

(1976) 02 PAT CK 0015
In the Patna High Court
Case No : A.F.O.O. No. 314 of 1970

Steel Co. (Construction)	Vs	APPELLANT
The Union of India(UOI) and Another		RESPONDENT

Date of Decision : 09-02-1976

Acts Referred:

Arbitration Act, 1940 — Section 30

Citation : AIR 1976 Patna 334 : (1976) 9 PLJR 369

Hon'ble Judges : S. Ali Ahmad, J;K.B.N. Singh, J

Bench : Division Bench

Advocate : Balbhadra Prasad Sinha and B. Narain Sinha, for the Appellant; A.K. Sinha and R.N.S. Sinha, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Ali Ahmad, J.—This appeal by the plaintiff has been filed u/s 39(1)(iii) of the Arbitration Act against the order passed by the 1st Additional Subordinate Judge, Patna, modifying the award of the arbitrator with regard to claim No. 5. The Union of India, defendant No. 1 to the suit has also filed cross-objection with respect to the items of the award on the basis of which the trial court directed for preparation of a decree.

2. The appellant filed a suit u/s 14 of the Arbitration Act, 1940 for preparation of a decree on the basis of an award submitted by defendant No. 2. According to the appellant, a dispute arose regarding a contract which he had taken by means of an agreement with defendant No. 1. According to the terms of the contract, defendant No. 2 was appointed as a sole arbitrator, who after hearing the parties and considering all the materials before him gave his award on 6-7-1969. A prayer, therefore, was made that the arbitrator may be asked to file the said award in the court and on the basis of that award a decree be passed.

3. The suit was contested by defendant No. 1, the Union of India. According to it, the award was illegal, invalid and improper and, as such, it could not be made

the basis for a decree.

4. On facts, it was said that the plaintiff did not complete the work and left it in a haphazard manner. It was also stated that the contractor-plaintiff had already been paid for the work he has done and that the contractor was not entitled to anything more. With regard to the claim as contained in item No. 5 it was said that under the contract itself, the Union of India was entitled to reduce the quantity of work without affecting the rates and, therefore, the fact that the construction of 20 bins was reduced to only 8 did not entitle the appellant to any higher rate. Some counter-claims were also made by the Union of India. The arbitrator allowed some of these counter-claims and rejected the rest.

5. In support of their respective cases, parties led evidence before the trial court. The trial court on an appreciation of the materials brought on the record, came to the conclusion that the arbitrator had misdirected himself with regard to the claim of the plaintiff as contained in item No. 5 and that consequently the award of Rs. 54,047 under this head was bad. With regard to the rest of the award the court below was of the opinion that it was lawful and, as such, directed a decree to be prepared on that basis. Aggrieved by the order holding that the plaintiff was not entitled to Rs. 54,047 under item No. 5 of the award, the plaintiff has filed this appeal. The Union of India also did not feel satisfied with the items of the award which were to be the basis of the decree and, as such, a cross-objection was filed on its behalf.

6. It appears that the Union of India invited tenders for the construction of foodgrains storage godown at Gaya. The appellant also applied as per tender invited by the department for the construction of 20 bins. His tender for Rs. 45,97,086 was accepted on 18-6-1965 and the plaintiff was to start the commencement of the work from 28th June, 1965. The work was to be started in right earnest after the monsoons were over. The plaintiff, therefore, collected materials and labourers for the construction of 20 bins. He also entered into an agreement with different persons for the supply of materials and made arrangement for articles required for centering and shuttering of 20 bins. Subsequently on account of the outbreak of Indo-Pakistan hostilities, the number of bins to be constructed was reduced from 20 to 8 only. This reduction in the number of the bins to be constructed was objected to by the plaintiff-appellant on the ground that he had already collected materials for construction of 20 bins and the reduction of work at this late stage would entail heavy loss to him and that he should be compensated for this.

7. According to the defendant, the construction of 20 bins was to be completed by the 27th March, 1967, but after the construction was reduced to only 8 bins, the plaintiff was directed to complete its construction by the end of July, 1966. According to it, the progress of these 8 bins was extremely slow and was very much behind the time schedule. Ultimately, the contractor suspended the execution of the work in April, 1967. After emergency was lifted the contractor was asked if he was prepared to proceed with the "work but the department did

not get any definite reply. A meeting was, therefore, convened at Patna where the question regarding completion of the 8 bins was taken up. In this meeting the contractor finally refused to take up the work which he had left in haphazard manner. Under the circumstances, according to the Union of India, they got the work completed through another agency at a higher cost and, as such, they suffered a loss. Parties on the basis of their claims, which have been mentioned above, went to the arbitrator, who on a consideration of the entire materials on record, gave his award.

8. Before going into the merits of the appeal, it will be useful at this stage to determine the scope of the suit and powers of the court in relation to the suit of this nature. Section 14 of the Indian Arbitration Act provides that the award has to be filed in court after it is signed. The court u/s 15 of the Act can modify any part of the award if that part relates to a matter which was not referred to the arbitration and such part can be separated from the remaining part without affecting the decision on the matter referred to. The court can also modify an award when it thinks that it is imperfect in form or contains any obvious error which can be amended without affecting the decision or where the record contains a clerical mistake or an error arising from accidental slip or omission. Section 16 of the Act provides that the court in proper cases may remit the award for reconsideration upon such term as it thinks fit. Section 17 of the Act empowers the court to deliver a judgment in terms of the award on the basis of which a decree has to be prepared. The next relevant section for our purpose is Section 30 of the Act which provides that the award can be set aside on one or more of the grounds mentioned below:--

- (a) that the arbitrator has misconducted himself or the proceeding,
- (b) that the award has been made after the issue of order by the court superseding the arbitration or after the arbitration proceedings have become invalid u/s 35 of the Act,
- (c) that the award has been improperly procured or is otherwise invalid.

