

(1988) 11 BOM CK 0002

In the Bombay High Court

Case No : Arbitration Petition No. 37 of 1988

Union of India and others

APPELLANT

Vs

Great Eastern Shipping Co. Ltd.

RESPONDENT

Date of Decision : 15-11-1988

Acts Referred:

Citation : (1989) MhLj 964

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Advocate : H.G. Advani with J.B. Ramchandani instructed by M/s. Raghvayya Nagindas and Co, for the Appellant; E.P. Bharucha with R.W. Walavalkar instructed by M/s. Bhatt and Saldhanha, for the Respondent

Judgement

H. Suresh, J.—This is a petition to set aside an award made by The arbitrators on December 30, 1987 whereby the respondents were awarded a sum of Rs. 4,55,259.43/- as against the Food Corporation of India - the petitioners.

2. The petitioners by a charter party dated August 31, 1981 chartered from the respondents their vessel "Jag Leela" to carry 88,000 metric tonnes of wheat in bulk from U. S. A. to India on terms and conditions set out therein. Clause 52 of the Charter party provided for arbitration. The said clause is as follows :

Any dispute arising under this Charter shall be referred to Arbitration and settled in India (Bombay), each party appointing an Arbitrator, and the two Arbitrators, in the event of disagreement appointing an Umpire whose decision shall be final and binding upon both parties hereto. The Arbitrators shall be commercial men.

3. The dispute arose between the parties and the respondents appointed one Mr. V. K. Bhandari as their Arbitrator while the petitioners appointed one Mr. J. L. Puri as their Arbitrator. The respondents had claimed in their statement of claim a sum of Rs. 9,64,349.33/- as the amount due to them on account of balance of freight charges, demurrage/despatch, lay-time charges, elevator charges and Inspector's over-time charges etc. It appears that during the pendency of the

arbitration, the respondents received a sum of Rs. 2,58,284.25/- and as a result of which the claim of the respondents was reduced to Rs. 7,06,065.08A. In addition to the above, the claimants have also claimed interest at the rate of 12% per annum and also the costs of the arbitration proceedings.

4. The award shows that all the five meetings of the arbitration were held at Calcutta. The first two meetings were held on 1st and 2nd of September 1987 while the next three meetings were held on September 23, 24 and 25, 1987. The hearing was concluded on September 25, 1987. Thereafter in December 1987, the learned Arbitrators had given the award in the sum of Rs. 4,55,259.43/- in favour of the respondents and as against the petitioners. They also awarded interest at the rate of 12% per annum on the said sum from the date of the submission of the statement of claim till the date of the award. This award was lodged in this Court and thereafter a notice was served on the petitioners as also on the respondents. The petitioners received the notice on February 6, 1988 and thereafter the petitioners filed the present petition to have this award set aside on various grounds.

5. The first contention of the petitioners is that this Court has no jurisdiction to take on file this award. They submit that the Calcutta High Court or in the alternative the Delhi High Court will have jurisdiction to receive this award. Mr. Advani submitted that the correspondence annexed to the petition would show that the charter party, though prepared and signed by the respondents in Bombay, was in fact received by the petitioners in Delhi and it was signed in Delhi. He submitted that it is at Delhi that the contract was concluded and therefore, the Delhi High Court could have had the jurisdiction to receive this award. Alternatively Mr. Advani submitted that rest of the cause of action arose in Calcutta inasmuch as the goods were to be delivered at Calcutta port and therefore, it could be said that the Calcutta High Court would have had the jurisdiction to receive this award. In any event, he submitted that this Court will have no jurisdiction to receive this award.

6. As against this Mr. Bharucha submitted that if one looks at the charter party, the very title shows that it was purported to have been entered into in Bombay on August 31, 1981, He also relied upon clause 52 as stated above which expressly says that the Arbitration shall be referred to and settled in Bombay and, therefore, it could be said that a part of the cause of action, in any case, has arisen in Bombay, and, therefore, this Court has jurisdiction to receive this award.

