

(2017) 02 CAL CK 0028
In the Calcutta High Court
Case No : 374 of 2006

Union of India

APPELLANT

Vs

M/s. Mohanlal Roongta

RESPONDENT

Date of Decision : 28-02-2017

Acts Referred:

Citation : (2017) 02 CAL CK 0028

Hon'ble Judges : I.P. MUKERJI

Bench : SINGLE BENCH

Advocate : P.S. Bose, Aparna Banerjee

Judgement

1. This is an application by Union of India, more particularly the Eastern Railway to set aside an arbitral award dated 2nd June, 2006 made and published by a sole arbitrator, under the Arbitration and Conciliation Act, 1996.

2. A very nice point of law is involved. It is also very short.

3. The petitioner railways refused to make payment for the supply of 6175 sq.m. (2144 in number) of Wipcheck Resin Impregnated floor board for EMU Coaches with chequered design on both surfaces, made by the respondent, under a purchase order dt. 7th July, 1999. The respondent was required to commence supply within 30 to 35 days from the date of receipt of the purchase order. The supply was to be completed within three months i.e. by 17th November, 1999 extension was granted by the Railways on 12th May, 2000. The goods, according to the railways were rightfully rejected by them.

4. This was done in three phases. The first consignment supplied by the respondent on 17th November, 1999 was rejected on 3rd March, 2000. The next lot of 1371 metres was rejected on 15th May, 2000 and 2nd August, 2000. The delivery period ended on 12th March, 2000 for the last consignment rejected on 2nd August, 2000.

5. According to the learned arbitrator, on a proper construction of the terms and

conditions of the agreement between the parties the rejection of each of the consignments was issued after ninety days of delivery, which was the time of 90 days stipulated by the contract to reject the goods. Since, the rejection was made beyond ninety days the rejection was wrongful. Hence, the petitioner was deemed to have accepted the goods and were directed to pay their price.

6. In his argument Mr. P.S. Bose, learned senior advocate for the petitioner very persuasively tried to convince the court that under Clause 1502 of IRS conditions of contract the railways retained the right to reject the goods within a reasonable period of time and that they were rejected within that reasonable period. Therefore, the railways were not liable to pay the price. The learned arbitrator had misconstrued the contract between the parties. Hence, the award was liable to be set aside.

7. I am unable to accept this contention. The award is very reasoned. The learned arbitrator in the paragraph before the heading "Conclusion" in the award has made a reference to two Clauses 1502 and 1504 and come to the finding that the time to reject the goods was ninety days from the date of their delivery. The rejection having been made by the railways later, he came to the conclusion that the rejection was wrongfully made. In other words, the railways had accepted the goods.

8. I find nothing wrong with this conclusion. The arbitrator is entitled to draw a reasonable conclusion on a construction of the contract between the parties. Even if two views are possible the arbitrator has taken one possible view, which appears to be the correct one. The court cannot supplant any other view in place of that of the learned arbitrator.

9. For those reasons, I am inclined to hold that there is no infirmity in the award. In fact it is a very good award. This application is dismissed. No order as to costs.

10. Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.