
(2016) 08 MP CK 0002
In the Madhya Pradesh High Court
Case No : Misc. Appeal No. 177 of 2005

Union of India

APPELLANT

Vs

Pramod Kumar Agrawal

RESPONDENT

Date of Decision : 01-08-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 37

Citation : (2016) 4 MPLJ 218

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Advocate : N.S. Ruprah, Advocate, for the Appellant; R.C. Sobhani, Advocate, for the Respondents

Final Decision : Partly Allowed

Judgement

Sujoy Paul, J.—This appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 is directed against the judgment passed by the Vth Additional District Judge, Bhopal in Arbitration Case No. 37/03 decided on 22-07-2004.

2. The original agreement was entered into between the parties on 04-01-1990. It was extendable upto 15-04-1990. On an application filed on 17-09-1996 by the respondent No. 1, the court below appointed the respondent No. 2 as Arbitrator on 24-10-1996. This appointment was called in question by the appellant before this court by filing MA No. 698/90. The said Miscellaneous Appeal was not entertained. However, an observation was made that the appellant will be free to raise all objections before the Arbitrator.

3. Shri N.S. Ruprah, learned counsel for appellant fairly submits that the order passed by this court on 19-08-1998 (Annexure P/7) in MA No. 698/90 was unsuccessfully challenged before the Supreme Court and the SLP was dismissed on 22-11-1999.

4. Shri N.S. Ruprah, learned counsel for the appellant and Shri R.C. Sobhani,

learned counsel for the respondents fairly admitted that the question regarding applicability of "Old Arbitration Act" or "New Act" is no more res integra. In view of the judgments by this court in 2003(5) MPHT 15 Northern Coalfields Limited v. Rajkishan and Company (paragraphs-14 and 23), it is clear that the New Act is applicable. Parties are in agreement on this aspect.

5. Shri Ruprah contends that certain claims as per the agreement are termed as "Excepted Matter". Heavy reliance is placed on clause 63 and 45(a) of the said agreement. By taking this court to the said clauses, it is urged that the respondent No.1 countersigned and certified that the measurement made by the Railway Administration is correct. Attention of this court is drawn on relevant documents which are at page-56, 58 and 60 with this appeal. On the strength of the endorsement made by the contractor, it is urged that the claim of the contractor falls within the ambit of the "Excepted Matter" and therefore, same was not arbitrable. During the course of arguments, Shri Ruprah pressed the pending amendment application to bolster his submission that the Arbitrator was not fit to conduct the arbitration proceedings. For the reasons stated in the said application, it is urged that his appointment and continuance was tainted with bias and such person could not have been appointed as an arbitrator. Lastly, it is urged that the agreement dated 04-01-1990 was extendable upto April, 1990 whereas an application for appointment of arbitrator was filed on 17-09-1996. Hence, the matter was barred by limitation.

6. Shri Ruprah by taking this court to Section 31 contends that the necessary ingredients for passing of valid award are missing in the impugned award. It is statutory obligation on the part of the arbitrator to give adequate reasons while reaching to a conclusion. By placing reliance on Section 34, it is urged that if an award deals with a dispute not contemplated or not falling within the arbitration agreement, the award can be set aside. He relied on certain judgments in support of contention about "excepted matter". No other point is pressed by the learned counsel for the appellant.

7. Per contra, learned counsel for the respondent No. 1 submits that the stand of the contractor is that measurement taken by the railway administration is correct but, method of taking measurement was incorrect. The measurement was taken only from one side whereas, it should have been taken from all the sides. If measurement would have been taken from all the sides, correct figure in consonance with claim of the contractor would have been arrived. It is submitted that the claim of the contractor falls within the ambit of clause- 45 of the agreement. He submits that interpretation of clause of agreement is in the province of arbitrator and this court cannot sit in appeal against the order of an arbitrator. He submits that the order is in accordance with law and contains adequate reasons. The court below has rightly declined interference.

8. By placing reliance on 2003 Arbitrator Law Journal SC 272 and AIR 1997 Kerala 253, The Central Warehousing Corporation and others v. Varghese K. Pulayath and others, it is submitted that the claim of the respondent No.1 does

not fall within the four corners of "Excepted Matters".

9. Shri R.C. Sobhani, relied on clause- 63 of the agreement to bolster his submissions that unless a decision is taken by the competent authority on "Excepted Matter", the appellant cannot contend that the claim of the respondent No. 1 is barred being "Excepted Matter".

10. Learned counsel for the respondent opposed the application for amendment by contending that the limitation for filing the appeal is 90 days, which is extendable upto 30 more days. The amendment application filed after such limitation period cannot be allowed.

11. No other point is pressed by learned counsel for the parties.

12. So far amendment application preferred by the appellant is concerned, in my view, the appellant had not taken the objection regarding impartiality/bias of Arbitrator before two forums, namely, the Arbitrator and Court below. The allegations are based on certain factual allegations. This cannot be examined at this stage by this Court. Apart from this, the amendment application is filed beyond the maximum time for filing the appeal before this Court, For these twin reasons, the amendment application is disallowed.

13. Shri Ruprah also contended that claim of the contractor before the Arbitrator was barred by time. However, despite specific query from this court, he is unable to show any provision which provides any limitation for filing the claim. Thus he could not substantiate his ground regarding limitation in raising the dispute by the contractor. Thus, this contention is also devoid of substance.

