
(2008) 08 GAU CK 0080
In the Gauhati High Court

Union of India (UOI) and Others

APPELLANT

Vs

Lan Robert Nongrum

RESPONDENT

Date of Decision : 08-08-2008

Acts Referred:

Arbitration Act, 1940 — Section 17, 30

Citation : (2009) 3 GLR 547

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Musahary, J.—This appeal is directed against the judgment and order dated 14.3.2005 and decree dated 19.4.2005 passed in Money Suit No. 1(H) of 2000 by the learned Assistant District Judge, Shillong and also the notice dated 29.9.2005 issued by the learned Assistant District Judge, Shillong in Money Execution Case No. 4(H) of 2005.

2. The brief facts of the case is that a valid contract for supply of meat at Supply Point Tezu in Arunachal Pradesh between M/s. Lan Robert Nongrum, Shillong, respondent and the Union of India represented by DDST, HQ101 Area, Shillong was executed. The contract was concluded in an open bidding of lenders and M/S Lan Robert Nongrum was awarded, the contract being the lowest bidder having quoted the lowest rate. The contract was signed on 20.2.1988 and the said contract was valid for the period from 1.4.1988 to 31.3.1989. There was a clause of security deposit of Rs. 56,500 and the same was lodged by the said Contractor with Controller of Defence Accounts, Guwahati through a FDR of Canara Bank, Shillong. The contractor M/s. Lan Robert Nongrum failed 66 times in supplying the meat at Tezu and he was advised, warned Counseled in writing to improve his performance but continuously failed to meet his obligations of the contract for which the Union of India had to spend Rs. 1,19,152.42 additional amount in locally purchasing meat which was to be supplied by the Contractor at his own quoted and accepted price. The said Contractor abandoned his contract midway

and did not turn up in spite of telegram, letters and telephone calls sent to him by the appellants. The said respondent Contractor stopped taking demand orders and disappeared from Tezu. Thus, an amount of Rs. 75,954 remained as an additional cost incurred by the Union of India and the security deposit Rs. 56,500 was withheld against the outstanding amount. The Contractor claims release of the said security deposit of Rs. 56,500 with 18% interest

3. Since a dispute arose, the Union of India as per terms and clause of the contract, offered to settle the matter through arbitration and accordingly one Lt. Col P.K. Saigal, Commanding Officer, 1872 Light Regiment was appointed as arbitrator. M/s. Lan Robert Nongrum made a claim of Rs. 2,35,000 but he did not appear in any sessions of the Arbitration Proceedings and also could not substantiate or prove his claim of Rs. 2,35,000. The Arbitrator met a final award on 9.4.1990 in writing as under:

(a) The claim amounting Rs. 2,35,000 (Rupees two lakh thirty-five thousand only) appears baseless and illegal, for the respondent has recovered a sum of Rs. 1,19,152.42 (Rupees one lakh nineteen thousand one hundred fifty two and paise forty two only) by way of risk purchases made against the claimant in the event of his failure to supply meat on hoof during the period 1st April 1988 to 31st March 1989 thus failing to meet the contractual obligations on his part.

4. The said award was filed before the Assistant Judge at Shillong for making it "Rule of the Court" u/s 17 of the Arbitration Act, 1940 and for drawing up a decree in terms of the award. On receipt of the notice dated 23.4.1991 from the court of learned Assistant District Judge, Shillong, the Union of India, by filing a petition No. 406 of 1991 dated 24.6.1991 and requested the said court to make the aforesaid award rule of the court. The Contractor Lan Robert Nongrum also filed an application u/s 30 of the Arbitration Act 1940 for setting aside the award which was registered as (Arb.) Misc. Case No. 46(H) of 1991, Subsequently, the Union of India filed a rejoinder to the objection petition of the Contractor stating, inter alia, that the Union of India is legally entitled to recover and receive the sum of Rs. 1,19,152.42 awarded by the Arbitrator and in support of the same a statement of risk of expense note in respect of contract agreement No. EC/CD/TEZU/3/88-89/ST 5 against Contractor for the period from 1.4.1988 to 31.3.1989 has been annexed.

5. After hearing the learned Counsel appearing for the parties, the aforesaid award dated 9.4.1990 was made rule of the court by an order dated 26.8.1994.

6. Being aggrieved, the Union of India approached this Court by filing Civil Rule No. 108(SH) of 1983 and a judgment was passed on 8.12.1993 which was connected with two different and separate contract between the Contractor M/s. Lan Robert Nongrum (for supply of meat at Khonsa and Tezu) for which two different security deposits were made. The Union of India complied with the order of this Court and released Rs. 53,300 being security deposit of the Contractor and a Contractor also deposited Rs. 2,720 in favour of the Union of

India. However, the Contractor failed to deposit Rs. 75,954 and as such the security money was not released. The Union of India prefer an appeal being Writ Appeal No. 1(SH) 1994 in which this Court passed an order dated 16.9.1994 to the following effect.

