

(2010) 05 JH CK 0002
In the Jharkhand High Court

Satrughan Prasad Singh

APPELLANT

Vs

Damodar Valley Corporation and Others
 Damodar
Valley Corporation and Others Vs Satrughan Prasad Singh

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Arbitration Act, 1940 — Section 13, 30, 35

Citation : (2010) 05 JH CK 0002

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Judgement

Pradeep Kumar, J.—The Miscellaneous appeal No. 87 of 1998, which has been preferred by appellant, Satrughan Prasad Singh and second Miscellaneous Appeal No. 62 of 1998, which has been preferred by the appellants M/s. Damodar Valley Corporation and others. The opposite party-Company against whom the claim was preferred by the appellant, Satrughan Prasad Singh.

2. Both the appeals have been filed against the judgment and order dated 22.12.1997 passed by Sri Sheo Murat Ram, Sub-Judge-II, Bermo at Tenughat in Arbitration Case No. 13 of 1980, by which judgment the learned Subordinate Judge in the objection petition filed u/s 30 of the Arbitration Act by the appellant, Satrughan Prasad Singh was dismissed and the Court while dismissing the application found the application filed by the D.V.C. challenging the exaggerated amount given by the Arbitrator correct and reduced the same to the original claim of Rs. 62,361/ -.

3. It is submitted by the learned Counsel for the appellant, Satrughan Prasad Singh that the award is bad since no reasons have been given, but the trial court without considering the same, confirmed the award, but illegally amended the award from Rs. 5,12,000/ - to Rs. 62,361/ -, which was beyond his power. learned Counsel for the appellant has relied in a judgment reported in Som Datt Builders Ltd. Vs. State of Kerala, .

4. On the other hand, learned Counsel for the respondent-DVC, who have preferred counter appeal submitted that the respondents challenged the award on the ground that the Arbitrator has traveled beyond the reference in awarding Rs. 5,12,000/-, which was never claimed by the applicant and as such the learned trial court has rightly amended the award.

5. After hearing learned Counsel for the parties and going through the record, I find that the appellant-opposite party. 1-Company i.e. Damodar Valley Corporation, which is a statutory body established by an act of Parliament (Act No. XIV of 1948) and other appellants-opposite parties are its officers (in M.A. No. 62 of 1998), invited a tender for remodelling of permanent shop and store building for conversion into a canteen at CTPC. The appellants-opposite parties after due procedure, issued order in favour of the plaintiff-Contractor, Satrugan Prasad Singh for the said construction work vide its letter dated 18.4.1975. Subsequently, just after two months of the issuance of the said order, because the Damodar Valley Corporation Management to decide to abandon the said work-programme of the said site. The appellants-D.V.C. informed the plaintiff-contractor, Shri Satrugan Prasad Singh by its letter dated 11.6.1975, which is marked as Annexure-"3" to the memo of appeal. It is further stated that the information given to the plaintiff-contractor was, in accordance with the terms of agreement as per Clause 12 of the agreement, which is marked as Annexure-"4" filed with the memo of appeal of the appellant-DVC wherein it was written that if the work is abandoned and notice is given in writing in time, the Contractor shall have no claim to any payment or compensation. However, the Contractor on receipt of the letter, in reply, sent a letter claiming a compensation of Rs. 10,321/- by its letter dated 14.8.1975, which is marked as Annexure-5 to the memo of appeal.

6. Since, the work had not started and the Contractor had only deposited the security money amounting to Rs. 676/-, the same was refunded to the contractor by letter dated 6th June, 1978. Thereafter, the final measurement was done made by the contractor and as per the measurement made by the Contractor, a bill was raised for the amount of Rs. 2762.61 paise. Subsequently, the plaintiff-Contractor filed a case before Sub-Judge, Bermo at Tenughat being Arbitration Title Suit No. 13 of 1980 wherein with consent of the parties, Sri Kameshwar Mishra, Advocate was appointed as an Arbitrator and the matter was referred to him for arbitration and it appears that he submitted the award dated 6.10.97, which was challenged by both the parties.

7. Since, both the parties challenged the award and filed their objections u/s 30 of the Arbitration Act, 1940. It is important to note that while passing the award the learned Arbitrator gave a findings, which are as under:

I Kameshwar Mishra, Advocate, Bermo at Tenughat, sole Arbitrator issued notices upon the parties. Both the parties took part in the hearing.

