
(2003) 10 J&K CK 0025
In the Jammu And Kashmir High Court
Case No : CIMA No. 77 Of 2003

Union of India & Anr.

APPELLANT

Vs

Des Raj Nagpal & Ors.

RESPONDENT

Date of Decision : 10-10-2003

Acts Referred:

Jammu and Kashmir Arbitration and Conciliation Act, 2002 — Section 29, 30, 39

Citation : (2004) 1 JKJ 326

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : S.S.Nanda, Anil Mahajan, Advocates appearing for the Parties

Judgement

This appeal under Section 39 of J&K Arbitration Act, 2002 is directed against order dated 23.12. 2002 passed by learned District Judge, Jammu,

in case titled ""M/S Des Raj Nagpal Vs Union of India"", whereby the award dated 23. 12. 1998 passed by the sole arbitrator has been made rule

of the Court.

Before I dwell upon the grounds of challenge in the award, it is deemed necessary to give resume of the facts.

The respondentcontractor executed certain works on behalf of appellants for which a Contract Agreement bearing No. CWE/JP23/8586 came to

be executed between the parties on 19.6.1985. The period for execution of work was from 2.7. 1986 to 1.4.1986. The work was however

completed on 16.4.1992. Certain disputes arose between the parties for which some arbitration proceedings were initiated. The present arbitration

proceedings commenced by the respondentcontractor which culminated in passing of the award dated 23.12.1998, wherein certain claims of the

contractor were allowed by the arbitrator with interest for the preresidence period, pendentelite and future. This award became subject matter of proceedings under section 30/33 of J&K Arbitration Act before the District Judge, Jammu in AA No. 6/1999. After inviting objections from the parties in respect to the award, the learned District Judge framed the following issues:

- i Whether objections to the award are time barred, if so, what is its effect thereof? OPP
- ii Whether the arbitrator has misconducted himself and the proceedings, if so, in what manner? OPP
- iii Whether award is liable to be set aside? OPP.
- iv Relief.

On consideration of the issues, learned District Judge upheld the award and made it rule of the Court vide impugned judgment dated 23.12.2002 and consequential decree in terms of the award has been passed.

Appellant Union of India has assailed the impugned judgment of District Judge, Jammu primarily on the following four grounds :

- i. That the decree and order of District Judge is against law and facts.
- ii. That the arbitrator was required to pass a reasoned award in terms of Condition 70 of the Contract Agreement i.e. IAFW2249, and the award being nonspeaking is liable to be set aside as it constitutes legal misconduct.
- iii. That the arbitrator was not competent to award interest as the same was not provided under any condition of the contract.
- iv. That the award is malicious and based on error apparent on record.

I have heard learned counsel for the parties and perused the judgment, impugned in the appeal.

Mr. Nanda has not been able to show anything from record as to how the judgment of learned District Judge is against facts and law. In

proceedings under Section 30/33 also the main contention of the appellant was that the award is not based on any evidence. Learned District

Judge has specifically dealt with this question and returned a finding that both the parties produced evidence in the form of documents and

pleadings before the arbitrator and there was sufficient material before the arbitrator on the basis of which the award has been passed.

Nonetheless, this Court is sitting as a court of appeal under Section 39 of Arbitration Act & cannot reexamine or reappraise the evidence. Even

the court exercising jurisdiction under Section 30/33 of Arbitration Act also cannot sit as a court of appeal over the award passed by an arbitrator,

in whose domain alone question of appreciation of evidence falls. Therefore neither the judgment nor the award can be interfered on this count.

Regarding the second ground that the arbitrator was required to pass a reasoned award, I have perused condition NO. 70 of the Contract

Agreement relied upon by Mr. Nanda, which requires the arbitrator to indicate his finding alongwith sum awarded separately on each individual

item of dispute. From the copy of award filed by the arbitrator it appears that the arbitrator has dealt with each claim itemwise. It is an itemwise

award and not lump sum award. As the sums have been awarded against each claim wherever it has been allowed, these does not seem to be any

violation of condition 70 of the contracted agreement as has been contended by Mr. Nanda.

Condition 70 of Contract Agreement was amended on 3.10.1986, which inter alia requires that where the claim or counter claim in an arbitration

reference exceeds Rs. 1 lac, the arbitrator shall give reasons for the award. In the present case the Contract Agreement was executed on

19.6.1985, whereas the amended condition was incorporated in October 1986, that too unilaterally. The contractor cannot be said to be a party

to the amendment in the general conditions of contract introduced by the appellants after its execution, therefore the amended condition has no

application to the case in hand.

This question also came to be considered by a Division Bench of this Court in case ""UOI & another v. M/S Om Parkash Baldev Krishan"",Air

2000 J&K 79, and it was held as under :

6. It is true that following sub para was added to subpara (9) of condition 70 of the general conditions of contracts by order of the Government of

India Ministry of Defence :

if the value of the claims or counter claims in an arbitration reference exceeds Rs. 1 lakh, the arbitrator shall give reasons for the award.

