
(2003) 01 CAL CK 0009
In the Calcutta High Court
Case No : A.P. No. 187 of 1996

Steel Authority of India Ltd. APPELLANT

Vs

Durga Crane and Another RESPONDENT

Date of Decision : 06-01-2003

Acts Referred:

Arbitration Act, 1940 — Section 30, 33, 41
Partnership Act, 1932 — Section 47

Citation : (2003) 2 CALLT 122

Hon'ble Judges : Altamas Kabir, J

Bench : Single Bench

Advocate : Debal Banerjee and Soumen Sen, for the Appellant; Jishnu Saha, Joy Saha and Abhijit Guha Roy, for the Respondent

Final Decision : Dismissed

Judgement

Altamas Kabir, J.—The petitioner in this application, under Sections 30, 33, 41 of the Arbitration Act, 1940, is a government company engaged in the manufacture of various types of Iron and Steel products and it also carries on business in iron and steel material produced in its steel plants and/or procured from other sources.

2. By a notice of tender issued from the Head Office of its Central Marketing Organisation at 2 Fairlie Place, Calcutta, the petitioner company invited tenders for handling iron and steel materials for the petitioner company at its Home Sales Stock Yard at Naini, Allahabad. The respondent No. 1, which was at the material time a partnership firm comprised of two partners, submitted its offer and was ultimately appointed as contractor for the purposes indicated in the tender notice. Subsequently, a formal agreement in writing was executed between the parties on/or about 15th October, 1990.

3. Pursuant to the above the respondent No. 1 commenced work in terms of the contract on and from 10th October, 1990.

4. According to the petitioner, from the very beginning the respondent No. 1 failed and neglected to perform the work under the contract in a proper manner and the same was recorded in several letters written on behalf of the petitioner to the partnership firm between 4th October, 1990 and 17th February, 1992.

5. In February, 1992, Shri Arun Kumar Bansal, one of the partners of the respondent firm informed the petitioner that he had disassociated himself from the partnership firm and he had no further interest or connection with the respondent firm. By a letter dated 6th February, 1992, Shri Bansal reiterated the fact of his disassociation with and/or retirement from the respondent firm and assured the petitioner that the Deed of Dissolution of partnership would be furnished to the petitioner at the earliest opportunity. It also appears that by a letter dated 1st October, 1991, Shri Bansal informed the other partner, Shri Sudhir Kumar Goel, that he was retiring from the partnership and was severing his connection with the firm.

6. According to the petitioner, the work entrusted to the respondent firm suffered on account of the circumstances indicated hereinabove and in view of the dissolution of the partnership the petitioner had no option but to cancel the contract with the partnership firm by a letter dated 17th February, 1992. The petitioner company, however, reserved the right to recover all losses purportedly suffered on account of the breach of obligation committed by the partners.

7. On 19th July, 1993, the respondent firm invoked the arbitration clause contained in the contract dated 21st September, 1990 and sought reference of the disputes and differences which had arisen between the parties to arbitration. On the basis of such request the Director (Commercial) of the petitioner company by his letter dated 27th August, 1993, appointed one Shri S.N. Subramaniam, the respondent No. 2 in the instant application, as sole Arbitrator for the purpose of adjudicating such disputes and differences and the claims of the respondent firm.

8. Pursuant to the directions given by the learned Arbitrator a Statement of Claim was filed on behalf of the respondent No. 1 claiming a sum of Rs. 41,84,342.09, together with interest at the rate of 21.55% per annum, on the allegation that the petitioner company had wrongfully terminated the contract. The said claims of the respondent firm were controverted by the petitioner company and on its part a separate Statement of Claim was filed for a sum of Rs. 10,18,821.59 for the loss and damage allegedly suffered by the petitioners. The respondent firm filed a counter-statement and ultimately the learned Arbitrator entered upon the reference on or about 9th December, 1993 and published his award on 20th January, 1995. In his said award the learned Arbitrator awarded a sum of Rs. 16,16,842.09 in favour of the respondent firm and a sum of Rs. 2,91,119.39 in favour of the petitioner company.

9. Aggrieved by the said award, the petitioner company has challenged the same in this application under Sections 30, 33 and 41 of the Arbitration Act, 1940.

