

(1993) 10 DEL CK 0055

In the Delhi High Court

Case No : Suit No. 29 of 1991 and Interim Application No. 10558 of 1992

Surinder Kumar

APPELLANT

Vs

Union of India and Another
 Surinder Kumar and
Brothers Vs Union of India and Another

RESPONDENT

Date of Decision : 01-10-1993

Acts Referred:

Citation : (1993) 4 AD 405 : (1994) 1 ARBLR 45 : (1993) 52 DLT 380

Hon'ble Judges : Mohd. Shamim, J

Bench : Single Bench

Advocate : P.N. Kumar, E.X. Joseph and Rajiv Bansal, for the Appellant;

Judgement

Mohd. Shamim, J.

(1) This is a petition u/s 14, 17 and 29 of the Arbitration Act for issue of a direction to the petitioner to file the Award and that the same be made a rule of the Court.

(2) The Award was filed before this Court on 30/01/1991 as is manifest from the order sheet of the said date.

(3) The petitioner did not file any objections against the Award but the respondent on the other hand, chose to file objections through their interim application bearing I A. No. 10558/92. The petitioner filed a reply thereto .

(4) Learned Counsel for the respondent Mr. EX. Joseph, has raised preliminary objection with regard to the maintainability of the present petition as this Court has no jurisdiction to entertain the same. However, he did not press the same during the course of his arguments. In view of the above I need not dilate on this point any further.

(5) Learned Counsel for the Respondent has next contended that the Arbitrator has miss conducted himself and the proceedings and did not give proper reasoning while awarding a sum of Rs. 2,04,423.00 to the petitioner. According

to the learned Counsel the Award is based on insufficient evidence. He has argued that there was absolutely no evidence before the Arbitrator to award the said amount to the petitioner. Learned Counsel in support of his argument has let me through the observations of their Lordships of the Supreme Court, as reported in K.P. Poulse Vs. State of Kerala and Another, . It was observed in the said authority by their Lordships: "(c) u/s 39(a) of the Arbitration Act an award can be set aside when an Arbitrator has misconducted himself or the proceedings. Misconduct u/s 3(a) has not a connotation of moral lapse. It comprises legal misconduct which is complete if the Arbitrator on the face of the award arrives at an inconsistent conclusion even on his own finding or arrives at a decision by ignoring very material documents which throw abundant light on the controversy to help a just and fair decision. It is in this sense that the Arbitrator has misconducted the proceedings in this case."

(6) Learned Counsel for the respondent has argued that there was no evidence before the Arbitrator that the petitioner maintained an establishment and an such incurred expenses thereon to the tune of Rs. 74,400.00 as there was a delay on the part of the respondent. Thus according to the learned Counsel for the respondent the Arbitrator fell into a grave error by awarding the said amount to the Contractor. I am sorry I am unable to agree with the contention of the Ld. counsel, I have very carefully gone through the Award and the findings of the Arbitrator on the said point. the Arbitrator has given very cogent reasons for arriving at his conclusions. He has in this connection referred to the details of the claims given in Annexure A-I filed by the petitioner before the Arbitrator. He has also in this connection referred to Ex. C-17, which shows that there were delays on the part of the respondent which compelled the Contractor to maintain an establishment and thus had to incur expenses thereon. Thus the Arbitrator, I feel, was justified in awarding a sum of Rs. 74,400.00 on this score to the petitioner. Moreover, clauses 36 and 36-A are quite clear on the above point. The Contractor/Petitioner was under obligation to engage and employ the technical staff otherwise he was liable to pay a penalty of Rs. 2000.00. In view of the above, it was obligatory on the part of the petitioner to maintain an establishment during the above said period of delay which was on account of the lapses on the part of the respondent.

(7) It is a well established principle of law that the Arbitrator is a final Judge of the facts and the evidence. This Court does not sit in judgment over the orders and the judgment given by the Arbitrator. The Court can interfere with the Award only in those discerning few cases where there is an error apparent on the record, and the Arbitrator has misconducted himself and the proceedings. Learned Counsel for the respondent has failed to show me any such thing in the present case. The above view was given vent to by their Lordships of the Supreme Court as reported in Hindustan Tea Co. Vs. K. Sashikant Co. and Another, : "Under the law. the Arbitrator is made the final arbiter of the dispute between the parties. The award is not open to challenge on the ground that the Arbitrator has reached a wrong conclusion or has failed to appreciate facts" It is

abundantly clear from the above that the award can not be challenged on the ground that the Arbitrator has arrived at a wrong conclusion or has failed to properly appreciate the facts and the evidence .Learned Counsel for the respondents in fact wants this Court to do so which T am sorry is not open to this Court simply because this Court does not sit in judgment over the findings given by the Arbitrator.

(8) No other point was raised before this Court. The objections, in view of the above, are rejected.

(9) In the circumstances stated above, the Award dated 10/12/1990 is hereby made a rule of the Court. Let a decree be passed in favor of the petitioner against the respondents in terms of the Award Ex. YZ. The Award Ex. Yz shall form part of the decree. The petitioner shall be entitled to future interest at the rate of 14% per annum till realisation of the decretal amount.

(10) Suit stands disposed of. Petition dismissed.