

(2012) 05 AHC CK 0211
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 28441 and 28448 of 1997

State of U.P. and Another

APPELLANT

Vs

M/s. Ram Pal Singh Mukhtar Ahmad and Others

RESPONDENT

Date of Decision : 11-05-2012

Acts Referred:

Arbitration Act, 1940 — Section 30, 33
Constitution of India, 1950 — Article 226, 227
Interest Act, 1978 — Section 3

Citation : (2012) 8 ADJ 363 : (2013) 1 AWC 76

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Prabodh Gaur and S.C, for the Appellant; Anil Sharma and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Sudhir Agarwal, J.—Heard learned Standing Counsel for petitioners and Sri Anil Sharma, Advocate, for respondent No. 1. Both these writ petitions have arisen out of the same arbitration proceedings and the order of Court below making award, rule of the Court.

2. Facts in brief giving rise to the present dispute are as under.

3. M/S Ram Pal Singh Mukhtar Ahmad, respondent No. 1, entered into a work contract on 3.3.1990 with the Executive Engineer, Irrigation, Bijnor. According to the stipulations of agreement, the work was to commence on 22.3.1990 and complete by 21.7.1990 but actually could complete by 22.3.1992. The total costs of contract work was 2,25,818/-. It is stated that on the request of Contractor, time was actually extended from time to time and till 22.3.1992.

4. Petitioners made final payment to the Contractor (respondent No. 1) by way of final payment bill where against Contractor executed acknowledgement on 23.5.1992 that he has received his dues for execution of contract and nothing

remain outstanding but despite thereto he raised a dispute making certain claims and by virtue of Clause 34 of the agreement, it was referred for arbitration.

5. Respondent No. 2, the Arbitrator, delivered award on 4.11.1995 holding that the Contractor is entitled for payment of Rs. 1,55,378/- with interest at the rate of 16 per cent till payment is made. The award was submitted to the Civil Judge (Senior Division), Bijnor and the Contractor, respondent No. 1, moved an application for making the award rule of Court which was registered as Original Misc. Case No. 196 of 1995. The petitioners objected the said application and filed objections u/s 30/ 33 of Arbitration Act, 1940 (hereinafter referred to as "Act, 1940"). After hearing the parties, Civil Judge (Senior Division) vide judgment dated 14.1.1997 allowed the objection and rejected application of Contractor (respondent No. 1). It held that the award is neither in accordance with terms of agreement nor is within jurisdiction of Arbitrator and, therefore, is not justified at all.

6. Respondent No. 1 filed appeals No. 14 of 1997 and 15 of 1997 against the judgment and decree dated 14.1.1997 which were allowed by 3rd Addl. District Judge, Bijnor vide judgment dated 15.5.1997. Both these writ petitions have been filed against the same judgment whereby the above two appeals arising out of same proceedings have been allowed.

7. Learned Standing Counsel stressed before this Court that there was no provision in contract for payment of interest and hence the Arbitrator has erred in law and committed misconduct in allowing interest to the claimant i.e. respondent No. 1 at the rate of 16 per cent per annum.

8. Sri Anil Sharma, learned counsel appearing for respondent No. 1, on the contrary contended that Appellate Court has rightly held that Contractor was entitled for interest and has rightly allowed the appeals.

9. The arbitration proceedings were conducted under the old Act, 1940. There was an amendment made in First Schedule providing "Implied Conditions of Arbitration Agreements" by U.P. Act No. 57 of 1976 (Act, 1976") and para 7-A, inserted therein with effect from 1.1.1997 vide Section 24 of U.P. Act No. 57 of 1976, reads as under:

7-A. Where and in so far as an award is for the payment of money, the arbitrators or the umpire may, in the award, order interest at such rate as the arbitrators or umpire may deem reasonable to be paid on the principal sum awarded, from the date of the commencement of the arbitration, as defined in sub-section (3) of Section 37, to the date of award, in addition to any interest awarded on such principal sum for any period prior to such commencement, with further interest at such rate not exceeding six per cent per annum as the arbitrators or umpire may deem reasonable on such principal sum from the date of the award to the date of payment or to such earlier date as the arbitrator or umpire may think fit, but in no case beyond the date of the decree to be passed on the award.

10. The aforesaid Clause provides for interest in the following manner:

(1) Interest on the principal sum for any period prior to commencement of arbitration.

(2) Interest from the date of commencement of arbitration to the date of award which can be allowed by Arbitrator or Umpire at such rate it may deem reasonable.

(3) Interest on principal sum from the date of award to the date of payment or such earlier date as the Arbitrator or the Umpire deem fit but not beyond the date of decree to be passed in award which shall not exceed six per cent.

11. In the present case, the interest has been awarded at the rate of 16 per cent on principal sum from the date of commencement of arbitration till the date of award i.e. 12.9.1992 till the date of award. This is covered by second contingency referred above where the rate of interest find reasonable by Arbitrator/Umpire can be allowed. For subsequent period Arbitrator has awarded interest at the rate of 6 per cent. The aforesaid interest thus is in conformity with Clause 7-A of "First Schedule" of Act, 1940 as inserted by Act, 1976.

