

(1996) 12 DEL CK 0031
In the Delhi High Court
Case No : Suit No. 1448A of 1985

Union of India

APPELLANT

Vs

Paxma Axle and Springs (P) Ltd.

RESPONDENT

Date of Decision : 13-12-1996

Acts Referred:

Arbitration Act, 1940 — Section 30, 33

Citation : (1997) 1 AD 128 : (1997) 40 DRJ 126

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Raman Kapur and S.K. Khurana, for the Appellant;

Judgement

M.K. Sharma, J.

(1) In pursuance of the tender invited by the petitioner for supply of 4,94,000 Nos. M.S. Cotters Side Split for C.I. Sleepers, the respondent submitted its tender which was accepted by the petitioner. However, since the respondent failed to make supply and honour its commitment, the said contract entered into between the petitioner and the respondent was terminated by the petitioner at the risk and cost of the respondent.

(2) Disputes and differences having arisen between the parties in respect of the aforesaid contract, the said disputes were referred to the arbitration of Shri Shyamji Singhal, Controller of Stores, Northern Railway. The parties to the proceeding filed their statement of facts and the counter claim statement of facts. After hearing, the parties, the arbitrator passed an award on 24.5.1985. The aforesaid award passed by the arbitrator ex-facie is a non-speaking award.

(3) The arbitrator after making and publication of the award submitted the same in this Court, on receipt of which notices were issued to the parties. In pursuance thereof, the respondent has filed an objection which was registered as I.A. No. 2223/1996. The petitioner, however did not file any objection and has sought for making the award a Rule of the Court.

(4) The counsel appearing for the respondent/objector submitted before me that the arbitrator has misconducted in making the award inasmuch as he did not consider the counter claim filed by the respondent at all while passing the aforesaid award which is a misconduct as has been held in *K.V. George Vs. Secretary to Government, Water and Power Department, Trivandrum and Another*, . The learned counsel further submitted that there was a total non-application of mind by the arbitrator in the instant case, which is apparent from the award itself for although, no oral evidence was adduced in the arbitration proceeding, yet the arbitrator has stated in his award that he has also taken note of the oral evidence adduced by the parties. According to the learned counsel such reference by the arbitrator of considering the oral evidence which was, in fact, non-existent bears out total non-application of mind by the arbitrator. In support of his submission, the learned counsel relied upon the decision in *The Fertilizer Corporation of India Ltd. Vs. Bharat Painters*, .

(5) The third and the last submission of the learned counsel for the respondent/objector was that the award is based on no evidence and, Therefore, the said award is liable to be set aside and quashed.

(6) I have heard the learned counsel appearing for the petitioner as well.

(7) The learned counsel submitted that the law in respect of a non-speaking award is by now settled and that it is not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled him to arrive at his conclusions. He further submitted that the fact that a lump sum award has been given is no ground to declare the award bad. He further submitted that the arbitrator in his award considered the claims made in the counter claim submitted by the respondent and on consideration thereof, he has passed lump sum award and that the award is legal and valid and in accordance with law and is liable to be upheld by this Court.

(8) Admittedly, the law relating to non- speaking award is well settled by the decision of the Supreme Court and also this Court. In this connection, I can do no better but to refer to the observations of the Supreme Court in the case of *State of Orissa and Others Vs. Lall Brothers*, . It was held therein that the fact that there is an unreasoned award is no ground to set aside an award and that a lump sum award is not bad per se, as such. It was further held that it is not open to the Court to speculate where no reasons are given by the arbitrator, as to what impelled him to arrive at his conclusions. Besides, the fact that a lump sum award has been given is no ground to declare the award bad. It is also conclusively held by the Supreme Court that a Court cannot sit in appeal over views of arbitrator by re-examining and reassessing the materials.(See *Food Corporation of India Vs. Joginderpal Mohinderpal*,).

(9) I have carefully considered the award passed by the Arbitrator in the present case. From the records of the arbitration proceedings and the contents of the said award it is clear that the arbitrator after acceptance of the appointment and

entering into the reference received statement of facts and the counter statement of facts and additional papers produced by the parties. The arbitrator also heard the parties and on consideration of all the material, papers and documents placed before him gave his award that the respondent shall pay to the petitioner a sum of Rs.3,15,096.00 in full and final settlement of all the disputes and claims referred to him. It is, thus, apparent that while passing the aforesaid award, the arbitrator considered both the statement of facts and the counter statement of facts filed by the parties and it cannot be said that the arbitrator did not consider the counter claim while passing his aforesaid award, awarding a sum of Rs.3,15,096.00 to the petitioner in full and final settlement of all the disputes and claims referred to him. The expression "in full and final settlement of all the disputes and claims referred to him" is vitally important, which shows that he has in fact considered the counter claim of the respondent raised before him as well while giving the aforesaid award. The first submission, Therefore, of the learned counsel for the respondent is held to be without any merit.

(10) Coming next to the further submission of the learned counsel in respect of non-application of mind by the arbitrator in passing the award. On perusal of the pleadings of the parties, I find that no such ground was raised by the respondent in its objection filed under Sections 30 and 33 of the Arbitration Act.

(11) I have carefully perused the averments made in the objection petition and I do not find any objection being taken by the respondent to the award on the ground that no oral evidence was adduced before the arbitrator, and that by making a reference to the same as having considered, there is total non-application of mind. On the other hand, the Managing Director of the respondent Company, who adduced evidence before this Court by way of affidavit in support of the averments made in the objections categorically stated in paragraph 12 of his affidavit that the arbitrator committed grave errors of jurisdiction in ignoring the evidence adduced before him and the award is contrary to the evidence both documentary and oral adduced before it. In view of the aforesaid statement on oath and there being no statement in the objection as stated above, this ground taken by the respondent is not available and cannot be urged and is accordingly rejected.

(12) With regard to the last submission of the learned counsel for the petitioner, it is settled law that the Court cannot re-appreciate evidence and re-examine the merit of the award to examine the correctness of the award.

(13) The contents of the award show that the arbitrator considered the evidence on record and, thereafter came to the conclusion that the petitioner is entitled to the amount as awarded by the arbitrator in full and final settlement of all claims and disputes referred to him. The mental process of the arbitrator in awarding the aforesaid amount cannot be appreciated and/or examined by the Court. In the aforesaid view of the matter, the grounds raised by the respondent in the objection petition are found to be baseless and without any merit and the same

is accordingly rejected.

(14) In the result, the award passed by the arbitrator is made a Rule of the Court. Let a decree be prepared in terms of the award. Since the amount claimed by the petitioner in the present case was withheld by the petitioner from other bills of the respondent due in respect of other contract with the respondent no interest is awarded. The parties shall, however, bear their own costs.