

(2009) 04 UK CK 0040
In the Uttarakhand High Court

State of U.P. and Others

APPELLANT

Vs

V.K. Sood Engineers and Contractors Pvt. Ltd.

RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Arbitration Act, 1940 — Section 39

Citation : (2009) 04 UK CK 0040

Hon'ble Judges : B.C.Kandpal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.C. Kandpal, J.—This appeal u/s 39 of the Arbitration Act, 1940, has been preferred by the State of U.P. and others against the judgment and order dated 16-3-2002 passed by Civil Judge (Senior Division) Haridwar in Misc. Case No. 4/95, Superintending Engineer and Ors. v. V.K. Sood Engineers and Contractors Pvt. Ltd. And O.S. No. 196/1993 Sood Engineers and Contractors Pvt. Ltd. v. S.E. and Ors..

2. The facts, in short, giving rise to this appeal are that Sri R.K. Goyal, Superintending Engineer, Upper Ganga Canal Roorkee was appointed sole arbitrator by Chief Engineer, U.G.I.M.P. (World Bank, Roorkee) to give award in the dispute arose between State of U.P. and M/s V.K. Sood Engineers and Contractor Pvt. Ltd. out of a contract agreement No. H1-03-020 dated 10-4-1986. The appointment of Sri M.K. Goyal, was made in terms of contract agreement. The arbitrator after considering the entire material on record and hearing parties gave his award dated 10-10-1993. The award was filed before the Civil Judge (S.D.), Haridwar to make the same rule of the court.

3. The State of U.P. has filed objections against the award before the court below and besides taking other pleas, it was also alleged that Sri R.K. Goyal, has retired on 30-9-1993 while the impugned award was given on 10-10-1993 and the same is not sustainable in the eyes of law as after his retirement Sri R.K.

Goyal has no jurisdiction to give the award.

4. M/s V.K. Sood Engineers and Contractors Pvt. Ltd. also filed objection before the trial court and supported the impugned award. It was alleged that the arbitrator has given the award on the basis of the evidence adduced by the parties on record and the same is liable to be made rule of the court.

5. The learned Civil Judge (Senior Division), Haridwar, after considering the objections raised by parties before him and hearing learned Counsel for the parties, dismissed the objections of the State of U.P. and made the impugned award rule of the court. The learned Civil Judge also directed that the award money, i.e. Rs. 20,52,610/- be paid by the opposite parties/appellants along with pendentelite and future interest @ 18% per annum.

6. Feeling aggrieved, the State of U.P. and others have preferred this appeal.

7. Heard learned Counsel for the parties and perused the record.

8. The learned Standing Counsel appearing on behalf of the appellants has restricted her submissions firstly to the fact that the arbitral award given by Sri R.K. Goyal, the sole arbitrator is illegal and cannot be given effect to, as Sri R.K. Goyal has given the award after his retirement and secondly, the Arbitrator has awarded interest @ 6% per annum from the date of passing the award till the date of passing the decree or payment whichever is earlier on the award money, whereas the learned Civil Judge has committed illegality in awarding the pendentelite and future interest @ 18% per annum. Accordingly to her the further interest after award can not exceed more than 6% per annum on the principal amount. Therefore the finding of learned Civil Judge is illegal and against the provision of law. The learned Standing Counsel, therefore, urged that the impugned award as well as the judgment and order passed by the Civil Judge, are liable to be set aside.

9. On the other hand learned Counsel for the respondent has submitted that the proceedings of arbitration were extended from time to time on the written consent of the parties and the Arbitrator has given his award within the extended period therefore, now the appellants cannot take this plea. He also submitted that the learned Civil Judge has jurisdiction to increase the rate of interest after the date of award till the date of payment.

10. So far as the authenticity of the impugned award is concerned, the learned Civil Judge has made a detailed discussion on this point. There is no dispute between the parties that the appointment of Sri R.K. Goyal, as an arbitrator was made as per the terms of the contract agreement and the only submission of learned Standing Counsel is that the arbitrator had no jurisdiction to give the award after he had retired. The arbitrator has retired on 30-9-1993 and he has given the award on 10-10-1993 after about 10 days of his retirement. The learned Civil Judge has recorded a categorical finding that on 1.5.1993 the defendants (appellants here) filed an affidavit before the arbitrator that both the

parties have given their consent to extend the time of giving the award till 10-10-1993. The arbitrator also noted this fact in the impugned award. Here it may also be mentioned that the arbitrator might have completed all the formalities of taking evidence and hearing arguments before his retirement and the parties gave their consent to give award after his retirement. After his retirement the arbitrator has not conducted the arbitration proceeding and he simply published his award. There is no case of the appellants that the award has been passed against public policy or there is basic mistake apparent to its face. Once the State/appellant has agreed to publish the award by the arbitrator, now the plea taken by it, is barred by the principle of estoppels. I do not find any illegality and infirmity in the finding recorded by the court below on this point and in the aforesaid facts and circumstances of the case the impugned award cannot be said to be passed beyond the jurisdiction.

11. As regards the interest part awarded by the arbitrator as well as by the learned lower court is concerned, the court below was competent to award the pendentelite and future interest on the award money and the submission raised by learned Counsel for the appellants does not bear any force and the same is rejected.

12. No other point has been raised before me.

13. For the reasons recorded above, the appeal lacks merit and is liable to be dismissed.

14. Accordingly, the appeal is dismissed. The impugned judgment and order passed by the learned Civil Judge (S.D.), Haridwar, rejecting the objections of the State and making the impugned award rule of the court, is hereby confirmed.