
(2010) 12 MP CK 0030

In the Madhya Pradesh High Court

Case No : Arbitration Appeal No. 05 of 2008

Union of India (UOI) and Another

APPELLANT

Vs

Hariram Gupta and Another

RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Arbitration Act, 1940 — Section 20, 21, 30, 34, 39
Arbitration and Conciliation Act, 1996 — Section 31(3)
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Contract Act, 1872 — Section 73

Citation : AIR 2011 MP 105 : (2011) ILR (MP) 951 : (2011) 1 MPJR 124 :
(2011) 1 MPLJ 583

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhay M. Naik, J.

This appeal has been preferred u/s 39 of the Arbitration Act, 1940 against the order dated 15-1-2002 passed by the Court of 6th A.D.J. Gwalior in MJC No. 24/1999 and for confirmation of the award of the Arbitrator dated 26-8-1999 passed by the Respondent No. 2.

Briefly stated facts are that an agreement was executed between the Respondent No. 1 and the Appellant on 18-11-1986. Work pursuant thereto could not be completed within time and a dispute arose between the parties with regard to it. Respondent No. 1 submitted an application for appointment of General Manager Central Railway as Arbitrator. Since no such appointment was made, Respondent No. 1 submitted an application before the Court for appointment of arbitrator. Court of District Judge Gwalior vide its order dated 9-12-1994 directed that General Manager Central Railway himself or any gazetted officer nominated by him in this regard would decide the dispute under G.C.C. (General Conditions of Contract) as an arbitrator. Respondent No. 2 was nominated as arbitrator, who

passed an award dated 26-8-1999. On service of award on Respondent No. 1 on 6-9-1999, he submitted an application u/s 30 of the Arbitration Act, 1940 for setting it aside mainly with the allegations that he had claimed in all Rs. 4,10,091/- against item Nos. 1 to 8, whereas, merely, a sum of Rs. 25,204/- has been awarded by the Arbitrator against item No. 1 as against Rs. 44,191/- as claimed. No award has been passed in respect of remaining other items. Main objection of Respondent No. 1 is that while declining the claim in respect of other items, no reason has been assigned by the Arbitrator. This application has been allowed by the impugned order dated 15-1-2002 on the ground that the Arbitrator was obliged to assign reasons by virtue of Sub-section (3) of Section 31 of the Arbitration and Conciliation Act, 1996. Since the arbitrator was directed to decide the dispute under G.C.C. and the arbitrator by virtue of Clause 64(3)(b) (i) of it was obliged to make the itemwise award with reasons, Accordingly, the arbitration award dated 26-8-1999 has been set aside and the arbitrator was directed to pass a fresh award after keeping in mind Section 31(3) of the Arbitration and Conciliation Act, 1996 and the provisions of G.C.C. Aggrieved by it, present appeal has been preferred.

Shri H. D. Gupta, learned Senior Advocate for the Appellant and Shri Prashant Sharma, learned Counsel for the Respondent No. 1 made their respective submissions, which have been duly considered in the light of the material on record.

Admittedly, the contract agreement No. GWL/STLI/Cont./4 in respect of the construction of boundary wall at Sithauli Railway Station was executed between Respondent No. 1 - the contractor and the Appellant on 10-3-1987 when the Arbitration Act, 1940 was in force. Arbitration and Conciliation Act, 1996 was brought into force on 22-8-1996. Prior to it's enforcement, an application was submitted by the Respondent No. 1 for appointment of arbitrator and an order for such appointment was made by the Court of District Judge Gwalior on 9-12-1994 that General Manager Central Railway or any gazetted officer nominated by him in this respect would decide the dispute as arbitrator under G.C.C. Pursuant thereto, Respondent No. 2 was nominated as Arbitrator on 19-5-1995. Thus, obviously the arbitration proceeding had commenced before the Arbitration and Conciliation Act, 1996 and the award passed under the Arbitration Act, 1940 cannot be legally set aside by invoking Sub-section (3) of Section 31 of the Arbitration and Conciliation Act, 1996.

