
(2007) 07 P&H CK 0064
In the Punjab And Haryana At Chandigarh

Shastri Construction Co.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-07-2007

Acts Referred:

Citation : (2008) 1 ARBLR 472 : (2008) 149 PLR 52 : (2007) 4 RCR(Civil) 411

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The present revision petition has been filed against the orders passed by the learned courts below vide which objections filed by the respondent-Union of India, against the award were accepted. The award was set aside on the ground that it was not a speaking award.

2. It is not in dispute that Clause 70 of the Contract executed between the parties stipulated that the Arbitrator was to identify each individual item of dispute and give reasons in support of his findings thereon along with the sums awarded. However, in the present case, in spite of Clause 70, the Arbitrator passed a non-speaking award.

3. Learned Counsel for the petitioner contended that in support of the findings recorded, detailed reasons were not required to be given by the arbitrator. However, this contention of the learned Counsel for the petitioner was rejected in view of the law laid down by the Hon'ble Supreme Court in case of Gora Lal v. Union of India AIR 2004 S.C. 4956. Para 7 of the said judgment reads as under:

The point for determination in this case is:

Whether the Arbitrator ought to have given reasons in support of his findings, along with the sums awarded, each item of dispute. To decide this point, we have to go by the text and context of Clause 70 of the arbitration agreement quoted above. Under the said Clause, the Arbitrator was required to identify each

individual item of dispute and give his findings thereon along with the sum awarded. In this context, one has to read with word "findings" with the expression "on each item of dispute" and if so it is clear that the word "finding" denotes "reasons" in support of the said conclusion on each item of dispute. The word "finding" has been defined in words and Phrases, Permanent Edition 17, west Publishing Co. to mean "an ascertainment of facts and the result of investigations". Applying the above test to Clause 70, we are of the view that the Arbitrator was required to give reasons in support of his findings on the items of dispute along with the sums awarded. We make it clear that this order is confined to the facts of this case and our interpretation is confined to Clause 70 of the arbitration agreement in this case.

4. Learned Counsel for the petitioner contents that the learned Courts below were wrong in recording a finding that the petitioner has failed to cite any law contrary to one relied upon by the objector. The contention of the learned Counsel for the petitioner was that the order of the Hon''ble Supreme Court in the case of My G.D. Engineering Construction v. Union of India, Civil Appeal No. 1346 of 1999, decided on January 13, 2004 should have been followed in this case, wherein the Hon''ble Supreme Court was pleased to lay down that unless there is statutory requirement to give reason, there was no necessity for the Arbitrator to have given reasons for the award. Learned Counsel for the petitioner submits that Clause 70 of the arbitration agreement was involved in the said case, the order of the Hon''ble Supreme Court relied upon by the petitioner reads as under:

Heard counsel for the parties.

The short question that arises in this case is whether the arbitrator was required to give reasons in the award.

The High Court by the impugned judgment has set aside the award merely on the ground that the arbitrator had not given reasons for giving his award. We do not find the view taken by the High Court as correct. Unless there is a statutory requirement to give reasons, an arbitrator cannot be said to have committed illegality if no reasons are given in the award.

For the aforesaid reasons, the judgment and order under challenge is set aside and this appeal is allowed. There shall be no order as to costs.

5. The reading of the above order does not show as to whether the Clause 70 of the arbitration agreement was considered by the Hon''ble Supreme Court. The order relied upon by the petitioner is, in fact, an order passed in particular circumstances of the case and does not lay down any case law nor the judgment passed in Gora Lal's case (supra) was considered. Even otherwise, once the parties to an agreement had agreed to impose a condition on the arbitrator to pass an award-by giving findings thereon, the Arbitrator was bound by the said agreement as Arbitrator is creation of the agreement and it is bound by the terms thereof and if there is violation of terms and stipulations of the arbitration

agreement itself, the award passed by the arbitrator in such a situation cannot sustain, as it is settled, law that the Arbitrator being the creation of agreement, was bound by the terms thereof and any deviation would amount to misconduct on his part.

Consequently, the findings recorded by the learned courts below do not call for interference in exercise of the revisional jurisdiction.

Dismissed.