

(1998) 08 DEL CK 0023
In the Delhi High Court
Case No : FAO (OS) 332 of 1996

Union of India

APPELLANT

Vs

Madhya Pradesh Export Corporation Ltd.

RESPONDENT

Date of Decision : 24-08-1998

Acts Referred:

Citation : (1998) 47 DRJ 349

Hon'ble Judges : Y.K. Sabharwal, J; Kripa Shankar Gupta, J

Bench : Division Bench

Advocate : Mr. Raman Kapur, for the Appellant; Mr. C. Mukhopadhyay, Y.K. Munshi, Mr. Sanjay Kumar and Mr. Manish Kumar, for the Respondent

Judgement

Y.K. Sabharwal, J.—The disputes between Union of India, Ministry of Railways, appellant in this appeal and respondent-Madhya Pradesh Export Corporation Ltd (for short "the Corporation") were adjudicated by Shri V.K. Raizada, Sole Arbitrator in terms of his Award dated 31st August, 1994. The Award directed the appellant to pay to the Corporation a sum of Rs. 40,91,531/-. The claim of the Corporation for interest was, however, rejected by the Arbitrator in the following words:

"As regards the claimant's prayer for the payment of interest on the balance amount due on account of the difference in rates at which payment was due and the rates at which the payment has actually been made, I am of the view that no interest is payable in this case as the contract did not provide for payment of any interest. Also, para 2401 of the Indian Railways Standards Conditions of Contract entitles the purchaser to withhold payment of any sum which the purchaser claims as his own and on such a sum no interest is payable. Therefore, no interest of any kind is considered justified on the balance amount due to the claimant."

2. The appellant accepted the Award and did not file any objections thereto. The Corporation, however, filed objections to only that part of the Award where the

Arbitrator had declined to grant interest to it. Learned Single Judge held that the Award declining grant of interest to the Corporation cannot be sustained at all and it was set-aside. It was also held by learned Single Judge that Para - 2401 of the Standard Conditions of Contract did not apply to the facts of the case. After setting-aside the Award in this manner, learned Single Judge instead of remitting the Award to the Arbitrator for fresh decision of question of interest, modified the award u/s 15 of the Arbitration Act, 1940 and held that the Corporation is entitled to interest at the rate of 12% per annum from 1st May, 1990 till date of realisation on sum of Rs. 40,91, 531/-. The appellant is in appeal before us.

3. Section 15 confers the power on court to modify or correct an Award on the existence of one of the contingencies mentioned in clause (a) to (c) of the section. The court will have no jurisdiction to modify or correct an Award in absence of fulfillment of one of the Clauses a, b or c. A plain reading of Section 15 shows that the power of the Court is limited by these three clauses. The court would be acting without jurisdiction, if an Award is modified only for the reason that the court takes a view different than the Arbitrator. Admittedly, Clauses (a) and (c) of Section 15 have no applicability to the facts of the present case. Learned counsel for the Corporation, however, submits that the present case is covered by Clause (b) as it is a case of an obvious error in the Award. Under Clause (b) it is not only an obvious error simplicities which vests power with the court to modify or correct an Award. An obvious error in the Award can be modified or corrected only when it can be amended without affecting the decision of the arbitrator. There can be various illustrations of obvious errors which can be amended without decision of the Arbitrator. One such illustration can be where the Arbitrator while intending to make Union of India liable, by mistake makes President of India liable. Such an error can be corrected u/s 15 without affecting the decision of the Arbitrator on merits. In the present case, the Arbitrator has, however, come to the conclusion that the Corporation was not entitled to any interest. The Court taking a different view, as in the present case, has modified the Award. In our view, the court has no such jurisdiction and, Therefore, the impugned order correcting the Award cannot be sustained. Under the circumstances of the case, one of the courses open to the Court was to remit the Award to the Arbitrator for reconsideration upon question of interest.

4. The learned Arbitrator held that the contract did not provide for payment of any interest and further that the Para-2401 entitles the purchaser to withhold payment on any sum which the purchaser claims as his own and on such a sum no interest is payable. Having heard counsel for the parties, we are of the view that the learned Single Judge rightly came to the conclusion that Para 2401 did not apply to the facts of the case. A bare reading of Para 2401 shows that it applies when the purchaser i.e. Union of India has a claim against the contractor and in that eventuality it can withhold the payment due to the contractor and on such payment being withheld contractor is not entitled to the interest. Admittedly, the purchaser - Union of India had no claim against the Corporation

and, Therefore, it was rightly held that Para 2401 had no applicability.

5. It appears that the Corporation was claiming the amount due from the appellant from 30th April, 1990. Reference to Arbitration was made in 1994. By the impugned judgment, the interest was awarded w.e.f. 1st May, 1990 till date of payment. Learned counsel for the appellant on the facts of the case besides questioning the jurisdiction of court to modify the Award, further submitted that the Court could grant interest only from the date of the decree as postulated by Section 29 of the Act and not from 1st May, 1990. Reliance has been placed by learned counsel for the appellant upon the decision of the Supreme Court in the case of Union of India Vs. Jain Associates and another 1994 (1) A L R 494, in particular, Para-4 holding that Section 29 also carries a negative import that the court has no power to grant interest pendente lite which the arbitrator had not granted. We, however, need not go into this question, for that, we have held that the Award could not be modified u/s 15 of the Act. The result of this would be that the question whether any interest is to be granted and if so rate thereof and for which period i.e. from 1st May, 1990 or from some other date would have to be decided by the Arbitrator in accordance with law.

6. In view of the aforesaid discussion, the impugned judgment is set aside to the extent it modifies the Award and grants interest to the Corporation and instead we direct the remission of the Award to arbitration for decision on the question of interest alone as no other point is under challenge. The question of interest would be reconsidered by the Arbitrator in the light of this decision and in accordance with law.

7. The learned counsel for the parties submit that the Arbitrator Shri V.K. Raizada has since retired. In this view, counsel for the Corporation submits that a retired Judge of this Court may be appointed as an Arbitrator to reconsider the question of interest. Mr. Kapur very fairly contends that the Government will have no objection to the appointment of a retired judge as an Arbitrator so long as the Government is not directed to pay the fee of learned arbitrator to be appointed by this Court. Counsel for the Corporation states that under these circumstances his client is ready to pay the fee of the learned Arbitrator.

8. Accordingly, we appoint Mr. Justice Jaspal Singh, a former Judge of this Court as sole-Arbitrator to decide the question of interest. The learned Arbitrator will pronounce the Award u/s 16(2) within a period of two months from the date he enters the reference. The learned Arbitrator will fix his fee which would be paid by the Corporation. The Arbitration record in Suit 2214/94 shall be sent forthwith to the learned Arbitrator. The amount towards interest deposited by the appellant herein shall continue to be kept in a fixed deposit so as to be disbursed after the reconsideration by the Arbitrator and further orders which may be passed in the suit on filing of Award by the learned Arbitrator.

9. The appeal is disposed of in the above terms. A copy of this judgment be given dusty to counsel for the parties.