As regards furnishing reasons for the award, it may be seen that neither in the arbitration agreement nor in the order dated 9-12-1994 it was so directed that reasons are to be assigned by the arbitrator. Learned District Judge Gwalior vide its order dated 9-12-1994 observed that the General Manager in case of claim not exceeding Rs. 5 lac may nominate any gazetted officer as arbitrator. Accordingly, it was ordered vide order dated 9-12-1994 that the General Manager Central Railway may nominate any gazetted officer as arbitrator, who was directed to decide the dispute of arbitration under G.C.C. There is no

material on record that an arbitrator was obliged to assign reason either under the statutory provisions or under the contract or even otherwise.

Hon"ble Supreme Court of India in the case of Rajendra Construction Company Vs. Maharashtra Housing and Area Development Authority and Others, , Rajendra Construction Co. v. Maharashtra Housing and Area Development Authority, has observed:

17. In the opinion of this Court, it could not be disputed that in India, it has been "firmly established" that it was not obligatory on the arbitrator or umpire to record reasons in support of the award when "neither any arbitration agreement nor any deed of submission" required reasons to be recorded. In that case also, it was urged, as has been done in the instant case, that if no reasons are disclosed by the arbitrator, it would not be possible for the Court to find out whether the award passed is in accordance with law. The Court, however, negated the contention observing that if the parties wanted reasons to be recorded in support of the award to be passed by the arbitrator or umpire it was open to them to make a provision in the agreement/contract itself to that effect. But in the absence of any stipulation in the contract, the Court could not say that arbitrator was duty-bound to record reasons and if reasons are not recorded in support of the award, the award was vulnerable and liable to be set aside or should be remitted to the arbitrator. According to this Court, such an order would amount to virtually introducing by judicial verdict an amendment to the Act. No doubt, if the reasons are recorded by the arbitrator or umpire in support of the award, they can be considered by the Court and if those reasons disclose an error apparent on the face of the record, the award can be set aside by a competent Court of law. But in the absence of such requirement under the agreement itself, the party could not insist for reasons in support of the award nor a Court of law can interfere with non-speaking award.

It was, however, urged that recording of reasons in support of the order is part and parcel of "natural justice" and on that count also, unreasoned award should be treated as null and void and ineffective. We are unable to uphold the argument. A similar contention was raised in Chokhamal and negated by this Court observing that the said doctrine applies to administrative law field. In the decisions pertaining to administrative law, this Court has always insisted for recording of reasons in support of the order or decision. The Court observed that it would apply to "public law" field and not to "private law" field like arbitration agreement.

The present awards are not under the new Act but under the old Act. It is, therefore, obvious that they could not have been set aside by the High Court on the ground that they were not supported by reasons and were not speaking awards.

Constitutional Bench of the Hon"ble Supreme Court of India in the case of Raipur Development Authority and Ors. v. Chokhamal Contractors and Ors. 1989 1LJ

511 has observed:

19. It is now well settled that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. The arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submission he is required to give such reasons and if the arbitrator or umpire chooses to give reasons in support of his decision it is open to the Court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the face of the record on going through such reasons. The arbitrator or umpire shall have to give reasons also where the Court has directed in any order such as the one made u/s 20 or Section 21 or Section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so.

The Constitutional Bench has further observed in para 36:

36. ...The arbitrators or umpire have passed the awards which are involved in the cases before us relying on the law declared by this Court that the awards could not be questioned merely on the ground that they have not given reasons. At the same time it cannot also be said that all the awards are contrary to law and justice. In this situation it would be wholly unjust to pass an order either remitting or setting aside the awards, merely on the ground that no reasons are given in them, except where the arbitration agreement or the deed of submission or an order made by the Court such as the one u/s 20 or Section 21 or Section 34 of the Act or the statute governing the arbitration required that the arbitrator or the umpire should give reasons for the award.

Placing reliance on the decision of the Hon"ble Apex Court in the case of M.M.T.C. Limited Vs. Sterlite Industries (India) Ltd., it has been contended on behalf of the Respondent No. 1 that the provisions of Arbitration and Conciliation Act, 1996 could be invoked and were rightly invoked.

In the case of MMTC Ltd. (supra), the arbitration proceedings commenced after the new Act came into force. This being so, MMTC Ltd. 's decision has no applicability in the present case.

It has been further contended on behalf of the Respondent No. 1 that the learned subordinate Judge has rightly set aside the award since there was no itemwise adjudication in the arbitration award as required by clause 64(3)(b)(i) of the General Conditions of Contract which according to him was that the arbitral award shall state itemwise, the sum and reasons upon which it is based.