However, the order directed that this amendment shall come into effect from 3101986. Obviously, the amendment was only prospective. Since

this condition was made part of the general conditions of contracts only after 3101986, therefore, it could not be read into the agreements already

executed and implemented. The arbitrator, therefore, had no obligation to follow the amendment through it would be ideal for any arbitrator to do

so. But the award is not illegal because this amendment was not in force of the time the agreement between the parties was executed. The

challenge to the award on this score is, therefore, not well founded.

The Apex court also considered this question in case of ""M/s Build India Construction Co. Ltd. v. Union of India"", AIR 2002 SC 2437 AIR 2002

SC 2437, and ruled :

In the present case, the contract entered into between the parties provided an arbitration clause to refer all disputes to a sole arbitrator. It did not

provide for a reasoned award to be given by arbitrator. The contractor had also signed an acceptance letter to abide by general terms and

conditions of contract as modified.

The Government subsequently amended the General terms and conditions of contract. The amended terms required to a reasoned award to be

passed. Dispute arise between the patries. It was referred to arbitration. The arbitrator made an unreasoned award. The award were set aside by

appellate Court on ground that in view of subsequent amendment made by Goverment in general terms and conditions of contract arbitrator was

required to give a reasoned award. Held, the award was not liable to be set aside for want of reasons. The contractor is agreement to abide by the

terms and conditions 'as modified' qualifies the terms and conditions contained in the general conditions of contract as on and till that day. There is

nothing contained in the acceptance letter, either expressly or by necessray implication, to spell out the contractor having authorized the

respondents to carry out modifications in the terms and conditions of the contract otherwise than by mutual agreement, and to hold the contractor

by such modifications though not consented to by him and though not even brought to his knowledge. The arbitration clause is contained in the

contract entered into between the parties. Its terms could not have been varied except by mutual agreement. Moreover the amendment made to

the gerneral terms and conditions of contract itself provides for its coming into effect from 30th day after the date of the amendment. That

amendment clearly cannot have any relevance for interpreting the arbitration clause contained in the contract entered into between the parties much before the date of amendment coming into effect.

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Therefore in view of the law laid down by the Apex Court and this Court, there was no obligation upon the arbitrator to pass a reasoned award.

Notwithstanding above, no such plea was raised in the objections under section 30/33 of the Arbitration Act before the learned District Judge,

Jammu. The award was sought to be contested on merits and the jurisdiction of arbitrator was challenged only in respect to award of interest. In

absence of there being any specific plea of misconduct on this count, appellants cannot be permitted to raise the same in appeal. The contention is

accordingly rejected.

Regarding the power of arbitrator to grant interest, it is now settled proposition of law that the arbitrator is competent to award preresidence,

pendentelite and future interest. The issue is no more res integra having been settled by a Division Bench of this Court in case "" Smt. Manjit Johal. v.

Dewan Modern Breweries Ltd."" , AIR 1994 J&K 56. The relevant extract is reproduced as under :

The entitlement of a party to claim interest depends upon either the availability of a statutory provision like the Interest Act or the existence of an

agreement to pay the same or the existence of a trade usage. Interest prior to the reference cannot be said to be payable only if the Interest Act is

applicable, but the parties have entered into an agreement, which envisages the making of such payment. It may also be payable where the party

claiming interest proves the existence of a trade usage of paying interest on the outstanding amounts.

In ""State of Orissa v. B.N. Agarwalla"" , (1997) 2 SCC 469, the Apex Court held as under :

The principles which can now be said to be wellsettled are that the arbitrator has the jurisdiction to award preresidence interest in cases which

arose after the Interest Act, 1978 has become applicable. With regard to those cases pertaining to the period prior to the applicability of the

Interest Act, 1978, in the absence of any substantive law, contract or usage, the arbitrator has not jurisdiction to award interest. For the period

during which the arbitration proceedings were pending in view of the decision in G.C. Roy case and Hindustan Construction Ltd. Case, the

arbitrator has the power to award interest. The power of the arbitrator to award interest for the post award period also exists.

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In ""Secretary, Irrigation Department, Government of Orissa and Ors. v. G.C. Roy,""", AIR 1992 SC 732, the Supreme Court held as under:

A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It

may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as

it is for the period prior to the arbitrator enter in upon the reference. This is the principle of sec. 34, C.P.C. and there is no reason or principle to

hold otherwise in the case of arbitrator. An arbitrator is an alternative form for resolution of disputes arising between the parties.

Therefore the power of arbitrator to award interest at different stages of the dispute cannot be disputed, notwithstanding absence of any such

stipulation in the contract agreement. The grant of interest is compensatory in nature and is permissible.

Finally it was argued by Mr. Nanda that the award is malicious and there is error apparent on the face of record. However, neither any such error

has been brought to the notice of the court nor reference was made to any such fact on the record. Though no such specific plea was raised,

however, the trial court while deciding issue No. 3, wherein the validity of award on any other count was examined, specifically recorded that no

argument was advanced in respect to the said issue. This fact has not been disputed in the memo of appeal. I do not find any reason to interfere

either with the judgement impugned or the award. This appeal is accordingly dismissed without any order as to costs.