

(1987) 03 MP CK 0034

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 262 of 1981

State of Madhya Pradesh

APPELLANT

Vs

Preconco, Indore

RESPONDENT

Date of Decision : 06-03-1987

Acts Referred:

Arbitration Act, 1940 — Section 30

Citation : AIR 1987 MP 284

Hon'ble Judges : R.K. Verma, J;G.G.Sohani, J

Bench : Division Bench

Advocate : S.R. Joshi, for the Appellant; M.L. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Verma, J.—This is an appeal by the State of M.P. against the judgment dated 1-8-1981 passed by the Court of District Judge, Ujjain in Civil Suit No. 8-B of 1980 whereby the learned District Judge while refusing to set aside the Award dated 27-8-1978 u/s 30 of the Arbitration Act, has made the Award a Rule of the Court and granted a decree for Rs. 1,13,435/- in favour of the Contractor respondent against the State of M.P., the appellant.

2. The material facts giving rise to this appeal, briefly stated, are as follows : --

The appellant State of M.P. through the Executive Engineer, Public Works Department (B & R), Ujjain on 22-10-1966 entered into a contract with the respondent M/s. Preconco (hereinafter referred to as the Contractor) for construction of a bridge across Gambhir river as per the terms and conditions stipulated in the formal deed of Contract. Clause 17 of the Contract provided for a reference to arbitration in case of dispute arising between the Executive Engineer representing to the contract stated therein. As the question in controversy in the present appeal involves construction of the said reference Clause-17, the same may be reproduced usefully at the outset.

"17. provided always that in case any question, dispute or difference shall arise

between the E.E. and the contractor (s) as to what additions, if any, ought in fairness to be made to the amount of the contract by reason of the works being delayed through no fault of the contractor (s) or by reason or on account of any directions or requisitions of the E.E. involving increased cost to the contractor(s), beyond the cost properly attending the carrying out of the contract according to the true intent and meaning of the signed drawings and specifications, or as to the works having been duly completed or as to the construction of these presents or as to any other matter or thing arising under or out of this contract except as to the matters left during the progress of the works to the sole decision or requisition of the E.E. under clauses Nos. 1, 4, 8 and 9, or in case the contractor(s) shall be dissatisfied with any certificate of the E.E. under Clause 6 or under the provision in Clause 13 or in case he shall withhold or not give any certificate to which they may be entitled, or as to the right of the contractor(s) to receive any compensation or as to the amount of such compensation payable to them under clause 18 then such question, dispute or difference or such certificate or the value of matter which should be certified as the case may be, as to be from time to time submitted to the arbitration of a tribunal composed of one arbitrator nominated by the contractor(s) and one arbitrator nominated by the E.E./S.E. In the event of a disagreement between the arbitrators, on any matter or matters, such matter or matters shall be referred to an umpire to be nominated by the C.E. and the Award of such arbitrators or the umpire is to be final and where necessary to be equivalent to a certificate of the E.E. and the contractor(s) are to be paid accordingly."

3. The contractor demanded extra payment of Rs. 2,12,525/- and interest from the date of payment of final Bill for digging a further depth of 10-feet in the foundations beyond design levels. The State did not agree for the payment and thus, a dispute arose. The Contractor appointed Shri P. G. Joglekar, a retired Superintending Engineer, as its Arbitrator but initially the State did not appoint any. By lapse of time Shri Joglekar became the sole Arbitrator. The State then moved the Court of District Judge, Ujjain u/s 9 of the Arbitration Act and eventually in terms of compromise reached in the High Court, the State was given three weeks time to appoint its Arbitrator. This Court in Civil Revision No. 434/71 by order dated 7-9-1972 also directed that the parties shall appoint an Umpire as well, in the first sitting of the Arbitrators. The State then appointed Shri K.D. Modak, another Superintending Engineer as Arbitrator and the two Arbitrators appointed Shri M. K. Kalu, retired District and Sessions Judge as the Umpire.

4. The two Arbitrators entered upon the reference on 11-11-1972 and eventually on 3- 5-76 disagreed regarding the matter referred to them. According to Shri Joglekar, the Contractor was entitled to get Rs. 62,435/- with interest at the rate of 6% per annum from the date of payment of the Bill i.e. 1-9- 1972, while according to Shri Modak the entire claim was to be negated. In view of the disagreement between the Arbitrators the matter was referred to the Umpire as per the provision of Clause-17 aforesaid. The Umpire started hearing on 16th

September, 1976 and after due extensions up to 31-8- 1978, ultimately gave an Award of Rs. 1,13,435/- with interest at 6% per annum from 29-1-1972 till 27-8-78 in favour of the Contractor.

