
(1993) 07 CAL CK 0032
In the Calcutta High Court
Case No : Award Case No. 544 of 1991

Union of India

APPELLANT

Vs

M/s. Jain and Associates and another

RESPONDENT

Date of Decision : 16-07-1993

Acts Referred:

Arbitration Act, 1940 — Section 13, 30

Citation : AIR 1994 Cal 106

Hon'ble Judges : Baboolall Jain, J

Bench : Single Bench

Judgement

1. This application has been made on behalf of the Union of India praying that the award passed by the arbitrator dated 20th July, 1992 along with the corrigendum dated 4th August, 1992 being Annexure B to the petition be set aside and for other consequential reliefs and orders,

2. By an order dated 25th March, 1988, this Court appointed Mr. A. C. Moitra, Senior Advocate, as the sole arbitrator in this case. M/s. Jain & Associates had made a claim on account of various items making a total claim of Rs. 25,52,777/-. The respondent, Union of India, made various counterclaims on different accounts making a total counter-claim of Rs. 24,59,404/-. The said arbitrator made an award in favour of the Jain Associates on account of their claims to the extent of Rs. 8,30,463.00. He also allowed the counter-claim of the Union of India to the extent of Rs. 72,670/-. The net award amount after deducting the counter-claims as allowed from the claims as allowed by the said arbitrator was Rs. 7,57,813/-. The said award was made on 18th September, 1991 and hereinafter referred to as the said first award.

3. After the said first award was made, an application was made on behalf of the Union of India for setting aside the said first award and the said application for setting aside the said first award was disposed of by a judgment delivered by Justice Mrs. Ruma Pal dated 23rd March, 1992 made in award case No. 544 of 1991. It was held by the learned Judge, inter alia, that arbitrator had patently

failed to consider counter-claims raised by the petitioner before Sri Sarvesh Chandra who was the previous arbitrator. It was also held that the arbitrator had completely overlooked the second set of counter-claims of the petitioner. The learned Judge also held that it was not clear whether the arbitrator had addressed his mind to the fact that Rupees 3,00,000/- included the claim arising out of rescission of the contract. It was also held that in granting the respondent an award of Rs. 1,50,000/-, the arbitrator should have taken into account how much of the claimant's claim under that head related to damages arising out of the terminations of the contract and how much to the damages arising during the currency of the contract. The learned Judge also held that there was some discrepancy in the costs awarded by the arbitrator. The learned Judge held that the arbitrator was guilty of misconduct. As the learned Judge held that the misconduct was a judicial misconduct or technical misconduct and as there was no allegation of bias or dishonestly or ill will against the arbitrator, the learned Judge set aside the said first award and directed the arbitrator to reconsider the claims and counter-claims of the petitioner and the respondent No. 1. The operative portion of the said judgment and order was as follows:--

"Accordingly I set aside the award dated 18th September, 1991. The arbitrator is directed to determine the claims and counterclaims within a period of four months from date. In the facts of the case, there will be no order as to costs."

4. Pursuant to the said judgment and order, the learned arbitrator held further sittings of the parties and submissions were made the "rein on behalf of the parties with regard to the respective claims and counterclaims. After hearing before the arbitrator was over, the arbitrator made his second award being the award dated 20th July, 1992 and it appears that the arbitrator published the said award to the parties and also forwarded the same to the Registrar, Original Side, of this Court for filing.

5. By the said second award the arbitrator allowed the claims of the respondent to the extent of Rs. 8,30,483.00 p. He also allowed the counter-claims of the petitioner to the extent of Rs. 92,134.00 p. After deducting the amount of counter-claims allowed by the arbitrator from the figure of the claims allowed by the arbitrator the net amount of award came to Rs. 7,38,349.00. He also allowed certain interest and costs as mentioned in the second award dated 20th July, 1992.

6. Thereafter by letter dated August 4, 1992 the said arbitrator forwarded a corrigendum dated 4th August, 1992 said to have been made under Sec. 13(d) of the Arbitration Act, 1940. By the said corrigendum the arbitrator intended to make certain corrections in the amount awarded. By the said corrigendum the amount awarded by the award of 20th July, 1992 was corrected and brought down from Rs. 7,38,349.00 to Rs.6,58,349/-.

7. It is to be noted that neither the Union of India nor the respondents in this application are seeking to challenge the factum and/or validity of the said

corrigendum nor have they made out any case to set aside the said corrigendum. As a matter of fact the said corrigendum operates to reduce the liability of the petitioner Union of India and apparently the Union of India is not interested in challenging the corrigendum by itself. The case of the Union of India is that- either the said award with the corrigendum be set aside and if at all the same is not set aside then the award along with the corrigendum be set aside and if at all the same is not set aside then the award along with the corrigendum should remain.