7. Relying on the case of *Cursetji Jamshedji vs. R. D. Shiralee*, AIR 1943 Bom 32, Mr. Bharucha submitted that this Court has jurisdiction to receive the award inasmuch as both the parties can be said to be carrying on their business within the jurisdiction of this Court. Undoubtedly, the Food Corporation of India carries on its business in Bombay, so also the petitioners. If that is so, it could be said that this Court has jurisdiction to receive this award. I understand that in a similar petition, my learned Sister Sujata Manohar, J. had taken the same view

and she has held that this Court has jurisdiction to receive the award (refer to the judgment dated February 5, 1987 in Arbitration Petition No. 79 of 1986 - NOTE - It appears that the judgment has been reversed by the Division Bench, but not on the question of jurisdiction). I am, therefore, not inclined to accept the submission of Mr. Advani on this point at all.

8. The next contention is no longer *res integra*. The contention is that the petitioners had given instructions to their Arbitrator that he should give reasons when he makes the award, and that the award contains no reasons, and, therefore, bad in law. Mr. Advani submitted that if for any reason the learned Arbitrator, appointed by the petitioners, was not in a position to give a reasoned award in that event the learned Arbitrator ought to have declined to make the award or withdrawn from the arbitration proceedings. In any event, having not complied with the mandate given by the petitioners, it" could be said that the Arbitrator appointed by the petitioners is guilty of misconduct and it is on this ground this award should be set aside. However, in an earlier matter I had taken a view that a mandate given by one party to their Arbitrator is not binding on the other Arbitrator, and even though the award gives no reasons, it cannot be said that the award stands vitiated on that ground. This view of mine finds support in the Supreme Court case of *Food Corporation of India and Another Vs. Great Eastern Shipping Co. Ltd.*, .

9. Mr. Advani then submitted that the award says that the award was made after considering "written submissions and documents etc." put before the Arbitrators. Mr. Advani submitted that no written submissions were made before the Arbitrators and, therefore, the award contains a statement which is patently incorrect and, therefore, it could be said that the award has been made without any application of mind and that is an error on the face of the award. It is true that the award contains the statement that the Arbitrators have considered "written submissions". But, I must keep in mind that the Arbitrators are commercial men and they are not used to the legal jargon and, therefore, when they say that they have considered the written submissions it must be understood in the context and it could as well be construed, as Mr. Bharucha rightly pointed out, that the Arbitrators were in fact referring to the written pleading which were before them. Therefore, I find no substance in this contention also.

10. The rest is all on merits. Mr. Advani took me at length through the statement of claims and pointed out that some of the claims relate to lay-time charges. The question is whether the lay-time charges should be calculated on the basis of the weight as shown in the bill of lading or on the basis of the weight as shown in the manifest quantity. He also submitted that it depends upon the capacity of the vessel to deliver the goods and there was no evidence with regard to the capacity of the vessel. He also submitted that the petitioners cannot be liable for demurrages because if at all there was any delay in delivery of the goods, the respondents themselves were responsible for the same. He also submitted that

there was no proper evidence before the Arbitrators and without any evidence they have decided the matter and, therefore, he submitted that this award is liable to be set aside on this ground. In this connection Mr. Advani took me through the minutes as recorded by the Arbitrators. The minutes at one place refer to a submission made by Mr. Walavalkar, Advocate, who appeared on behalf of the respondents, that a sum of Rs. 44,000/- and odd had been deducted by the petitioners from the balance freight on account of claimants' 50% share in the Port/Customs overtime and that no supporting document had been produced by them. The minutes also show that the petitioners were given time to submit the relevant vouchers in this behalf, latest by October 31, 1987. I cannot understand how the minutes can help the petitioners inasmuch as the relevant documents which relate to the minutes relate to the vouchers to be submitted by the petitioners in support of their claim and there is no question of the respondents being given any time for producing the documents.

