
(1994) 02 DEL CK 0027

In the Delhi High Court

Case No : Suits No. 2280/85 and 995-A/86 and A.I. No. 6219/88

Union of India

APPELLANT

Vs

Hind Wire Industries Ltd. and another

RESPONDENT

Date of Decision : 03-02-1994

Acts Referred:

Citation : (1994) 02 DEL CK 0027

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : Ms. Sudha Srivastava, for the Appellant; Sanjeev Ralli, for the Respondent

Judgement

Sat Pal, J.—Suit No. 2280/85 is a petition filed on behalf of the Union of India (hereinafter referred to as "the petitioner") under Sections 14 & 17 of the Arbitration Act, 1940 and in this petition it has been prayed that the arbitrator be directed to file the award dated 30th October, 1985 and thereafter the award be made a rule of the court.

2. Suit No. 995-A/86 is a petition filed on behalf of M/s. Hind Wires Industries Ltd. (hereinafter referred to as "the objector") u/s 14 of the Arbitration Act, 1940 and in this petition it has been prayed that the Arbitrator be directed to file the original award dated 30th October, 1985. Accordingly, both the suits are being disposed of by this common judgment.

3. On receipt of the award, notice of filing of the award was issued to the parties. Thereafter, Ms. Hind Wires Industries Ltd., filed objections vide is No. 6219/88. On 17th May, 1988 the following issues were framed :

(1) Whether the award is liable to be set aside on the grounds alleged in the objection petition ?

(2) Relief.

4. On the same date the objector was directed to file affidavit by way of evidence

and counter affidavit on behalf of the petitioner was directed to be filed within four weeks thereafter. Pursuant to this order the affidavit and counter affidavit have been filed.

5. Mr. Sanjeev Ralli, the learned counsel appearing on behalf of the objector submitted that there is an error apparent on the face of the award as the arbitrator has failed to consider the vital documents. He further submitted that the tests mentioned in ISI Specifications 280/1978 and IS 4826/1979 were not carried out by the inspector and the material was rejected only on visual basis. In this connection he referred to clause A-3.1 of ISI Specifications IS 280/1978. Learned counsel also drew my attention to the evidence of Mr. S. Dayal, Assistant Inspecting Officer of the department and submitted that the officer had clearly stated in his statement and the goods were rejected on visual inspection. The learned counsel, Therefore, contended that the award was liable to be set aside as the arbitrator has failed to consider the tests mentioned in ISI Specifications which were not carried out and has also ignored the evidence of Mr. S. Dayal, the Assistant Inspecting Officer. In support of his contention the learned counsel has place reliance on a Supreme Court judgment in the case of K.P. Poullose Vs. State of Kerala and Another, , and a judgment of this court in M/s. Bhai Sardar Singh & Sons v. New Delhi Municipal Committee and another (AIR 1981 Delhi 374).

6. I have heard the learned counsel for the parties and have also perused the records. From the evidence of Mr. S. Dayal I find that the goods of the objector were rejected in terms of clause 4.3 of IS 2826/1979. In this connection a reference may be made to clause 17 sub-para (5) of Conditions of Contract which reads as under :

"Method of testing. The Inspector shall have the right to put all the stores or materials forming part of the same or any part thereof to such tests as he may think fit and proper. The ground whatsoever to the method of testing adopted by the Inspector".

Learned counsel for the objector relying on this clause submitted that the methods of testing indicated hereinabove were not carried out in terms of the said clause. I, however, find no substance in this submission as the inspection officer found the material defective in terms of clause 4.3. of IS 4820/79 and rejected the same and this was accepted by the arbitrator. Further the award in the present case is non-speaking one. The contention raised by the learned counsel for the objector amounts to analysing the reasons given by the arbitrator in making the award whereas no such reasons have been given in this award, as the present award is a non-speaking award. In any case it is not a case where there was no material whatsoever before the arbitrator while passing the award. I, Therefore, find no substance in the contention urged on behalf of the objector and the objections are dismissed. The view I have taken finds support a judgment of the Supreme Court in the case of M/s. Hind Builders Vs. Union of India, , and my own judgment in Council of Scientific and Industrial Research Vs. Overseas Water Proofing Corporation and Another, .

7. The law laid down by the Supreme Court in the case of K. P. Poullose (supra) is not applicable to the facts of the present case as in that case the award was a speaking award and contained reasons. In view of the law laid down by the Supreme Court in the case of Hind Builders (supra) the case of Ms. Bhai Sardar Singh (supra) relied upon by the learned counsel for the respondent is of no assistance to the objector.

8. The objections against the award having been dismissed, the award dated 10th October, 1985 is made a rule of the court. Let a decree be drawn in terms of the award. The award shall form part of the decree, I further grant interest in favor of the petitioner at the rate of 12 per cent per annum from the date of award till realisation. The parties are, however, left to bear their own costs.