
(1980) 11 CAL CK 0011
In the Calcutta High Court
Case No : Award Case No. 76 of 1980

Samir Kumar Mitra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-11-1980

Acts Referred:

Citation : 85 CWN 265

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : Bhaskar Gupta, for the Appellant; Ashutosh Law, for the Respondent

Final Decision : Dismissed

Judgement

Sabyasachi Mukharji, J.—This is an application for setting aside of an award dated 6th of March 1980 made by an Arbitrator. The claim of the petitioner was for about rupees one lakh. The petitioner has been awarded a sum of Rs. 2,500/-. Learned advocate for the petitioner incidentally mentioned the paucity of the sum awarded in considering the validity of the award though he very fairly conceded that by itself this was no ground of the invalidity or infirmity of the award. His main grievance, however, was the Arbitrator had called for by the letter dated 20th of January, 1980 for certain documents in connection with the previous arbitration proceedings and he had asked for the date when the claimant originally asked for the earlier arbitration, the details of the claim on which the arbitration had already been held, the latest directives in respect of refund of earnest money to the contractor and the analysis of rates as promised by the representative of the respondent. By the letter dated 18th of January, 1980 the General Manager of the Eastern Railway furnished those points as asked for and in the award which is the subject matter of challenge the Arbitrator has stated inter alia, as follows :-- I, J. N. Biswas, as the sole Arbitrator, having duly taken upon myself the burden thereof and having duly, considered the statement of facts and counter-statement of facts and all other papers filed before me and having heard and duly considering all clarifications, arguments,

counter arguments and evidence and having gone through all connected material papers and documents placed before me by the said parties and having considered all matters submitted to me in connection with the aforesaid disputes and difference do hereby award and direct as follows :--

(1) The Union of India, represented by the General Manager, Eastern Railway, 17, Netaji Subhas Road, Calcutta 700001 (respondent) do pay to the Contractor Shri S. K. Mitra 10B, Kalidas Lane, Calcutta 700012 (claimant), the amount of Rs 2,500/- (Rupees two thousand five hundred) only in full and final settlement of all the claims as referred to me for arbitration by the General Manager, Eastern Railway, Calcutta under his letter No. W. 623/7/1 dated 2-3-79.

(2) That each party should bear their own costs.

I Further Award and Direct :--

(3) That the Union of India, represented by the General Manager, Eastern Railway, Calcutta, do pay my "honorarium" as per Railway Board's letter No. E (G) 65 Ho 1-3 dated 4-11-67 (Copy E. Rly's SI. No. 6851).

(4) That the Union of India, represented by the General Manager, Eastern Railway, Calcutta, do pay a sum of Rs. 50/- (Rupees fifty) only "Clerkage" to Sri S. K. Mukherjee Sr. Clerk of Chief Engineer (Con) E. Rly's Office, Calcutta, whose services were utilised by me in this arbitration without detriment to his official works.

(5) That the Union of India, represented by the General Manager Eastern Railway, Calcutta will bear the amount of stamp duty payable in the award.

This is to mention that the claimant Sri S. K. Mitra, Contractor 10-B, Kalidas Lane, Calcutta 700012 has paid a sum of Rs. 50/ (Rupees fifty) only to Sri S. K. Mukherjee, Sr. Clerk of Chief Engineer (Con)/E. Rly's office as the latter's fees for his services utilised in this arbitration without detriment to his official works, under my direction.

This Award is given and signed by me at Calcutta on 6th day of March, 1980.

On behalf of the petitioner it was contended that the documents called for by the Arbitrator by the letter dated 18th January, 1980 were not complete in themselves in the sense that only the claim that was made that was asked for and the award that was made and asked for without taking into consideration that it was a consolidated award taking into consideration various other factors. According to the petitioner the said materials were irrelevant and also incomplete in themselves. The petitioner states that the materials asked for were irrelevant and are also (not) disputed in this case and the Arbitrator having recited that that he has taken into consideration all documents produced before him, it must be presumed that he must have taken those documents which he had asked for were also considered by him. In the premises it was urged that the Arbitrator had taken into consideration the materials in their incomplete form without

giving the parties a fair and reasonable opportunity to explain the situation. It was submitted that in so conducting himself the Arbitrator had acted improperly and the award was vitiated. Reliance was placed on certain observations of mine in a decision in the case of *Stresscon Engineering Co. v. N. K. Roy Chowdhury & Sons*, 82 Calcutta Weekly Notes, page 806, where I had observed that in all judicial and quasi judicial proceeding it was vital not only to do justice but also to conduct the proceedings in manner from which it appeared that the justice was done. It was urged that in calling for the irrelevant, and incomplete materials and in considering those materials there was presumption of law that the Arbitrator acted in a manner where justice had not appeared to have been done.

2. Even assuming that the materials called for the Arbitrator were irrelevant, the very fact that the Arbitrator had called for those materials by itself without anything else does not indicate or establish that the Arbitrator was in any way influenced or has based his award on those materials. If a Judge, or an Adjudicator or an Arbitrator calls for certain materials which may ultimately be considered irrelevant or incomplete, there is no presumption of law that the decision is based upon either incomplete or irrelevant materials or the Adjudicator or Arbitrator has allowed himself to be influenced by those materials. It is true it is difficult to challenge an award where it is not a speaking award except collaterally but merely because certain documents, assuming the documents were irrelevant and incomplete document had been called for by the Arbitrator at some stage of the proceeding, it does not necessarily follow that the Arbitrator has based his award on those materials and unless it is so established or there is a reasonable possibility of presuming that the Arbitrator has based his decision on irrelevant or incomplete materials it is not proper to set aside an award merely on the suspicion that an award might have been influenced by certain irrelevant materials or incomplete materials called for at certain stage. The principle that in quasi judicial proceeding justice should appear to be done is a salutary principle and must in all cases apply. But the application of that principle depends upon the facts and circumstances of each case. The observation upon which reliance was placed was made in a different context. There the umpire had actually mentioned certain figures in the award itself which figures were incorrect. Apart from that there were certain other irregularities noticed in the said decision, for instance the failure of the Umpire to allow production of document u/s 43 of the Act, i, e, the final account and the refusal of the Umpire to Hear de novo, though asked for, were factors which were taken into consideration in enunciating the principle upon which learned Advocate for the petitioner sought to rely. Here, even if the materials that were asked for were irrelevant or incomplete there is no evidence that the petitioner at any stage thereafter sought for any opportunity to explain the situation or call for complete materials. In the premises, in the background of the facts of this case it is not possible to hold that the award is vitiated by the conduct of the Arbitrator in calling for certain documents by a letter dated 18th of January 1980. In the premises, this application fails and is accordingly dismissed. In the facts and

circumstances of the case there will be no order as to costs.