11. Mr. Advani also drew my attention to some of the clauses of the charter party agreement and submitted that the respondents were to submit the necessary documents and certificates for the purpose of claiming either overtime charges or demurrages or lay-time charges and he also submitted that in the absence of proper documents it was impossible for the Arbitrators to make any award. Here again, I find no substance in this contention inasmuch as there is nothing to show from the records that the parties were prevented from leading any evidence as they liked. Broadly speaking, every document which is relevant appears to have been placed before the Arbitrators. The Arbitrators have heard the advocates who appeared on behalf of the parties. After considering all the documents which were put before them and after hearing the advocates on either side, the Arbitrators have made the award. The Arbitrators have made a lump sum award. But, that cannot be considered as a default on their part inasmuch as it is open to them to make such award as they considered proper. Therefore, I find no substance in this contention also.

12. Mr. Advani submitted that the claim of the respondents was of Rs. 7,06,065.08/- and as against that the Arbitrators have awarded a sum of Rs. 4,55,259.43/- . Mr. Advani submitted that the award is not intelligible as to how they arrived at this figure. It cannot be said whether they have disallowed lay-time charges or the overtime charges, and, if so, to what extent? The award is not a reasoned award. Mr. Advani, therefore, submitted that since the award does not set out what claim was allowed and what was not allowed, which item was taken into account and which was not, it can be said that the award is per se defective. The answer is simple. It was open to the Arbitrators to make a lump sum award. Having made the said award, it is not possible for a Court to probe into the mind of the Arbitrators as to how they arrived at that figure.

13. Mr. Advani then drew my attention to three cases, viz. 1) Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others, , 2) Bhai Sardar Singh and Sons vs. New Delhi Mpl, AIR 1981 Del 374 and 3) Rashtriya Chemicals and

Fertilizers Limited Vs. Mohindersingh and Co. and Another, . The substance of the argument is that the Arbitrators' jurisdiction was restricted in the manner provided under the contract. He submitted that when the Arbitrators made the award, that should be in accordance with the charter party agreement. Since the award does not say how and in what manner they arrived at the figure, it could be said that the Arbitrators have not given the award in terms of the charter party agreement. He submitted that it is in this sense the award could be said to be bad in law.

14. If one has regard for The statement of claims as preferred by the respondents before the Arbitrators, it becomes clear that they had claimed in all a sum of Rs. 9,00,000/- and odd, after adjusting the amounts which are due to the petitioners. We do not know how the Arbitrators arrived at the figure as contained in the Award. But, it was certainly on the basis of all the material that was before them including the charter party agreement. Mr. Advani's contention is that it cannot be said that the Arbitrators have perused the charter party agreement. His contention is that they ignored the same. I am afraid, the award does not spell out that. Certainly the charter party was before them and they considered the same. They have considered all the documents before them. Finally, they were within their jurisdiction to make the lump sum award. They have not allowed the full claim of the respondents. If that is so, I find nothing wrong in the award.

15. Mr. Advani further emphasised that there was no evidence with regard to the claim of Rs. 1,85,000/- pertaining to the item of elevators and Inspectors' overtime charges, inasmuch as no certificate as required by charter party was produced before the Arbitrators. I am afraid, I cannot go into this question. Nobody had prevented any party from leading any evidence before the Arbitrators. Whatever material was before the Arbitrators, they have considered every aspect of the matter and it is on that basis they made the award. If I were to accept the arguments of the petitioners, it would be in effect reassessing the matter which is not open to the Court. It is for this reason the petitioners have no right to advance any such contention with regard to the evidence relating to each of the documents. I can understand if the Arbitrators had made the award in respect of each of the items separately, and in that event, perhaps, the petitioners could have contended that there was some error or there was no material to make such an award. The Arbitrators have made a lump sum award which was within their jurisdiction and, therefore, it is not open to the petitioners to contend that the Arbitrators have taken into account certain items or they have taken into account items which they ought not to have taken into account in coming to the conclusion.

16. This takes me to the last contention that the Arbitrators could not have awarded interest from the date of submission of the statement of claim till the date of the award. Mr. Bharucha has, in fact, conceded that. Certainly, to that extent the award will have to be set aside.

I, therefore, pass the following order :

The award is set aside to the extent that the Arbitrators have given interest from the date of submission of the statement of claim till the date of the award.

The rest of the award stands.

Petition is partly allowed with no order as to costs.