

(2010) 02 CAL CK 0026

In the Calcutta High Court

Case No : GA No. 104 of 2004 and AC No. 92 of 1997

Reliance Industries Limited

APPELLANT

Vs

Khaitan Transport Company Private Limited
 Khaitan
Transport Company Private Limited Vs Reliance Industries
Limited

RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

Arbitration Act, 1940 — Section 30, 33

Citation : (2010) 02 CAL CK 0026

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : P.S. Bose and S.K. Samanta, for the Appellant; S. Deb, R.N. Basak and Bidyut Dutt, for the Respondent

Judgement

Sanjib Banerjee, J.—An award made under the Arbitration Act, 1940 in the year 1991 has been challenged under Sections 30 and 33 of the Act.

2. The arbitration Clause did not oblige the Arbitrator to give reasons in support of his award. The petitioner says that notwithstanding the Arbitrator not being required to furnish reasons, the Arbitrator has, in fact, passed a reasoned award and the petitioner is entitled to question the reasons.

3. Over the first two pages of the award, the Arbitrator has narrated the facts and at the third page the Arbitrator has recorded the following before specifying the amounts awarded under various heads:

According to the respondent's counter statement, it intended to terminate the contract on the ground of default/neglect/failure of the claimant. However, the respondent as it appears stated hiring truck/lorries from third parties since January 1988 and completely stopped giving any transportation job to the claimant from February 1988. The respondent eventually terminated the contract by its letter dated 18th June 1988 preceded by an explanatory letter dated 5th

May, 1988 on the ground that the respondent had established a Feeder warehouse at Patna in January 1988 and stocks were being received directly from Baroda instead of redirecting the same from Calcutta. There is thus a clear inconsistency on respondent's part who in fact terminate(d) the contract of the claimant in February, 1988 itself on alleged ground of default but merely attempted to core (sic, cover up) the irregularity by a plead (sic, plea) calculated to give such termination a prospective and immediate effect.

In view of the foregoing, I hereby award and direct as follows:

4. The petitioner says that in proceeding to direct how much should be paid to the claimant, the Arbitrator has relied on the reasons given in the preceding paragraph and it is thus that the petitioner is entitled to challenge the basis for the award. The petitioner also claims that there is error apparent on the face of the award in that there is an arithmetical mistake in the calculation on the basis of the amounts awarded under four heads by the Arbitrator.

5. The relevant paragraph in the award consists of four sentences. The first sentence records what had been pleaded in the counter-statement. The second sentence is a conclusion drawn by the Arbitrator without indicating the basis therefore. The third sentence records a fact. The fourth sentence is the Arbitrator's impression of the matter and is based on the conclusion recorded in the second sentence. The Arbitrator has made no attempt to justify either finding recorded in the second and fourth sentences. The award is, in every sense, a non-speaking award.

6. In proceedings under Sections 30 and 33 of the 1940 Act, the court does not sit in appeal over the award. The power of a court assessing an award under Sections 30 and 33 of the Act is rather limited. If the court finds that the Arbitrator had acted within his authority and according to the principles of fair-play, the award would be left untouched. An Arbitrator's adjudication is generally to be binding on the parties for he is the forum preferred by the parties to the court. Courts have traditionally frowned upon challenges being made to arbitral awards by parties who had chosen arbitration in preference to the regular mode of adjudication available in civil courts. When an award does not give any reason and the agreement between the parties did not oblige the Arbitrator to give reasons, the court cannot speculate in proceedings under Sections 30 and 33 of the Act as to what impelled an Arbitrator to arrive at his conclusion.

7. In proceedings for setting aside an award under the 1940 Act, the challenger has to assail the reasons for the award. A non-speaking award is one where no reasons are given in support of the conclusion. Reasons are to be distinguished from conclusions; reasons would be the links that would lead to a conclusion and not the conclusion itself.

8. In the impugned award the Arbitrator concluded that the respondent in the reference stopped giving the claimant any transportation job from February, 1988. The Arbitrator thereafter recorded the factum of the termination of the

contract. The Arbitrator also concluded that there was inconsistency on the part of the respondent in the reference in terminating the contract to merely cover up the default of not having awarded any transportation job for some period prior to the issuance of the letter of termination. In neither case did the Arbitrator open his mind or give reasons as to how he reached the conclusion. Reasons would reveal how a mind has been applied to the matter in issue and convey the nexus between the matters that have been considered and the conclusion based thereon. There is nothing of the kind that is evident in the award to indicate how the Arbitrator inferred that the respondent in the reference had stopped giving any transportation job to the claimant prior to the termination of the contract; or, as to how the respondent's conduct was inconsistent or amounted to covering up a default on its part. Similarly, the quantum that the Arbitrator awarded is without any reason in support thereof. It is true that the damages awarded is based on the Arbitrator's conclusion that the respondent in the reference was at fault but the Arbitrator has not disclosed either why he felt that the respondent was at fault or as to why he awarded the sums that he did under the various heads.

9. It is not the petitioner's case that the award went beyond the reference or touched upon matters that were not arbitrable. The petitioner does not demonstrate that the Arbitrator acted contrary to any specific condition contained in the agreement. The jurisdiction of the court in interfering with a non-speaking award is constricted and this petitioner has not been able to show that the Arbitrator has misconducted himself or the proceedings or has proceeded beyond his jurisdiction.

10. There is, however, an obvious mistake in the addition. The Arbitrator has awarded Rs. 60,000/- on account of loss of profit; Rs. 11,000/- on account of establishment expenses; Rs. 1,800/- on account of detention charges; and, Rs. 3,450/- on account of unlawful deductions. The sum of the four amounts comes to Rs. 76,250/- and not "Rs. 86,2150" as erroneously arrived at by the Arbitrator.

11. In view of the above there will be judgment on the award for Rs. 76,250/- together with interest at the rate of 15 per cent per annum on such sum as awarded since the petitioner did not make payment within three months as provided by the award. The interest will continue on the principal sum at the same rate of 15 per cent per annum till payment. The respondent will also be entitled to costs assessed at 500 GM.

12. GA No. 104 of 2004 and AC No. 92 of 1997 are disposed of.

13. Urgent certified photocopies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.