

(2000) 04 CAL CK 0040
In the Calcutta High Court

Case No : Ordinary Original Civil Jurisdiction G.A. No. 3415 of 1999 A.C. No. 19 of 1999

Union of India (S.E. Rly)

APPELLANT

Vs

Dulal Chandra Mondal

RESPONDENT

Date of Decision : 10-04-2000

Acts Referred:

Arbitration Act, 1940 — Section 14(2), 30, 33

Citation : (2000) 3 CALLT 405 : (2000) 2 CHN 335

Hon'ble Judges : Pinaki Chandra Ghose, J

Bench : Single Bench

Judgement

1. This is an application filed by the Union of India under sections 30 and 33 of the Arbitration Act, 1940 (hereinafter referred to as the said Act) inter alia, challenging an Award made and published by the learned Arbitrator on March 18, 1999.
2. Union of India has also filed an application for condonation of delay in filing the said application.
3. The petitioner has also prayed delay in making the application to be condoned.
4. According to the petitioner, condonation of delay should be allowed Inasmuch as notice u/s 14(2) of the said Act was received by the petitioner on April 26, 1999. The petitioner has also stated that steps were taken by the administration sought for legal opinion from the Ministry of Law and Justice and thereafter on 2nd June on the basis of the opinion received by the said Office the petitioner has taken steps in the matter between 22nd May and 6th June, 1999. The Court was closed for Summer Vacation and on reopening instructions were given to learned counsel and steps were taken to file this application.
5. It is also submitted on behalf of the petitioner that sufficient cause has been shown and further submitted that a liberal approach should be taken and delay should be condoned. Learned counsel appearing on behalf of the petitioner also

relied upon the judgments reported in :

Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, .

N. Balakrishnan Vs. M. Krishnamurthy,

Sonerao Sadashivrao Patil and Another Vs. Godawaribai Gahirewar and Others,

(2) 1999 CLT 312 (Mina Base v. Antara Kundu).

In support of his contention he also relied upon an unreported judgment delivered by the Division Bench of this High Court in A.P.O.T. No. 858 of 1998 in G.A. No. 4232 of 1998 (Union of India v. M/s Jain & Associated) delivered on 15th September, 1998.

6. Learned counsel appearing on behalf of the respondent submitted that there is a total delay for 50 days. According to him, notice was served on 26th April, 1999 and the application has been filed on 16th June, 1999 and according to him, this application is barred by limitation.

7. After hearing the parties in my opinion. Union of India has shown sufficient cause in the matter and further the delay which has been caused by the petitioner in filing till application on the said sufficient cause has shown by the petitioner is reasonable and is thereby accepted by me and delay in making this application is accordingly allowed.

8. Now I deal with the matter on merits.

9. The disputes and differences arose between the parties in respect of an agreement dated February 25, 1987. By an order dated 7th February, 1996 a Special Suit was filed being Suit No.86 of 1993 whereupon learned Arbitrator was appointed to adjudicate upon the disputes between the parties. Learned Arbitrator accordingly entered into reference, pleadings were filed before the said learned Arbitrator, documents were also filed and the learned Arbitrator after holding sittings published his Award.

10. Learned counsel appearing on behalf of the petitioner challenged the said Award inter alia on the following grounds :--

(a) According to the petitioner, under Clause 16(2) of the condition of contract no interest will be payable upon the earnest money or the security deposit or amounts payable to the contractor.

(b) According to the petitioner, the learned Arbitrator has no right to grant such interest since there is an express bar under the said contract. Reliance was placed on the decision reported in Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, and on an unreported decision made by the Division Bench of this High Court in A.P.O. No 473 of 1998 (Union of India v. Singh Verma & Others) delivered on 25th March, 1999 by Their Lordships Ruma Pal, J. and M.H.S. Ansari, J.

(c) The Award in respect of the Claim No.2 It is stated that under Clause 43(2) of the General Conditions of Contract the claim of the respondent cannot be gone into since the said claims were covered by a "No Claim Certificate".

(d) It is further contended that the learned Arbitrator to give intelligible award where claim is more than Rs.3 lakhs. Learned Arbitrator has passed his award in respect of the said claim without any reasons and as such the said award is bad In law and should be set aside. Reliance also placed on a decision reported in AIR 1990 1426 (SC) .