I have gone through the reference made before me. Heard both the parties on

each and every matter under reference, examined and considered all the statements and documents placed before me.

AND

Whereas I, (Kameshwar Mishra, sole Arbitrator) do hereby make and publish this final award in writing with regard to the matter referred to me as under: which shall meet the ends of justice.

a) The defendant/opposite party/objector-DVC shall pay a lump sum rupees 5,12,000/- to the plaintiff-claimant.

The defendants/opposite party shall pay simple interest @ 12% per annum from 25.2.1980 the date of institution of the case till actual payment to the plaintiff/claimant.

8. The first objection, which has been raised by the claimant-appellant is that the award was not a speaking award. In that respect it is now important to consider as to whether Arbitrator is required in law to give a reasoned award or not?

9. In the case of Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others, , observed as follows:

It is not open to the court to speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. On the assumption that the arbitrator must have arrived at his conclusion by a certain process of reasoning; the court cannot proceed to determine whether the conclusion is right or wrong. It is not open to the Court to attempt to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of his award.

10. In the case of Bijendra Nath Srivastava (Dead) through LRs. Vs. Mayank Srivastava and others, , it was observed in para 46 that it was permissible to arbitrator to settle the consolidated lump sum award.

11. In that view of the matter, in my opinion, the Arbitrator was not required to give any reasoning for coming to the finding as to how he has allowed a sum of Rs. 5,12,000/ - in favour of the claimant-contractor. The learned trial court also while discussing the law on the point referred to various judgments of the Hon'ble Supreme Court in paras 14 and 15 and after considering the aforesaid judgments, the learned trial court came to the following conclusions in para 16 of its judgment that "from the propositions of law enunciated in the decision referred to supra it is manifestly clear that the Arbitrator is the sole and final judge of the dispute between the parties referred to him and his award is final, conclusive and binding between them. It is also obligatory on the part of the Arbitrator to give a reasons for the conclusion arrived at by him. The Court has got limited scope to interfere with the award, The award of an Arbitrator can only be set aside on the grounds enunciated u/s 13 of the Arbitration Act".

Section 30 of the Arbitration Act as follows:

An award shall not be set aside except on one or more of the following grounds, namely, (a) that an Arbitrator or umpire has mis-conducted himself or the proceedings (b) that an award has been made after the issue of an order by the court superceeding the arbitration or after arbitration proceedings have become invalid u/s 35; (c) that an award has been improperly procured or its otherwise invalid.

12. As far as the appellant's case was objection is concerned, the trial court rightly itself allowed the same as the arbitrator was not required to give any reason for passing the award.

13. However, considering the objection made by the DVC, which confined their submissions to ground No. C "that an award has been improperly procured since the Arbitrator has traveled beyond the terms of reference by allowing lump sum Rs. 5,12,000/- whereas total claim made by the claimant was Rs. 62,351/- only with interest @ 12% without assigning reason for arriving at such conclusion and subsequently amended the same Rs. 62,361/-".

14. In view of the legal position, as discussed above, arrived by this Court as also by the trial court the learned Sub-Judge had no power to amend the award, if the arbitrator has not mis-conducted himself or the proceeding then either the trial court should confirm the award of Rs. 5,12,000/- or he should have set aside the entire award for going beyond the reference. Since, the matters were referred with consent of the parties and it also appears that after the main claim the claimant had filed amendment of the claim and by order dated 7.12.1993 passed in Title (Arbitration) Suit No. 13 of 1980 the learned Subordinate Judge with consent of both the parties referred the amendment also to the Arbitrator. In that view of the matter, the Arbitrator after considering both amendment and the original claim in his discretion passed the final award of Rs. 5,12,000/-, which has been confirmed that one hand by the learned Subordinate Judge-II by the impugned order and also amended, is bad in law.

15. Accordingly, the award of Rs. 5,12,000/- as passed by the Arbitrator is confirmed since the arbitrator was within his jurisdiction to pass the award in favour of the appellant-contractor. The second part by which this award has been amended to Rs. 62,361/- is set aside.

16. In view of the above finding that miscellaneous appeal No. 87 of 1998 is allowed and the appeal filed by the D.V.C.-appellants in miscellaneous appeal No. 62/98 is dismissed. In view of the aforesaid order the award is made rule of the court and a decree be prepared in terms of the modified award.