
(1991) 05 DEL CK 0031
In the Delhi High Court
Case No : Suit No. 1356A of 1986

Sharma Timber Works

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-05-1991

Acts Referred:

Citation : (1991) 2 ARBLR 417 : (1991) RLR 447

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Shiv Khurana and Subhash Bansal, for the Appellant;

Judgement

P.K. Bahri, J.

(1) Respondent No. 1, the sole arbitrator, on receiving the notice issued in this petition filed u/S, 14 of the Arbitration Act, had filed the award and the proceedings in Court. On notice being served of the filing of the award on the petitioner, the petitioner has filed the objections to the award which are opposed by the U.O.I. respondent and following issues were framed, (1) Is award liable to be set aside for reasons stated in objections filed ? (2) Relief.

(2) It was directed that the matter shall be decided by way of affidavits and arbitration proceedings shall be read in evidence. Petitioner has filed the affidavit None has been filed on behalf of U.O.I.

(3) Issue NO. 1. Although the award is a non-speaking one still counsel for the petitioner has urged that the arbitrator has committed judicial misconduct inasmuch as he did not pass any order on the application of the petitioner requiring the respondent to produce the railway receipts which could have shown that consignee had diverted the goods to different destination and had also redirected the goods to another station and thus, there took place delay in receipt of the goods and the rejection of the goods was beyond the period stipulated in the contract. He has also argued that the arbitrator has given vague and conflicting findings and thus, the award is vitiated on that score as well.

(4) Admittedly, contract for supply of 375 cu. met. @Rs. 999.00 per cubic metre Was placed on petitioner on 15.12.80. As per terms of the contract, the petitioner had got inspected sample logs and thereafter had dispatched the same by railway and had sent the railway receipts to the consignee. There were six consignments and the railway receipts were of 22.4.81, 5.6.81, 25.6.81, 19.9.81, and 22.6.81, and were received by the respondent respectively on 5.5.81, 23.6.81 and 2.7.81, 26.9.81 and 7.7.81. In respect of the five consignments the goods were rejected on July 1.7.82, 2.7.82, 5.5.82, 27.8.82 and 30.8.82. The U.O.I, had claimed in its claim petition before the arbitrator that these rejections of goods were within the stipulated period i.e. 45 days from the receipt of the goods and thus, the quantity rejected was 52.0710 cubic metre (115 logs) and thereafter a joint inspection of the rejected logs was carried out on October 1.10.82, in the presence of the representative of the petitioner and it was found that the logs were not of required strength. The respondent had on the basis of joint inspection agreed to accept the rejected goods but at the reduced rate of 30% which was not accepted by the petitioner. Thus, the respondent claimed cost of the rejected goods which came to the tune of Rs. 52,018/93P and 4% Central Sales Tax to the tune of Rs. 2,080/76P and freight charees incurred to the tune of Rs. 29,636.00. So, in all a claim of Rs. 83,735/69 P was put up.

(5) The petitioner filed a reply-cum-counter claim wherein the petitioner took various other grounds which have not been urged before me. So, I need not refer to them but on the question of rejection of the goods the petitioner specifically took the plea that goods have been rejected beyond 45 days of receipt of the goods and also took the plea that the claim of the respondent is contradicted as at one place the respondent had put up the plea that the rejected goods could be accepted on payment of 30% of the price while at other place the respondent has claimed the whole price of the rejected goods. Under the contract 90% of the price of the goods had been paid to the petitioner on dispatch of the goods and 10% price was retained to be paid after the goods were to be received and were to be found in accordance with the order. The petitioner claimed that Rs. 48,689.00, the balance price of the goods, was liable to be paid and he, thus, put up the counter-claim in that respect.

(6) The arbitrator allowed the claim of the Union of India to the extent of Rs. 72,053/06 P presumably accepting the claim of the railway that the rejected goods arc to be paid only at 30% of the price and allowed the counter claim of the petitioner to the tune of Rs. 38,618/54 P. It appears that during the course of the arbitration proceedings the petitioner had asked for release of Rs 91,592.00 which amount appears to have been withheld by the Union of India in respect of some other contracts on account of dispute arising in respect of this contract and the arbitrator directed that the said amount withheld be paid to the petitioner. This was not the claim put up by the respondent in the counter claim petition.

(7) Be that as it may, the short question which arises for decision is whether the

arbitrator had committed judicial misconduct or not in not directing the production of R.R.'s. which could have shown whether the consignee had diverted the goods. It is evident that according to the contract the goods could be inspected and could be rejected within 45 days of the receipt of the goods. The goods were sent by railway and thus, as soon as the wagons were to reach the place of destination the delivery of goods ought to have been taken by the consignee and period of 45 days to be calculated from the said date of receipt of the goods but in case the goods had been diverted to different destination by the consignee then obviously the consignee could not have taken up the plea that goods had been rejected within 45 days of the receipt of goods because the consignee has delayed the receipt of the goods. But this question would have been decided by the arbitrator as to which date should have been treated as the date of receipt of the goods. It is true that the petitioner had moved an application after the close of the evidence praying that the respondent should be directed to produce the R.R.'s but it cannot be said that the R.R.'s had no relevance at all. They were definitely material documents to prove the case of the petitioner as to whether the rejection of the goods by the respondent was beyond the stipulated period. It is settled law that if certain material documents are required for arriving at a fair decision of the matter in issue it is incumbent upon the arbitrator to have those documents produced for his consideration before giving any award. In *K.P. Poulose Vs. State of Kerala and Another*, the Supreme Court has laid down that misconduct u/S. 30(a) of the Arbitration Act has not a connotation of moral lapse. It comprises legal misconduct which is complete if the arbitrator on the face of the award arrives at an inconsistent conclusion even on his own finding or arrives at a decision by ignoring very material documents which throw abundant light on the controversy to help a just and fair decision. In the said case, there were two very material documents which could have lot of bearing for just decision to resolve the controversy between the parties and they were not produced. It was held by the Supreme Court that even if department did not produce those documents before the arbitrator it was incumbent upon him to get hold of all the relevant documents including the two documents in question for the purpose of a just decision. It was held that the award suffers from a manifest error apparent ex facie and was liable to be set aside. A D.B. of this Court in *Union of India Vs. Mehta Teja Singh and Co.*, also laid down the same proposition of law. In the said case, the claim of the Govt. before the arbitrator was for recovery of some amount from the contractor based on the report of the Technical Examiner and the arbitrator had not directed for production of such report although a specific and special request was made by the contractor to have that report produced from the Govt. It was held by the D.B. that the award allowing the claim without arbitrator himself looking into the report on which the claim was based and without allowing the contractor inspection of the said report amounts to misconduct of the arbitration proceedings resulting in the denial of natural justice to the contractor and rendering the award liable to be set aside. It was found that Govt. had opposed the request of the contractor for production of the report before the arbitrator.

The Court held that it was not a fit case for remission of the award to the arbitrator for re-decision. Following these two judgments, I hold that in the present case also the original R.R.'s which were in possession of the U.O.I, were material documents which could have helped the arbitrator in giving a just decision on the disputed claim of the respondent and by not directing the production of the same the arbitrator committed judicial misconduct. The award is, hence, liable to be set aside on this score. Issue is decided in favor of the petitioner.