
(2010) 05 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : APAA No. D-2 of 2005

Union of India

APPELLANT

Vs

Mohan Brothers

RESPONDENT

Date of Decision : 03-05-2010

Acts Referred:

Jammu and Kashmir Arbitration and Conciliation Act, 1997 — Section 34

Citation : (2010) 3 JKJ 200

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Hali, Judge

1. A contract in writing was executed between the Commander HQ 138 Works Engineers and M/S Mohan Brothers for provision of Steel Watch

Towers at AP Birpur and FDS/FPD at BD Bari. The contract agreement was allotted vide CA No. CWE / JP-46/2000-2001. The agreement

indicates an arbitration clause vide condition no. 17, which forms part of the contract. A dispute arose between the parties out of the contract and

a request was made to the Chief Engineer Udhampur Zone, who was the appointing authority, for appointment of arbitrator. Consequently one

Shri Brij Mohan Kohli was appointed as arbitrator to adjudicate the dispute between the parties.

2. Following claims were submitted by the claimant to the arbitrator

(a) Payment of damages suffered on account of prolongation of the contract period. Amount claimed Rs. 5,73,881.21.

(b) Cost of payment of loss suffered on account of retrieved materials not

allowed to take away such as trusses, nuts, bolts and wind tie F.I. 40x3 mm thick not included in the credit schedule as per Schedule "A" Part IX of Contract Agreement. Amount claimed Rs. 2,29,336.54.

(c) Cost of payment of loss suffered on account of un-contractual illegal and unilateral recoveries reflected in the final bill. Amount claimed Rs.

1,72,243.83.

(d) Cost payment of damages suffered due to unduly harassment, mental torture, uncontractual and illegal involvement by the users, inconvenience, distress. Amount claimed Rs. 5,00,000.00.

(e) Legal expenses amount to Rs. 50,000/-.

(f) Interest at the rate of 18% per annum, pre-reference penditilite and future interest.

3. The Union of India also filed three claims against the contractor. These were:

(a) Non return of old materials obtained from deviation e.g. steel purlins and wind ties. Amount claimed Rs. 1,72,234.83.

(b) Cost of reference to arbitration. Amount claimed Rs. 20,000/-.

(c) Interest at the rate of 18% per annum.

4. The arbitrator, after hearing the parties, has allowed claim no. 2 and awarded an amount of Rs. 2,21,705.45 to the claimant. In respect of claim

no.3, the arbitrator has allowed an amount of Rs. 1,72,243.83 in favour of the claimant. Against claim no. 5 an amount of Rs. 30,000/- has been

allowed in favour of the claimant and against claim no. 6, interest at the rate of 12% per annum from the date of award till actual payment.. The

other claims of the claimant have been rejected. None of the claims of the Union of India have been allowed by the Arbitrator.

5. After filing application u/s 34 of the Jammu and Kashmir Arbitration and Conciliation Act, 1997 was filed in this Court, notice was issued on

14.11.2005. Objections also stands filed by learned counsel for the respondent-claimant.

6. The contentions raised in the petition u/s 34 are that:-

(a) That the claim of the contractor for loss suffered on account of retrieved materials relating to nuts, bolts and wind tie has been awarded by

wrong interpretation of the terms of the contract. The contention raised was that all those items which were not credited in the list were to be

retrieved by Union of India and those which were shown in the list were also to be retrieved by the Union of India and not by the contractor. It is

contended by the claimant that so far as the material dismantled from the buildings, schedule "a" part IX, which formed part of the contract

agreement, provided that credit was required to be given to Union of India for specific items in the schedule and whole of the dismantled material

was to be removed and taken away by the contractor. The positive case of the claimant is that steel trusses, nuts and bolts, flat iron which were not

mentioned in the credit schedule 'A' also formed the part of the dismantled material. As per the agreement, no credit was required to be given to

Union of India for these items. The arbitrator has, while dealing with this question, observed as under:-

(a) The decision of Accepting Officer for directing the contractor to deposit materials which were not covered under the schedule of credit was un-

contractual and contradictory to his own decision with, respect of "J"/ "L" hooks.

(b) Claimant has been put to loss of profit due to non handing over buildings No. T/65, T/74 and 1/75.

7. I have heard the learned counsel for the parties.

8. The matter herein relates to interpretation of the terms of the contract and the arbitrator has recorded a finding that the material was required to

be taken away by the contractor after dismantling the buildings.

9. Where it is a question of interpretation of the terms of the contract, the finding of the arbitrator is final. The court cannot be permitted to

substitute its own decision. Reliance is placed on a judgment of the Hon'ble Supreme Court of India delivered in case titled Sudarsan Trading Co.