10. Appearing on behalf of the petitioner company, Mr. Debal Banerjee, learned senior advocate, submitted that the contract had been awarded to the partnership firm consisting of Shri Arun Kumar Bansal and Shri Sudhir Kumar Goel. In term of the partnership agreement, Shri Arun Kumar Bansal gave notice of his intention to sever connection with the partnership firm and retire therefrom with effect from 1st October, 1991, and informed Shri Goel accordingly by his letter of 1st October, 1992, and subsequent letter of 6th February, 1992. Mr. Banerjee submitted that upon severance of connection by Shri Bansal with the partnership firm it ceased to exist with effect from 1st October, 1991, and in any event, the notice given by Shri Bansal to dissolve the partnership at will showed Shri Bansal's unequivocal and final intention to dissolve the firm. Consequently, the contract which had been entered into with the partnership firm automatically came to an end and/or stood determined with effect from 1st October, 1991 and such fact was duly communicated by the petitioner company both to Shri Bansal and Shri Goel.

11. In continuation of his aforesaid submission, Mr. Banerjee submitted that since the partnership had ceased to exist and the contract had come to an end, the respondent firm had no locus standi to refer any alleged dispute or differences to arbitration or to submit any claim under the contract. Furthermore, since the partners had by their own conduct made it impossible for the partnership firm to complete the work under the contract, neither the partnership firm to complete the work under the contract, neither the partnership firm nor any of its erstwhile partners were entitled to recover anything on the contract itself. Mr. Banerjee submitted that the learned Arbitrator ought to have dismissed the claim of the respondent firm and clearly committed a legal misconduct in holding that the partnership firm had locus standi to invoke the arbitration agreement and to make a reference to arbitration and to also file a Statement of Claim.

12. Mr. Banerjee urged that the action of the petitioner company in treating the contract with the respondent firm as having come to an end in terms of the letter of 17th February, 1992, was fully justified and the learned Arbitrator should have held that the partnership firm stood dissolved and ceased to exist with effect 1st October, 1991, upon the retirement of one of its partners, namely, Shri Arun Kumar Bansal.

13. Mr. Banerjee submitted that the learned Arbitrator ought to have held that, inasmuch as, upon dissolution of the partnership the contract had automatically come to an end, there was no question of termination of the contract by the petitioner company.

14. Mr. Banerjee urged that in estimating the profit of 371/2 months and awarding a sum of Rs. 6,32,500/- on that head in favour of the respondent firm the learned Arbitrator had unauthorisedly imparted his own personal knowledge which clearly vitiated the impugned award. Mr. Banerjee submitted that the awarding of such sum being perverse and not based on any evidence, the award

was liable to be set aside.

15. In support of his aforesaid submission Mr. Banerjee firstly relied on a single Bench decision of the Orissa High Court in the case of The Fertilizer Corporation of India Ltd. Vs. Bharat Painters, wherein the learned Judge, inter alia, held that although the scope of interference by Court in the case of a non-reasoned award is very limited and the Court has no jurisdiction to investigate into the merits of the case and to examine the evidence on record, in certain facts and circumstances of a case, a Court of law would be justified in interfering with the award within its limited power of interference, such as when the award was passed without any material on record, which amounted to misconduct. The learned Judge also observed that the expression "otherwise invalid" used in Section 30 of the Arbitration Act, 1940, would also cover an award which was passed without application of mind.

16. Drawing a parallel to the facts involved in the instant case, Mr. Banerjee submitted that in the instant case also there were no materials before the learned Arbitrator which justified the awarding of a sum of Rs. 6,32,500/- on account of the alleged profit for 371/2 months.

17. Reference was then made to the decision of the Hon"ble Supreme Court in the case of Rajasthan State Mines and Minerals Limited Vs. Eastern Engineering Enterprises and Another, , where among various observations, the Hon"ble Supreme Court observed that an Arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. A deliberate departure or conscious disregard of the contract not only amounted to misconduct on the part of the Arbitrator but it could also tantamount to malafide action.

18. Mr. Banerjee urged that while it was well-settled that if an award is in excess of jurisdiction of the Arbitrator then it is liable to be set aside but if the award is within the jurisdiction of the learned Arbitrator then the Court cannot set aside the award merely because another view was possible. However, in order to determine whether the Arbitrator acted in excess of jurisdiction, it was open to the Court to examine some documents, including the contract and reference of the dispute to the Arbitrator, for the limited purpose of determining whether the Arbitrator had jurisdiction or not.

19. Reference was also made to a single Bench decision of this Court in Union of India v. Jain Associates and Anr. (1993 II CLJ 117) where it was held that when a conclusion was contrary to an express finding the award is liable to be set aside.

20. Certain other decisions were also cited by Mr. Banerjee, in support of his aforesaid submissions, to which reference may be made, if required.