The effect of this section is that the courts have no jurisdiction to look into the correctness or otherwise of the conclusion or findings arrived at by the arbitrator provided, of course, he has acted within his authority and in accordance with principles of natural justice,

9. The learned Advocate-General appearing on behalf of the appellant has contended that the court below had no jurisdiction to modify the award given by the arbitrator in respect of item No. 5 when there was no error apparent on the face of the award nor there was any inherent lack of jurisdiction in the arbitrator to deal with the matter. He also submitted that since the award did not suffer from any of the infirmities mentioned u/s 30 of the Act the court below had no authority to examine the merits of the award and the determination made by the arbitrator. According to him the court below was in error in entering into the evidence in the form of correspondence to determine the correctness or legality

of the claim which was accepted by the arbitrator. He next contended that the trial court had no jurisdiction to consider Clause 25 of the agreement as the award does not contain any discussion regarding that clause. In support of the arguments advanced by him, learned Advocate-General has placed reliance on certain decisions which I propose to consider one by one.

10. In the case of Bungo Steel Furniture Pvt. Ltd. Vs. Union of India (UOI), , it has been held that where the arbitrator in deciding a dispute does not record his reasons and does not indicate the principles of law on which he has proceeded then the award is not vitiated on that account. The court gets jurisdiction to examine whether the arbitrator has proceeded contrary to law or not only in cases where the arbitrator proceeds to give his reasons or to lay down principle on which he has arrived at his decision. In this case the arbitrator has not mentioned anything neither he has laid down any Law nor there is any indication as to how he came to the conclusion that under item No. 5 "the contractor's claim is justified for Rs. 54,047". That being the position, it is not possible to say that the award under this head is covered by any of the conditions laid down u/s 30 of the Act. In the case of Kapoor Nilokheri Co-op. Dairy Farm Society Ltd. Vs. Union of India (UOI) and Others, , it has been laid down that where an arbitrator is called upon to decide the effect of the agreement he has really to decide a question of law, i.e. of interpreting the agreement and hence his decision is not open to challenge. In the present case also Clause 25 of the agreement which provided for compensation to contractors in certain cases had to be considered and construed by the arbitrator himself. This clause was before the arbitrator and he was competent to interpret it. As I have said above the award does not show as to how he has interpreted the clause. Therefore, it is not possible for the defendant to ask the court to interpret this clause and to modify the award under this head on the basis of the interpretation arrived at by the court. The interpretation of the arbitrator was final. I may refer to one more decision in the case of Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore, where it has been held that the arbitrator could give a lump sum award. His award on both the facts and law is final. There is no appeal from the verdict. The courts cannot review his award to correct any mistake in his adjudication, unless an objection to the legality of the award is apparent on the face of it. In the same volume at page 1032 in the case of Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd., it has been held that the award can be set aside on the ground of error of law on face of award only when in the award or in the document incorporated with it there is some legal proposition which is basis of the award and which is erroneous. The principle laid down in the aforesaid cases of the Supreme Court could not be disputed by learned counsel appearing for the Union of India. He, however, referred to a decision in the case of Iftikhar Ahmed and Others Vs. Syed Meharban Ali and Others, to show that the view taken by the arbitrator could be interfered with. The facts of this case are entirely different. The arbitrator in his award had dealt with a judgment of the Allahabad High Court and was of the view that the decision did not amount to res judicata.

For coming to the conclusion that there was no res judicata, the arbitrator had discussed in his award the principle of law erroneously. The Supreme Court was of the view that the judgment in the previous suit created the bar of res judicata and that the reasons given by the arbitrator were not correct. It was on these facts that it was held that the award was invalid. This case, therefore, does not help the respondent.

11. I have quoted above the award of the arbitrator in respect to item No. 5 of the appellant's claim, The award is a lump sum in respect of that item. No reasons have been assigned for holding that the plaintiff was entitled to Rupees 54,047 under that head of the claim. No law has been discussed neither any principle of law has been laid down. The arbitrator was within his right to interpret the different provisions including Clause 25 of the contract and was also competent to give his own construction. He has done that. His decision is final and it does not suffer from any infirmity. Therefore, the order under appeal in so far as it modified the award of the arbitrator under item No. 5 of the appellant's claim is bad. The appeal is accordingly allowed and the order under appeal to the extent indicated above is set aside.

12. Now the cross-objection preferred on behalf of the Union of India has to be considered. Under item No. 6, the appellant had claimed a refund of earnest money and security deposit that was deducted from the bills. This claim was allowed by the arbitrator in full. Learned counsel for the respondent urged that there was no jurisdiction in the arbitrator to give his award directing the refund of the earnest money and security deposit in full when the appellant had abandoned the work. The same argument was advanced before the learned Subordinate Judge also and it was rightly rejected. It was for the arbitrator to consider the justification of the claim. He has considered that and has given an award. His award is final and he was fully competent to give the award. There is no merit in this argument. Learned counsel has again challenged the validity of the award given under items 8, 9 and 10 of the counter-claims advanced by the defendant. These claims also were considered by the arbitrator and he has held that the claims were not justified. The arbitrator was the sole judge to determine as to whether these counter-claims were justified or not. He has held them to be not justified and that ends the matter. No grievance can now be made that the arbitrator was not within his jurisdiction to say that the claims were not justified. There is no merit in the cross-objection, It is accordingly dismissed,

13. In the circumstances of the case, there will be no order as to costs either in the appeal or in the cross-objection.

K.B.N. Singh, J.

I agree.