8. The first ground that was urged before me for challenging the said second award was that in paragraph 2 the arbitrator stated that the original award in favour of the claimant was Rs. 8,30,483/-.

9. In the judgment aforesaid, it is mentioned that the first award in favour of the respondent No. 1 was for a sum of Rupees 7,57,813/ -. Even in the second award itself, in the very first paragraph of the second award, it is mentioned that the first award was for Rs. 7,57,813/-. According to the learned Counsel for the Union of India, there is an error apparent on the face of the record because the arbitrator at one place says that the first award was for Rs. 7,57,813/-, whereas, at another place in the same award while affirming the first award, the amount mentioned is Rs. 8,30,483/-. The arbitrator has stated in his award as follows:

"Original award in favour of the claimant which is affirmed by me in this award..... Rs.8,30,483/-."

10. At first, I was also of the impression that the arbitrator has failed to apply his mind inasmuch as he has referred to two different amounts as the amount awarded as per the first award. However, the learned Counsel for the respondent No. 1 placed before me the first award and after looking into the first award, the controversy was resolved. The sum of Rs. 8,30,483/- was the amount awarded in the first award in respect of the claims of the respondent No. 1 and the said sum of Rupees 7,57,813/- was the net amount which was awarded after deducting the amount of counter-claims which were allowed to the Union of India. In the premises, in my opinion, there is no substance, in the aforesaid submissions made on behalf of the Union of India.

11. It was also argued that there was an error apparent on the face of the impugned award inasmuch as the arbitrator made the same award, as in the earlier award so far as the claims made by the respondent No. 1 are concerned. It is true that the earlier award was set aside by this Court. But it is also true that the arbitrator was directed to determine the amount of the claims and the counter-claims. The authority of the arbitrator continued and, in my opinion, there was nothing to stop the arbitrator from coming to the same conclusion or making the similar award on the points of which he thought it fit to do so. In my opinion, there is no substance in the said argument made on behalf of the Union of India.

12. Though at one place the arbitrator has stated in his award as if the matter

was remitted back to him and as if the first award was not fully set aside, yet in another portion of the said second award, he has clearly referred to the ordering portion and to the setting aside of the earlier award.

13. He has also reconsidered the matter as directed by the Court and has made a new award. I, therefore, do not find any substance in the contention on behalf of the Union of India that the arbitrator misinterpreted the judgment aforesaid dated 23rd March, 1992 which was passed by this Court earlier after the first award was made.

14. It was also sought to be urged that the arbitrator has in a sense confirmed his first award in respect of the amount awarded by him in the first award and has awarded the same amount again. That, according to the Union of India, amounted to misconduct on the part of the arbitrator.

15. I do not think that the arbitrator after giving a fresh hearing and after considering the earlier judgment and order could not, as arbitrator, hold the same view in respect of the claims or counter-claims as decided earlier by him. This cannot possibly be termed as "misconduct".

16. It was also sought to be urged on behalf of the Union of India that the arbitrator should have reconsidered each of the claims one by one and that he could not make an award for the same sum as awarded earlier. In my opinion, the arbitrator did hear the parties after the first award was set aside and he considered their arguments and submissions and it cannot be said that the arbitrator made the award without considering the respective submissions and / or the cases made out by the parties.

17. So far as the corrigendum filed by the arbitrator is concerned, it appears that the arbitrator sought to make corrections in the award already made by him. Under Sec. 13(d) the arbitrator has the power to correct in award any clerical mistake or error arising from any accidental slip or omission. The arbitrator intended to exercise that power given to him under Sec. 13(d) of the Arbitration Act. By the said corrigendum the original amount awarded against the Union of India was reduced by about Rs. 80,000/- or so on the ground of mistake and/or error. The petitioner. Union of India, therefore, did not make any submission or argument that the corrigendum is bad or that the corrigendum should be held to be without jurisdiction or as non est. The learned Counsel appearing on behalf of the respondent No. 1 also did not advance any arguments that the corrigendum should be set aside or should be held as without jurisdiction or as non est. Since neither of the parties challenged the said corrigendum nor any of them is interested in getting the said corrigendum to be set aside or declared as nullity and since both the parties have argued on the basis as if the said corrigendum forms part of the said second award and since the arbitrator was purporting to exercise his powers under S. 13(d). I am of the view that the said corrigendum should also be and is treated as part of the second award. I am making it clear that, in view of the aforesaid facts and the stands taken by both parties, I am

not going into as to whether the arbitrator acted strictly in accordance with law or within ambit of his powers in issuing the said corrigendum.

18. Since I am of the view that no grounds have been made out for setting aside the said second award and/or the said corrigendum, this application is liable to and is hereby dismissed.

19. There will be no order as to costs.

20. Order accordingly.