However, Dy. Chief Engineer, Construction, Gwalior of North Central Railway has submitted his affidavit in support of his application under Order XLI Rule 27, CPC (LA. No. 17094/10) accompanied by the copy of G.C.C., which was in force at the relevant time. According to him, said clause was revised vide letter issued by the

Chief Engineer Works Headquarters Office Mumbai CST dt. 27-8-1997. Thus, at the relevant time, clause 64 (3) was as under:

Clause 64(3):

(a) Matters in question, dispute or difference to be arbitrated upon shall be referred for decision to:

As per Railway Board Letter No. 82/WJ/CT/9(P) dated 21-12-1983, circulated vide CE(C) letter No. EW 187 R.465.11 dt. 6-2-1984.

(3)(i)

A Sole Arbitrator who shall be the General Manager or a Gazetted Railway Officer nominated by him in that behalf in cases where the claim in question is below Rs. 5,00,000/- (Rs. 5 lakhs) and in cases where the issues involved are not of a complicated nature. The General Manager shall be the sole Judge to decide whether or not the issues involved are of a complicated nature.

(ii) Two Arbitrators, who shall be Gazetted Railway Officers of equal status to be appointed in the manner laid down in Clause (3)(b) for all claims of Rs. 3,00,000 and above, and for all claims irrespective of the amount or value of such claim if the issues involved are of a complicated nature The General shall be the sole judge to decide whether the issues are of complicated nature or not. In the event of the two Arbitrators being divided in their opinions the matter under dispute will be referred to an Umpire to be appointed in the matter laid down in Clause (3)(b) for his decision.

(iii) The Arbitrators(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 disputes.

In the absence of rebuttal, there is no reason to disbelieve the affidavit and the copy of the GCC accompanying the application under Order XLVII, Rule 27, Code of Civil Procedure. Consequently, LA. No. 17094/10 is hereby allowed. Document G.C.C. accompanying application is taken on record.

Claim of the Respondent No. 1 is contained in Annexure P/3 of the record of the trial Court, which is as follows:

----- Sr. Claim Particulars					
of	Claims	Amount	No.	No.	claimed in Rs.

				1.	1. Refund of
				2.	2. Cost of T and P and Z pumps and
				3.	3. Cost incurred against re-excavation of
				4.	4. Payment of Final Bill 25,000/-
				5.	5. Cost incurred for idle labour
				6.	6. Profit @ 10% on
				7.	7. Damages for prolongation of contract
				8.	8. Compensation for mental injury

due to harassment by the Railway authorities.
----- Total: 4,10,091/-

The relevant portion of the award is as follows:

NOW KNOW YE, that I, Smt. Shobhna Jain having taken upon myself the burden of said reference and having considered the evidence produced before me by both the parties and having heard the arguments of both the parties and having satisfied myself concerning the matters which were referred to me for arbitration as aforesaid and having considered the claims made by the Claimant and the defence of the Respondent, I hereby make and publish this award of and concerning the same in the manner following, that is, I award and determine.

----- Claimant Amount Claimed Amount	
Awarded -----	1. 44,191/- 25204* 2.
40,000/- Nil 3. 10,000/- Nil 4. 25,000/- Nil 5. 50,000/- Nil 6. 40,900/- Nil 7.	
1,00,000/- Nil 8. 1,00,000/- Nil -----	
Total 4,10,091/- 25,204 -----	

*Being the refund of Security Deposit after adjusting the dues as per Final Bill since the notice for termination of contract was not received by the claimant. Award in the aforesaid manner cannot be said to be in contravention of clause 64 (3)(a) (iv) as it existed at the relevant time.

From the aforesaid, it is clear that at the relevant time arbitrator was not under obligation under the conditions contained in GCC to pass itemwise award. In the absence of any such requirement, the arbitrator could validly give lump sum award, as he was not bound to give separate award for each claim, as observed by the Hon''ble Apex Court in para 2 of the decision in the case of Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore,

In view of the aforesaid discussion, the impugned order dated 15-1-2010 is not sustainable in law and the same is hereby set aside. Award of the arbitrator dated 26-8-1999 is hereby confirmed in the light of the foregoing reasons. Appeal stands allowed accordingly with no order as to costs.