21. Opposing the application on behalf of the respondent No. 1 Mr. Jishnu Sana contended that the award under challenge was reasoned award which contains reasoned findings on the basis of materials produced by the parties and there was nothing either, inconsistent and/or arbitrary which could render the award

open to scrutiny, particularly when the learned Arbitrator had acted well within his jurisdiction and in terms of the contract.

22. Mr. Saha submitted that the question regarding dissolution of the partnership had been duly considered by the learned Arbitrator who relied on the tender form itself and also on the provisions of Section 47 of the Indian Partnership Act, 1932, to come to a finding that even if the partnership firm stood dissolved on account of the letter written by Shri Bansal on 6th February, 1992, the authority of each partner to bind the firm and other mutual rights and obligations of the partners continue, notwithstanding the dissolution so far as it was necessary to wind up the affairs of the firm and to complete transactions began but unfinished at the time of dissolution. Mr. Saha submitted that in any event, the purported dissolution of the firm had never been given effect to and there could, therefore, be no question of lack of authority of the partnership firm to either continue the contract began before such alleged dissolution but left unfinished thereafter or to make the reference to arbitration.

23. Mr. Saha then urged that the awarding of a sum of Rs. 6,32,500/- on account of estimated profit for 371/2 months was not on the basis of the learned Arbitrator's own personal knowledge but on the basis of the petitioner's admission that a sum of Rs. 9,34,342.09 was due and owing to the partnership firm against its pending bills. On the materials before him the learned Arbitrator also recorded that the respondent firm was legitimately entitled to refund of its security deposit amounting to Rs. 50,000/-. Mr. Saha pointed out that the claim of the respondent firm on account of stigma due to termination of the contract had been disallowed by the learned Arbitrator. Mr. Saha submitted that definite reasons had been given by the learned Arbitrator in arriving at the estimated profit of Rs. 15,000/- per month which worked out to Rs. 6,32,500/- for 371/2 months.

24. In support of his aforesaid submissions Mr. Saha referred to and relied on the decisions of the Hon'ble Supreme Court in the case of (1) Mohd. Salamatullah and Others Vs. Government of Andhra Pradesh, and (2) A.T. Brij Paul Singh and Bros. v. State of Gujarat (1984) 4 SCC 691, wherein the Hon'ble Supreme Court was of the view that while estimating the loss of profit that could be claimed for breach of contract it would be unnecessary to go into the minutest details of the work executed in relation to the value of the contract and a broad evaluation would be sufficient.

25. Mr. Saha urged that the arguments advanced on behalf of the petitioner for setting aside the award in question were without any foundation and the instant petition was liable to be dismissed with cost.

26. The main thrust of Mr. Banerjee's submission was the letter dated 6th February, 1992, written by Shri Bansal, one of the partners indicating that he had disassociated himself from the respondent No. 1 firm. According to Mr. Banerjee, on account of the same the partnership stood automatically dissolved

and the same was sufficient for the petitioner to terminate the contract entered into between the petitioner and the respondent No. 1 firm. It has to be considered whether Mr. Banerjee's said submission can stand scrutiny in view of the fact that the petitioner company had not been formerly informed that the partnership had been dissolved giving rise to a situation contemplated in Section 47 of the Indian Partnership Act, 1932. It is also to be seen whether in view of the provisions of Section 47 of the aforesaid Act, the petitioner company could have terminated the contract without ascertaining as to whether the other partner was ready and willing to complete the transaction under the contract.

27. The learned Arbitrator has considered both the questions in detail in the light of Section 47 of the Partnership Act and these appears to be no reason to disagree with his findings and observations in that regard.

28. The other argument advanced by Mr. Banerjee regarding the personal knowledge allegedly imparted by the Arbitrator in estimating profit for 371/2 months is also untenable since detailed reasons have been given by the learned Arbitrator for arriving at the figure in question. The learned Arbitrator has in his award indicated that the petitioner company had admitted that a sum of Rs. 9,34,342.09 was due and owing to the respondent firm against its pending bills. Taking profit to be 15% of the value of the bills passed for the work done between 1st October, 1990 to 16th February, 1992, the learned Arbitrator arrived at the sum of Rs. 6,32,500/- for 371/2 months. The learned Arbitrator thought it fit to award the said amount upon his finding that the contract had not been correctly terminated.

The decisions cited by Mr. Banerjee do not help the case of the petitioner in the facts and circumstances of the case and the materials as disclosed.

In any view, the learned Arbitrator has not misconducted himself and no interference is called for with the impugned award. There being no merit in the instant application, the same is dismissed but without costs.

Department and all parties are to act on a signed copy of the operative portion of this judgment on the usual undertakings.