After taking into consideration the entire facts and circumstances of the case, we are of the opinion that in case the appellant has already recovered from the contesting respondent an amount of Rs. 1,19,152.42 as recorded by the Arbitrator in the award, the security which has been deposited by the contesting respondent in respect of second contract shall also be released forthwith. However, it has been made clear that in case the amount of Rs. 1,19,152.42 has yet to be recovered by the appellant from the contesting respondent, the security in respect of the second contract shall not be released in favour of the contesting respondent until further orders of this Court.

7. Mr. P. Dey, learned Counsel appearing for the appellant submits that although in the award it has been mentioned that the sum of Rs. 1,19,152.42 has been recovered by the respondent Union of India from the claimant Contractor by way of risk purchase made against the claimant in the event of his failure to supply the meat, it was actually not recovered from the claimant Contractor and the Arbitrator as wrongly recorded the same. The Union of India, the present appellant, as submitted by Mr. Dey, is yet to recover the said amount of Rs. 1,19,152.42 from the respondent-Contractor. The Union has recovered an amount of Rs. 43,197.71 only and the balance amount of Rs. 75,954 is yet to be recovered from the respondent-Contractor.

8. Mr. Dey, learned Counsel for the appellant submits that the respondent Contractor has erroneously filed a money suit being MS No. 1(H) of 2000 for recovery of Rs. 56,500, being the security deposit, which is yet to be released by the appellant-Union. According to Mr. Dey, the aforesaid amount of Rs. 56,500 has been withheld by the Union against the balance amount due from the respondent-Contractor. Mr. Dey, learned Counsel appearing for the appellant submits that no suit for recovery of aforesaid amount of Rs. 56,500 lies in the civil court inasmuch as the said amount is due to the appellant-Union as per the award of the Arbitration and the remedy for the respondent-Contractor would lie in the Arbitration Proceeding.

9. Countering the submissions made by the learned Counsel for the appellant, it is submitted by Mr. S.T. Laso that the aforesaid amount of Rs. 56,500 is a security deposit made by the respondent-Contractor in terms of the work agreement and since the Arbitrator has given a finding to the effect that the Union has already recovered a sum of Rs. 1,19,152.42 by way of risk purchase, there is no more amount due to the appellant-Union and since the appellant-Union has refused to return/release the said security amount deposit, the respondent-Contractor had no other alternative except to approach the civil court for realisation of the said amount from the appellant-Union. There is, according to Mr. Laso, no legal bar to approaching the civil court by way of filing money suit

for recovery of the said security deposit which the Contractor is legally entitled to and as such the learned Assistant District Judge has rightly passed the impugned judgment and order dated 14.3.2005 decreeing for realization of the security money of Rs. 56,500 from the Union and all other persons who are holding in the office of the defendant-Union including the pro forma defendant and also ordering payment of interest at the rate of 18% per annum from the date of deposit of the security money till realization of the whole amount with cost of the suit.

10. I have perused the records of the (Arb.) Misc. Case No. 48(H) of 1990 and also the records of the Money Suit No. 1(H) of 2000. There is no dispute that an Arbitrator was appointed and an award was made by the said Arbitrator. It is an admitted position that in the aforesaid award, the Arbitrator has recorded his finding that the claim amounting to Rs. 2,35,000 appears to be baseless and illegal and the respondent-Union recovered a sum of Rs. 1,19,152.42 by way of risk purchase made against the claimant Contractor due to his failure to supply meat on hoof during the contract period in terms of the contract. It is also an admitted position that the Union of India insisted upon making the aforesaid award rule of the court in terms of the award given by the Arbitrator. At certain point, the Union of India apprised the learned Assistant District Judge in the proceeding of Arbitration Misc. Case No. 46(H)/1990 that the aforesaid amount of Rs. 1,19,152.42 was yet to be recovered from the Contractor but it was not persuaded in the said proceeding and ultimately the learned Assistant District Judge by an order dated 26.8.1994 made the said award of the Arbitration as rule of the court. From the records and also from the submissions and the pleadings of the Union of India it has become clear that the security deposit of Rs. 56,500 lodged by the Contractor has been withheld and the same is yet to be paid to the Contractor for which the Contractor had to approach the civil court by way of filing the aforesaid money suit.

11. The submissions of Mr. Dey that the money suit does not lie before the civil court does not sound impressive since the appellant-Union has admitted the position that the security deposit of Rs. 56,500 has not been paid to the respondent-Contractor. The other submission that the respondent-Contractor should approach the Arbitration Proceeding for recovery of the aforesaid security deposit is also found unimpressive in view of the fact that the Arbitrator who has already given the award has become functus officio and no more proceeding is pending before him. Moreover, the award given by the Arbitrator has already been made rule of the court.

12. In my considered opinion, the learned Assistant District Judge, Shillong lacks no jurisdiction in adjudicating the Money Suit No. 1(H) of 2000 filed by the respondent-Contractor claiming realization of the security deposit and the learned trial Court has rightly decreed the suit in favour of the respondent-Contractor and there is no valid ground for interference with the same. The appeal is found devoid of merit and accordingly the same is dismissed. No order

as to cost.