14. The aforesaid factual backdrop makes it clear that parties have taken diametrically opposite stand on the question of claim. The contractor contended that his claim is covered under clause 45 of the agreement whereas the stand of the appellant was that it is covered under clause 45(a) and 63. As per appellant, a conjoint reading of clause 45(a) and 63 makes it clear that claim is a "excepted matter". In the award, the Arbitrator reproduced clause 45, 45(a) and 63 of the agreement. In para-8, he recorded about the rival stand taken by the parties. In para-9, he directly recorded his conclusion as under :-

"After going through the rival submissions of the parties, I decide that claim No.1 is not "excepted matter".

The question is whether this conclusion drawn, is in conformity with the Act of 1996. Section 31 of the Act prescribes forms and contents of arbitral award. Relevant portion of Section 31(3) reads as under :-

"31. Forms and contents of arbitral award.- (1).....

(2).....

3. The arbitral award shall state the reasons upon which it is based, unless.-

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30."

(Emphasis supplied)

15. Learned counsel for the parties have not shown any provision from the agreement which prescribes that no reasons are to be given by the arbitrator. In absence thereto, it is a legislative mandate as per section 31(3) to assign reasons upon which conclusions are based. This is also the requirement of principles of natural justice and fair play in action. The court below also did not deal with this aspect. It gave stamp of approval to the award without dealing with the specific stand of the appellant that adequate reasons are not given in the award.

16. The Apex Court in the matter of *Som Datt Builders Limited v. State of Kerala*, (2009) 10 SCC 259 held that the requirement of assigning reasons in support of the award under Section 31(3) is not an empty formality. It guarantees fair and legitimate consideration of the controversy by the Arbitral Tribunal. It is true that the Arbitral Tribunal is not expected to write a judgment like a court nor is it expected to give elaborate and detailed reasons in support of its finding(s) but mere noticing the submissions of the parties or reference to documents is no substitute for reasons which the Arbitral Tribunal is obliged to give. Howsoever brief these may be, reasons must be indicated in the award as that would reflect the thought process leading to a particular conclusion. To satisfy the requirement of Section 31(3), the reasons must be stated by the Arbitral Tribunal upon which the award is based, want of reasons would make such award legally flawed.

17. In the case of *Anand Brothers Private Limited v. Union of India and others*, (2014) 9 SCC 212, it was held that the Arbitration and Conciliation Act 1996 which has repealed the Arbitration Act of 1940 and which seeks to achieve the twin objectives of obliging the Arbitral Tribunal to give reasons for its arbitral award and reducing the supervisory role of Courts in arbitration proceedings. Section 31(3) of the said Act obliges the arbitral tribunal to state the reasons upon which it is based unless the parties have agreed that no reasons be given or the arbitral award is based on consent of the parties. There is, therefore, a paradigm shift in the legal position under the new Act which prescribes a uniform requirement for the arbitrators to give reasons except in the two situations mentioned above. It is trite that a finding can be both; a finding of fact or a finding of law. It may even be a finding on a mixed question of law and fact. In the case of a finding on a legal issue the Arbitrator may on facts that are proved or admitted explore his options and lay bare the process by which he arrives at any such finding. It is only when the conclusion is supported by reasons on which it is based that one can logically describe the process as tantamount to recording a finding. It is immaterial whether the reasons given in support of the conclusion are sound or erroneous. That is because a conclusion supported by reasons would constitute a "finding" no matter the conclusion or the reasons in support of the same may themselves be erroneous on facts or in law. It may then be an erroneous finding but it would nonetheless be a finding. What is important is that

a finding presupposes application of mind. Application of mind is best demonstrated by disclosure of the mind; mind in turn is best disclosed by recording reasons. That is the soul of every adjudicatory process which affects the rights of the parties.

18. The Supreme court in the matter of M/s Kranti Associates Pvt. Ltd. and another v. Masood Ahmed Khan and others, (2010) 9 SCC 496 emphasised the need of assigning reasons. It was held that reasons are heart beat of conclusions. Adequate reasons must be assigned in the orders passed by administrative, quasi judicial and judicial authority. More so, when rights and liabilities are involved in a case.

19. Since the decision making process is vitiated and no reasons are given by the Arbitrator, the award cannot sustain judicial scrutiny. As noticed above, the court below also failed to see that no reasons are assigned by the Arbitrator while jumping to a conclusion.

20. Section 34 deals with power of Arbitral Tribunal for setting aside an award. Award can be set aside if it deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decision on matters beyond the scope of the submission to arbitration. If there exists a manifest illegality, interference can be made by the court in exercise of powers under section 34 of the Act. The core issue whether claim of the contractor falls within the ambit of "excepted matters" or not, was not dealt with by the arbitrator. The court below also did not deal with the correctness of the decision making process and mechanically gave stamp of approval to the award passed by the Arbitrator. The objection raised about "excepted matter" by the appellant goes to the root of the matter. If appellant succeeds on this, the matter cannot be treated as arbitrable to the extent of that claim which comes within the fore-corners of "excepted matter". Thus, this core issue needs to be addressed by the Arbitrator. The Arbitrator is best suited and under an obligation to decide this aspect.

21. For the reasons stated above, the award of the Arbitrator and the impugned order of the court below dated 2nd of July, 2004 cannot sustain judicial scrutiny. Resultantly, both the orders are set aside. The matter is remitted back before the Arbitrator with a direction to proceed in accordance with law and decide the dispute within the fore-corners of law.

22. Appeal is allowed to the extent indicated above. It is made clear that this court has not expressed any view on merits.