Vs. Government of Kerala and Another, , where their lordships have held as under:-

29 The next question on this aspect which requires consideration is that only in a speaking award the court can look into the reasoning of the

award. It is not open to the court to probe the mental process of the arbitrator and "" speculate, where no reasons are given by the arbitrator, as to

what impelled the arbitrator to arrive at his conclusion. See the observations of this Court in Hindustan Steelworks Construction Ltd. Vs. C.

Rajasekhar Rao, . In the instant case the arbitrator has merely set out the claims

and given the history of the claims and then awarded certain amount. He has not spoken his mind indicating why he was done what he has done; he has narrated only now he came to make the award. In absence of any reasons for making the award, it is not open to the court to interfere with the award. Furthermore, in any event, reasonableness of the reasons given by the arbitrator, cannot be challenged. Appraisement of evidence by the arbitrator is never a matter which the court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisement of the evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a judge on the evidence before the arbitrator. See the observations of this Court in *Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar and Another*, .

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32. The High Court in the judgment under appeal-referred to the decision of the Division Bench of the Kerala High Court in *State of Kerala v.*

Poulose, (supra). Our attention was also drawn to the said decision by the counsel for the respondents that if an arbitrator or the umpire travels

beyond his jurisdiction and arrogates jurisdiction that does not vest in him, that would be a ground to impeach the award. If an arbitrator, even in a

non-speaking award decides contrary to the basic features of the contract, that would vitiate the award, it was held. It may be mentioned that in so

far as the decision given that it was possible for the court to construe the terms of the contract to come to a conclusion whether an award made by

the arbitrator was possible to be made or not, in our opinion, this is not a correct proposition in law and the several decisions relied by the learned

Judge in support of that proposition do not support this proposition. Once there is no dispute as to the contract, what is the interpretation of that

contract, is a matter for the arbitrator and on which court cannot substitute its own decision.

33. Reference was also made to the decision in *State of Kerala v. Raveendranathan*, (1987) 1 KLT 604. Insofar as the court held therein that an

arbitrator deciding a dispute under the contract, is bound by the contract, the court is right. The court cannot, however, substitute the decision of

the arbitrator as to what was meant by the contract, once that dispute is conceded to the arbitrator. In so far and to the extent the aforesaid

decision of the Kerala High Court decided to the contrary, the same is not the correct law.

35. In the instant case, the High Court seems to have fallen into an error of deciding the question on interpretation of the contract. In the aforesaid

view of the matter we are of the opinion that the High Court was in error. It may be stated that if on a view taken of a contract, the decision of the

arbitrator on certain amounts awarded, is a possible view though perhaps not the only correct view, the award cannot be examined by the court in

the manner done by the High Court in the instant case.

36. Might of the above, the High Court, in our opinion, had no jurisdiction to examine the different items awarded clause by clause by the

arbitrator and to hold that under the contract these were not sustainable in the facts found by the arbitrator.

10. The other contention raised by Union of India regarding claim no.3 is that amount of Rs. 1,72,243.83 was sought to be recovered from the

petitioner on account of retrieving of steel purlins and wind ties, which, according to them, was the government property. It is stated that these steel

purlins were taken away by the contractor, which was the property of the government. It is contended that the arbitrator has traveled beyond his

jurisdiction by ignoring intention of contractual provisions.

11. The stand of the respondent with respect to this claim was that no steel purlins were retrieved from the buildings' which were demolished. It

was further contended that the steel purlins also did not appear in the credit schedule as per Schedule "A" to make any recovery in this respect.

The arbitrator has, after examining the claim, found that there was no document or proof available to the extent that Steel Purlins were recovered.

He has awarded an amount of Rs. 1,72,243.83, to the claimant which amount had been deducted from the bills of the claimant. The finding of the

arbitrator cannot be questioned in view of the law laid down by the Apex Court (supra).

12. Regarding claim no. 5, no justifiable ground has been raised in the petition u/s 34, except for stating that it was in violation of the contractual

provisions, without disclosing the violation. The arbitrator has rightly awarded

Rs. 30,000/-on the account.

13. It may, however, be noted that u/s 34 of the Jammu and Kashmir Arbitration and Conciliation Act, 1997, the power to intervene in an award

is confined to the issues which are called in question in terms of Section 34 (2) of the Act. The objector has not been able to demonstrate before

this Court that the award can be set aside on any one of the grounds.

14. Stress has been laid by learned counsel for Union of India that arbitral award deals with a dispute not contemplated by or not falling within the

terms of the submission to arbitration or it contains decisions on matters beyond the scope of the submission to arbitration, has to deal with the

dispute. However, the objector has failed to bring his case in any one of the grounds mentioned herein.

15. Be that as it may, I find no force in this petition, which is, accordingly, dismissed.

16. The award be executed as a decree of the Court in terms of Section 36 of the Jammu and Kashmir Arbitration and Conciliation Act, 1997.