11. The claim of the respondent un respect of 2(f) and 3 were not arbitrable by virtue of Clause 39(2) and 45 of the said conditions of contract.

12. The award in respect of Claim Nos. 1, 4 and 5 has been awarded by the learned Arbitrator without any evidence or on the basis of perverse evidence.

13. It Is further submitted that the learned Arbitrator has travelled beyond the scope of reference and thereby exceeded his Jurisdiction in publishing such award. Accordingly he has submitted that this award should be set aside.

14. Learned counsel appearing on behalf of the respondent submitted that the award passed by the learned Arbitrator does not call for any interference. According to him, the Court will not sit on appeal over the decision of the learned Arbitrator and in support of his submission he relied upon the Judgments reported in Sudarsan Trading Co. Vs. Government of Kerala and Another, and M/ s. Hind Builders Vs. Union of India, . According to the respondent, the learned Arbitrator has authority to grant interest as it has already been settled by the Hon"ble Supreme Court reported in a judgment reported in Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, . Many other judgments also cited by learned counsel and submitted that the claim for damage for withholding the Just and lawful dues of the claimant, is Just and lawful if allowed by the learned Arbitrator. In support of his contention he relied upon several judgments reported in (1985) 1 CHN 142.

Union of India Vs. Abhoy Sarkar and another,

Calcutta Metropolitan Development Authority Vs. Gouranga Lal Chatterjee,

Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another,

15. Clause 64(3)(a)(iv) is relevant in deciding this matter. The said Clause is reproduced hereunder :--

"64(3)(a)(iv). In case where the claim is upto Rs.3,00,000/- (Rupees three lakhs), the Arbitrator(s)/Umpire so appointed, as the case may be, shall give the award on all matters referred to arbitration indicating therein break-up of the sums awarded separately on each Individual item of dispute. In cases where the claim Is more than Rs. 3,00,000/- (Rupees three lakhs), the Arbitrator(s)/Umpire so appointed, as the case may be, shall give intelligible award (I.e. the reasoning

leading to the award should be stated) with the sums awarded separately on each Individual Item of dispute referred to arbitration."

16. It further appears that no interest will be payable upon the earnest money or the security deposit or amounts under the contract. Clause 16.2 is as follows :--

"16.2: Interest on amounts. No Interest will be payable upon the earnest money or the security deposit or amounts payable to the Contractor under the contract, but Government Securities deposited In terms of sub-clause (1) of this clause will be repayable with Interest accrued thereon.

Interest on the said Government Security will be drawn by the Railway Administration and credited to the Contractor and the Contractor shall not be entitled to claim any other sum by way of interest or profit on the said Security Deposit than the amount actually drawn by the Railway Administration from the Government."

17. I have considered all the cases cited before me and I have found the Claim No. 1 is for the refund of security deposit and the earnest money and the learned Arbitrator stated as follows :--

"This is a claim for the refund of security deposit lying with the respondent amounting to Rs 85,785/-. In view of my finding that the contract was wrongfully terminated by the respondent there can not be any plausible reason for not awarding the release of the aforesaid amount In favour of the claimant and I hold that the claimant is entitled to get refund of the said amount of Rs.85,785/- (Rupees Eighty Five Thousand Seven Hundred Eighty Five) only as and by way of security deposit as per his claim No. 1."

18. The Arbitrator has held that the contract was wrongfully terminated by the respondent and as such has awarded in favour of the respondent and directed to refund the said security deposit. Therefore, in my opinion, the award in respect of claim No. 1 is sustainable.

19. The Claim No.2 is for the balance payment due for execution of the work by the Claimant and the learned Arbitrator awarded Rs. 16,76,250/-which was divided in six sub-heads. The learned Arbitrator has dealt with the said claim No.2 elaborately and has given reasons in allowing the claim of the respondent under the said heading after going through the evidence and after hearing the parties it came to the conclusion that the said sum of Rs. 16,76,250/- to be paid to the respondent.