5. The Award was filed in the Court of the District Judge on 30-8-1978 after the Umpire had informed both the parties about the making of the Award. Notices of filing of the Award were sent to the parties and the one meant for the State through the Executive Engineer, was received by him on 30-9-78.

6. On 9-10-78, the first date of hearing in the court of the learned District Judge, the State filed some objections and asked for getting all the records from the Umpire so that all objections may be taken. The Umpire called all the records to be filed in the Court and a second objection petition was filed on 30-10-1978.

7. While challenging the Umpire's Award the main objection of the appellant State has been that according to one Arbitrator, the Contractor could get nothing while according to another, he was entitled to get Rs. 62,435/- with interest and hence the scope of reference before the Umpire was limited to the question as to what amount the Contractor should get ranging from zero to Rs. 62,435/- and consequently, the Umpire by awarding a sum in excess of Rs. 62,435/- has exceeded his jurisdiction and has thus, misconducted the proceedings. This objection is also the sole point of controversy in the arguments of the learned counsel for the parties in the present appeal.

8. The learned District Judge after hearing arguments urged on behalf of the parties, has negated the various objections raised by the State and refused to set aside the Award and has made the Award given by the Umpire a rule of the Court and granted a decree for Rs. 1,13,435/- in favour of the contractor against the appellant State. Hence this appeal is filed by the State of Madhya Pradesh.

9. The only contention raised by the learned Government Advocate appearing for the State of M.P., is that the scope of reference made to the Umpire as envisaged in Clause-17 of the Contract, is limited to resolving the difference between the two Arbitrators appointed at the instance of the two contracting parties. On the other hand, the learned counsel for the respondent Contractor has contended that the reference Clause-17 contemplates that in the event of disagreement between the Arbitrators on any matter, the Award of the Umpire shall prevail. According to the learned counsel once there is a disagreement between the Arbitrators all such matters which initially were referred to them for arbitration stand referred for decision by the Umpire and the individual Awards of the Arbitrators have no significance. The Umpire enters upon the entire reference and gets jurisdiction to decide all the disputes which stood referred to the Arbitrators in the first instance. The Award of the Arbitrators could have been final only if both the Arbitrators agreed to give the same Award. In the event of disagreement the individual Awards get wiped out and the Umpire gets the jurisdiction in that event to adjudicate on the whole case.

10. The rival contentions, therefore, raise a controversy which really pertains to

the construction of Clause-17 of the Contract as reproduced in a foregoing paragraph. A perusal of the said clause shows the relevant portion thus, "in the event of a disagreement between the Arbitrators, on any matter or matters such matter or matters shall be referred to an Umpire to be nominated by the E.E. and the Award of such Arbitrators or the Umpire is to be final." A plain reading of the language discloses that the Award of the Arbitrators to be final, but in the event of disagreement the Award of the Umpire is to be final. It does not envisage a limited jurisdiction of the Umpire confined only to resolving the extent of difference between the Arbitrators. The Award of the Arbitrators or the Award of the Umpire are mutually exclusive situations. It, therefore, becomes abundantly clear that so long as it is possible to make an agreed Award by the Arbitrators the same finally adjudicates the dispute between the parties and the jurisdiction of the Umpire does not arise, but in the event of disagreement between the Arbitrators there can be no Award at the instance of the Arbitrators and the matter is left solely to the jurisdiction of the Umpire who is supposed to act as a substitute in place of the disagreeing Arbitrators, to adjudicate on the entire reference in the same manner as the Arbitrators, if they were in agreement, could have done. There are no words of limitation so as to curtail the jurisdiction of the Umpire or limit his discretion in making the Award.

11. In this view of the matter we are of the opinion that the contention of the learned Government Advocate deserved to be rejected and that of the learned counsel for the respondents must be accepted. The judgment of the learned District Judge, therefore, calls for no interference in this appeal.

12. In view of the discussion aforesaid, this appeal fails and is hereby dismissed with cost. The counsel fee as per Schedule, if certified.