12. In B.V. Radha Krishna v. Sponge Iron India Ltd., 1997 (1) Arb. L.R. 412, the Apex Court upheld the award of an Arbitrator granting interest by referring to Section 3 of Interest Act, 1978. However, for this Court it is not necessary to refer any other Statute for the reason that by virtue of amendment in the Act, 1940 in the State of U.P., in First Schedule, the provision for interest has been made one of the implied conditions of agreement and therefore the award granting interest strictly in accordance with Clause 7-A cannot be said to be illegal. The Appellate Court, therefore, has rightly upheld the award granting interest.

13. The next submission is that once a final acknowledgement was given stating that nothing is further due, it was not open to Contractor to raise any dispute. Entire arbitration proceedings, therefore, are bad.

14. The pleadings show that the claimant's case as set up was that no-claim certificate was obtained by respondent No. 1 under coercive and undue influence and on the condition of granting extension to completion period and it was not under a free will. The final bill was accepted under protest. The Arbitrator has considered this aspect and found that the claim certificate was not issued under free will. The Contractor accepted final bill under protest. It thus would not disentitle Contractor from raising dispute. In my view it is a finding recorded by Arbitrator after examining case of rival side and in absence of anything to show that it is a perverse finding the Court below ought not to have interfered with the findings as if sitting in appeal since the scope of interference with arbitration award is very limited.

15. In similar circumstances, in Chairman and M.D., N.T.P.C. Ltd. Vs. Reshmi Constructions, Builders and Contractors, , the Apex Court said, where the case

set up by Contractor is that the final bill was received under protest after the date of execution of no-claim certification, that question itself would have to be considered by the Arbitral Tribunal whether the Contractor has waived his contractual right to receive the amount or is otherwise estopped from pleading otherwise. The Court held that in a given situation Arbitrator can determine all questions of law and fact.

16. In *Puri Construction Pvt. Ltd. Vs. Union of India (UOI)*, , the Court said that jurisdiction in judicial review is limited, as expressly indicated in the Arbitration Act. The Court has no jurisdiction to sit in appeal and examine correctness of the award on merits.

17. In *State of Rajasthan v. Puri Construction Co. and another*, 1995(1) Arb LR 1, in para 25 the Court said:

25. The arbitrator is the final arbiter for the dispute between the parties and it is not open to challenge the award on the ground that the arbitrator has drawn his own conclusion or has failed to appreciate the facts. In *Sudarsan Trading Co. Vs. Government of Kerala and Another*, , it has been held by this Court that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power of the arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties (emphasis supplied). Whether a particular amount was liable to be paid is a decision within the competency of the arbitrator. By purporting to construe the contract the Court cannot take upon itself the burden of saying that this was contrary to the contract and as such beyond jurisdiction. If one a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view though perhaps not the only correct view, the award cannot be examined by the Court. Where the reasons have been given by the arbitrator in making the award the Court cannot examine the reasonableness of the reasons. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisal of evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the Court to take upon itself the task of being a judge on the evidence before the arbitrator.

18. What can be the ground of setting aside award u/s 30 of Act has been considered in *Food Corporation of India Vs. M/s. Veshno Rice Millers*, and in para 7 thereof the Court has said:

an award of the arbitrator can only be interfered with or set aside or modified within the four corners of the procedure provided by the Act. It is necessary to find whether the arbitrator has misconducted himself or the proceedings legally in the sense whether the arbitrator has gone contrary to the terms of reference

between the parties or whether the arbitrator has committed any error of law apparent on the face of the award. It is necessary to emphasize that these are the grounds for setting aside the award but these are separate and distinct grounds. Halsbury's Laws of England Vol. 2, 4th Edn., para 623 reiterates that an arbitrator's award may be set aside for error of law appearing on the face of it. Though this jurisdiction is not to be lightly exercised, the award can also be set aside if, inter alia, the arbitrator has misconducted himself or the proceedings. It is difficult to give an exhaustive definition what may amount to misconduct on the part of the arbitrator. This is discussed in Halsbury's Law of England (supra). It is not misconduct on the part of an arbitrator to come to an erroneous decision, whether his error is one of fact or law, and whether or not his findings of fact are supported by evidence. See the observations of Russell on Arbitration, 20th Edn., page 422.

19. In view of above discussions and exposition of law, this Court has no hesitation in observing that Trial Court erred in interfering with the findings of Arbitrator as if it was sitting in appeal and Appellate Court has rightly allowed the appeal restoring the award and making it rule of the Court by rejecting the objections.

20. In my view, therefore, the decision of Appellate Court making the award rule of Court and rejecting objection of petitioners cannot be said to be faulty either in law or otherwise. I, therefore, find no error apparent on the face of record in the order impugned in this writ petition warranting interference under Article 226/ 227 of the Constitution.

21. No other point has been argued.

22. In the result, both the writ petitions, being devoid of merits, are dismissed. No costs.