20. In my opinion, the learned Arbitrator has dealt with the matter elaborately and has come to the conclusion and gave reasons to reach the said amounts as awarded in favour of the respondent and as such In my opinion, the same reasons are well reasoned and does not ask for the interference by this Court

21. The Claim No.3 is the claim for compensation for price hike of materials and increase in the labour wages amounting to Rs. 3,43,160.65 P. learned Arbitrator

also dealt with the said claim and has given his reasons to grant such amount as compensation in favour of the respondent.

22. So far the Claim No.4 is concerned, the claim was no account of a claim that the cost of materials kept at site which could not be utilised by the respondent consequent upon the wrongful termination of the contract amounting to Rs. 1,02,000/-. The Learned Arbitrator has held :--

"... The Claimant, however, failed to disclose/produce any contemporaneous document which should specifically show the various quantum of materials lying unused at site as spelt out in the said annexure "A"."

Arbitrator further has stated as follows :--

"... I am convinced that some materials must be lying unused at the site at the time of termination of contract. In view of above I am inclined to award a nominal sum of Rs.50,000/- only as per Claim No.4 of the Claimant."

23. There Is no reasons or basis to award the said sum of Rs. 50,000/-in favour of the respondent has been stated by the learned Arbitrator and as such in my opinion, the same is without any reasons whatsoever and cannot be sustainable in law.

24. So far the Claim No. 5 is concerned, the learned Arbitrator has stated that the Claim No. 5 is a claim for the infraluous expenditures on off site and on site establishments and the learned Arbitrator has stated as follows :--

"... and in absence of any proof of expenditures-- actually Incurred towards off-site and on-site establishment by the Claimant. I award a sum of Rs. 1,85,000/- only as per Claim No.5 of the Claimant."

25. No reasons whatsoever have been given by the learned Arbitrator for awarding the said amount. There is no basis for awarding the said amount and as such in my opinion, the same cannot be sustainable in law.

26. Claim No.6 is a claim for infructuous expenditures of idle labourers. The learned Arbitrator himself has stated as follows :--

"... I am unable to ascertain the exact amount spent by the Claimant on his idle labourers from the documents disclosed in this proceeding. More so, the Claimant have not adduced any other evidence oral or otherwise to establish exactly the details of this claim as spelt out in the said compilation (annexure "C"). ...In view of above I award a nominal sum of Rs. 50,000/- only against this Claim No.6 of the Claimant."

27. The said amount also has been reached by the learned Arbitrator without any reasons or any basis. Therefore in my opinion cannot be acceptable by me.

28. Claim No.7 is a claim for Interest and the amount has been awarded at the rate of 18% per annum on Rs. 27,41,309.65 P. No reasons whatsoever have been given by the learned Arbitrator for awarding Interest on the awarded

amount. Apart from that the learned Arbitrator also violated the clause in the contract by awarding interest. The Learned Arbitrator has a power to award interest pendente lite only as already decided by the Supreme Court reported in Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, where the Supreme Court has specifically stated that :--

"Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the arbitrator."

29. The said view has already been affirmed in a Judgment reported In The Board of Trustees for the Port of Calcutta Vs. Engineers-De-Space-Age, where the clause says that "no claim for interest will be entertained by the Commissioner". The Supreme Court has specifically held as follows :--

"Strictly construed the term of the contract merely prohibits the commissioner from paying Interest to the contractor for delayed payment but once the matter goes to arbitration the discretion of the arbitrator is not, in any manner, stifled by this term of the contract and the arbitrator would be entitled to consider the question of grant of interest pendente lite and award interest if he finds the claim to be justified. We are, therefore, of the opinion that under the clause of the contract the arbitrator was in no manner prohibited from awarding Interest pendente lite."

30. In this case, the Clause in the agreement between the parties specifically forbade the grant of Interest on security deposit and the earnest money. No interest will be payable upon earnest money or security deposit or any other amount payable to the contractors under the contract. Accordingly the award in respect of this claim also cannot be accepted by me and should be set aside,

31. So far the Claim No.8 is concerned, the Claim No.8 deals with the cost of arbitration in respect of the said claim, no grounds have been made out in the petition. The petitioner also did not challenge the Claim No.8 in this petition.

32. In these circumstances, In my opinion the part of the award is set aside in respect of claim Nos. 3, 5, 6 and 7 and award is modified accordingly.

For the reasons stated hereinabove this application is disposed, of, however, no order as to costs.

33. Application disposed of