also came to be filed in which additional claims were filed. Besides, this, the claimants were permitted to file claims and counter claims before the Arbitrator, as such, the plea, that the Arbitrator had travelled beyond the scope of reference, was not factually correct.

(b) That with regard to the plea that the Arbitrator, while dealing with the question that the award was not supported by any reasoning, which was required to be done in terms of Clause 55.6 of the General Conditions of Contract, the learned Single Judge held that the Arbitrator had given sufficient reasoning for the same;

(c) That while dealing with the question that the award suffers from an error which is apparent on the face of the record, learned Single Judge held that nothing was brought on record to suggest an error which is apparent on the face of the record.

(d) That while dealing with the question that lump-sum interest was awarded without referring the period for which it has been awarded, learned Single Judge granted interest from the date of decree till its realization @ 10%.

11. Similar issues were raised in A.A. No.147/1994.

12. We have heard learned counsel for the parties and perused the record.

13. The first question raised by the learned counsel for the appellant-Corporation relates to an issue that the Arbitrator has travelled beyond the

scope of reference by entertaining the claims, which were not mentioned in the Arbitration Application. The specific plea of the appellant is that the

claimant had stated in para no.17 of the petition filed before this Court that the value for the purpose of this Arbitration Application is fixed at

Rs.1.05 lac. This would be construed to be a claim, which the claimant sought to be recovered from the Objector-Corporation. The Arbitrator, for

having entertained the claim of more than Rs.1.05 lacs, had travelled beyond the scope of reference in entertaining the claims.

14. The order of reference defines limits of the authority and jurisdiction of the Arbitrator. The arbitrator's authority has its source in the order of

reference. He cannot traverse beyond the reference made by the Court. If he does so, he acts without jurisdiction. After examining this principle in

the present context, it is important to note that order of reference was made by this Court while referring the disputes to the Arbitrator. The

following directions were issued by the Division Bench of this Court vide order dated 26.07.1993 :

The appointed arbitrator shall whereafter, enter upon the reference and submit his award within the statutory period. The parties shall be at liberty

to file their claims and counter claims before the arbitrator

15. This was the point of reference made by the Court to the Arbitrator.

16. The import of the directions aforesaid clearly envisages that the parties are left free to submit their claims and counter claims before the

Arbitrator irrespective of what has been claimed by them in the application u/s 20 of the Arbitration Act. In the present case, order of reference

itself provides that the Arbitrator is at liberty to adjudicate upon the claims and counter claims, which may be filed by the parties before him. The

order of reference does not restrict the claims to the extent as pleaded in the petition by the claimant but permits filing of the claims and counter

claims before the Arbitrator. The argument of the learned counsel for the appellant-Corporation cannot be sustained. It is important to mention that

when additional claims were filed by the claimant before the Arbitrator, no objection was raised by the Objector-Corporation before him.

17. In so far as the other contention raised by the learned counsel for the appellant-Corporation that, the Arbitrator has not passed the reasoned

award, in this context, it is contended that in terms of clause 55.6 of the Agreement, it is incumbent upon the Arbitrator to give reasons for the

award if claim is more than Rs.1.00 lac. Dealing with this question, learned Single Judge has rightly observed that the reasons may not be

elaborated and detailed but award cannot be said to be without reasons. The Arbitrator has briefly referred to the claims/counter claims of the

parties filed before him, oral and documentary evidence as also referred to the spot inspection undertaken by him. After examining this aspect, the

Arbitrator has given the award item wise. The award appears to have been passed on the basis of the whole material that was before him, as such,

it cannot be said that non-speaking award has been passed. We are not inclined

to agree with the contention raised by the appellant-Corporation

and concur with the view taken and, therefore, we affirm the reasons given by the learned Single Judge.

18. The other contention raised by the learned counsel for the Objector-Corporation is that the Arbitrator has given interest, which is exorbitant

one. Even though no such plea have been raised in these appeals by the appellant, but looking to the facts and circumstances of the case, we are

inclined to reduce the interest from 10% to 7% per annum. The claimant-non objectors shall be entitled to interest at the rate of 7% from the date

of decree till the date of payment in terms of orders passed by the learned Single Judge.

19. Both these appeals are partly allowed in the terms mentioned hereinabove along with connected CMP(s).