
(1961) 11 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : Civil Rev. No. 435-D of 1961

Raghunath Enamels Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-11-1961

Acts Referred:

Arbitration Act, 1940 — Section 33

Citation : AIR 1962 P&H 383

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Judgement

(1) The short question for determination in this petition is whether the arbitrator had any jurisdiction to go into the dispute which was referred to him?

(2) In order to appreciate the point in issue, it would be necessary to state the facts briefly. The petitioner Raghunath Enamels Ltd. entered into a contract with the Union of India through the Ministry of Works, Housing and Supply, which is the first respondent on 4th of November, 1954, for the supply of "3250 Imperial Gallons of Enamels" in terms of the conditional contained in the acceptance of tender. The supply of Enamels was to conform to the standards sample No. AT/18/52 of 3rd of October 1951 approved by the Government Test House Certificate on 26th of August, 1953.

(3) Out of the total quantity indented for only 1760 Imperial Gallons were supplied and accepted by the first respondent. The remaining supply of 1490 Gallons though tendered for inspection by the supplier on 29th of December, 1955, was rejected by the Inspector on 9th of March, 1956. The time for delivery was thereafter extended to 15th of February, 1957, on which date the same quantity was again tendered and rejected by the Inspector on 6th of May 1957. The first respondent felt obliged to make the purchase of 1490 gallons at the risk of the supplier and a sum of Rs. 12,168-43 nP. was debited to the account of the Petitioner. A sum of Rs. 2296/- was mulcted on the petitioner as liquidated damages in pursuance of the agreement. The sum due from the petitioner not

having been paid to the first respondent, the adjustment was made from the credits standing in the name of the petitioner with the Union of India in respect of other contracts. Subsequently, the dispute was referred to arbitration.

(4) It is manifest that the entire dispute turns on the validity of rejection by the Inspector on 6th of May, 1957. The case for the petitioner is that the Inspector in the exercise of his power acted capriciously, wrongfully and without any basis. The position of the first respondent has been that the Inspector is the sole and final judge and his order of rejection is not open for adjudication under the arbitration clause. The arbitrators having framed issues, the first respondent moved the Court u/s 33 of the Arbitration Act for stay of proceedings on the ground that the arbitrators has no jurisdiction to go into this matter. The trial Judge having found in favour of the respondent union the petitioner has come to this Court in revision proceedings.

(5) Under clause 21 of the "General Conditions of Contract" applicable to contracts placed by the Central Purchase Organisation of the Government of India any dispute of difference arising between the parties "in connection with this contract" except as to any matters or the special conditions, the same shall be referred to the arbitration whose award shall be final and binding on the parties to the contract.

(6) The point for determination is whether the dispute is such that arbitration must be deemed to have been precluded. In other words, it has to be seen whether it relates to a matter the decision of which is specially provided for in the contract. Reference may now be made to clause 13 which relates to inspection and rejection. Sub-clause (i) of this clause provides for facilities for test and examination. In sub-clause (ii). the methods of test are prescribed and it is stated that "the Inspector shall have the right to put all stores or materials forming part of same or any part thereof to such tests as he may think proper for the purpose of ascertaining whether the same are in accordance with the particulars and to cut out or off and/or destroy a portion from each delivery for such purpose without prejudice to this right". In sub-clause (iii) it is stated that the Inspector is to be the final authority to reject any stores submitted as not being in accordance with the particulars. In sub-clause (v) relating to rejections it is provided in paragraph (d) that "the Inspector's Decision as regards rejections as aforesaid shall be final and binding on the parties".

(7) The learned counsel for the petitioner, who has put up a very strong argument, contends that the supplies had to be made in accordance with the sample and the Inspector has to see that the bulk of the goods conformed to the sample. The Inspector, who rejected the goods on 6th of May, 1957, nearly three months after they had been tendered on 15th of February, 1957 according to his argument, could not possibly have compared the goods with the sample which on the first respondent's own showing had been destroyed. In this connection, my attention has been invited to the letter Exhibit R/6, of 9-3-1956, addressed by the Director of the government test House, Calcutta to the petitioner that "all

standard samples registered by you prior to 1st of January, 1955, stand cancelled as they have either deteriorated or been consumed in testing against supply samples". It is argued that when the sample had been cancelled, how could the rejection be justified which, according to the Inspector's note of 6th of May, 1957, was due to the behaviour of the tendered goods in weathering being materially different from that of the approved sample?

(8) There can be no doubt that when the goods are sold by sample their delivery has to be such that the bulk conforms with it. Under clause 13, however there is nothing to preclude the Inspector from applying a test other than such comparison in acceptance or rejection of the tendered goods. That the goods were tendered late admits of no doubt as an extension had to be granted to the petitioner for delivery of 1490 Imperial Gallons. The sample may have suffered by deterioration and the Inspector had to apply some test to see whether this petitioner was tendering the right quality of material. Designedly, the Inspector has been given final powers of rejection and the Court must scrupulously observe the terms of the contract which has been executed between the parties.

In *price and Co. v. Governor General in Council* AIR 1955 P&H 240, Bishan Narain, J. had an occasion to construe clauses 13 and 21 relating to rejection and arbitration, and considered that

"it is clear from these clauses of the contract that the decision of the Inspector is final and any dispute relating to his decision cannot be adjudicated upon by the arbitrators or umpire, as such dispute does not fall within the scope of the arbitration agreement and the reference does not embrace the dispute relating to the Inspector's decision."

In reaching this conclusion, the learned Judge considered that an award cannot be extended beyond the scope of its submission and an arbitrator cannot give himself jurisdiction on a matter which is left to the decision of another under the agreement.

(9) The learned counsel for the petitioner places reliance on a judgment of the Full Bench in *Mohindra Supply Co., Kashmere Gate, Delhi Vs. Governor General in Council*, , and more especially on the observations of Chief Justice Weston in the referring order of the Bench consisting of himself and Bhandari, J. This was an appeal from an order of Falshaw, J. in which the Government's objection that the decision of the Inspector is final had been upheld. Chief Justice Weston said at a page 204 of the report (Pun LR) : (at p. 214 of AIR) that

"if it is found that the rejection of the goods made by the Inspector was within his powers, there can be no doubt that as under the terms of the contract itself such rejection was made final and binding, then by reason of the saving part of clause 21 of the General conditions of Contract termed W. S. B. 133 that rejection could not be the subject of arbitration." Reference was then made to the detailed provisions of clause 13. Now in the present case, the Inspector has full powers under sub-clause (ii) "to put all stores or materials to such tests as

he may think proper". Even though some reference was made to the sample which had deteriorated it was within the powers conferred on the Inspector under clause 13 and even under the rule laid down by Chief Justice Weston, his decision would be final.

It may be mentioned in passing that the judgment of the Full Bench upsetting the order of Falshaw, J., was reversed by their Lordships of the Supreme Court very recently on 5th of September, 1961, but the case was decided only on the basis that no Letters patent Appeal under clause 10 is competent from decision of a Single Judge under the Arbitration Act, Thus, the effect of the Supreme Court judgment is that the order of Falshaw J., was restored and that of the Full Bench together with the referring order of Chief Justice Weston was reversed. However, as rightly pointed out by the learned counsel for the petitioner, the reasoning of Chief Justice Weston which has not been dissented from in the judgment of their Lordships of the Supreme Court, is still available in support of his contention. But in my view, the reasoning adopted by Chief Justice Weston does not support the petitioner's case.

(10) As a result of the discussion, I would accordingly uphold the decision of the trial judge and dismiss this petition for revision, in the circumstances. I would leave the parties to bear their own costs.

Revision dismissed.