
(2011) 03 SHI CK 0016
In the High Court Of Himachal Pradesh
Case No : Arbitration Appeal No. 3 of 2006

Union of India (UOI)

APPELLANT

Vs

Kundan Construction Company

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 13(3), 34, 37
Limitation Act, 1963 — Section 5

Citation : (2011) 03 SHI CK 0016

Hon'ble Judges : Sanjay Karol, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—In this appeal filed u/s 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act), Objector-Union of India alone has assailed impugned order dated 18.8.2005 passed by the learned Single Judge of this Court in OMP (M) No. 25 of 2000 with OMP (M) No. 13 of 2001, titled as Union of India v. M/s Kundan Construction Co. and Kundan Construction Co. v. Union of India and Anr.

2. In relation to certain works i.e. "Provision of OTM Accn for Signal Regt at Yol" an agreement was duly executed between the Appellant-Union of India and the Respondent Kundan Construction Company (for short contractor). The work was to commence on 29.6.1988 and to be completed on 28.6.1990. There is no dispute that extension was granted to the contractor and the work was completed on 12.1.1991. Contract price was Rs. 1,20,35,881.76.

3. Certain disputes having been arisen between the parties, in accordance with the terms of agreement, were referred to the Arbitrator for adjudication. Before the Arbitrator, both the contractor and Union of India made several claims. It is not in dispute that Arbitrator partly accepted and partly rejected the claims of both the parties in terms of award dated 31.12.1999.

4. Aggrieved thereof, Union of India filed objections u/s 34 of the Act before this Court. The Contractor separately filed objections before the Court of District Judge, Kangra at Dharamshala, which petition was subsequently withdrawn and a fresh petition was filed by the contractor before this Court alongwith an application for condonation of delay u/s 5 of the Limitation Act. In terms of the impugned order dated 18.8.2005 both the petitions alongwith the application for condonation of delay stand dismissed.

5. Undoubtedly the Contractor has not preferred any appeal.

6. The ambit and scope of interference by this Court u/s 34 as also Section 37 of the Act is quite narrow and clearly defined.

7. Section 34 of the Act enumerates the grounds on which an award can be challenged. This provision was interpreted by the Supreme Court in Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., holds:

31. Therefore, in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interestor what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the fact of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/ judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term "public policy in Renusagar"s case (supra), it is required to be held that the award could be set aside if it is patently illegal. Result would be award could be set aside if it is contrary to:

- (a) fundamental policy of Indian law; or
- (b) the interest of India; or
- (c) justice or morality, or
- (d) in addition, if it is patently illegal.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court. Such award is opposed to public policy and is required to be adjudged void. (PP 2643 and 2644)

8. It is also settled position of law that this Court is not to sit as an appellate Court against the award made by the Arbitrator. Sumitomo Heavy Industries Limited Vs. Oil and Natural Gas Commission of India,

9. This Court cannot substitute its own judgment and there cannot be any reappraisal of evidence unless it attracts the principles laid down in Saw Pipes

Ltd. (supra). Interpretation of the contract is within the domain of the Arbitrator. Sufficiency and insufficiency of evidence is also to be seen by him. Scope of interference by this Court is to a limited extent. Parameters clearly stand laid down and well defined. The object and purpose of enacting the Act is to minimize interference by the Court in the awards passed by the Arbitrator.

10. In the instant case, the award as has been so rightly held by the learned Single Judge, contains sufficient reasons. This in fact is the main ground of challenge. It cannot be said that the Arbitrator, while assigning the reasons has breached the provisions of Section 13(3) of the Act. The award runs into 15 pages. The Arbitrator may not have given detailed reasons in the award while arriving at its conclusion but then he is not supposed to write a detailed judgment. Sufficient reasons to arrive at its conclusion are there. He has considered the entire material while arriving at its conclusions and assigning reasons. The purpose of giving reasons is to enable the Court and the parties to know that the Arbitrator has correctly addressed himself to the controversy in issue or has considered the material on record and applied correct principles while arriving at its conclusions. Keeping in view the ratio of law laid down by the Apex Court in Indian Oil Corporation Ltd. Vs. Indian Carbon Ltd., and Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another, , we find no fault with the reasoning adopted in the impugned order.

11. It is not the case of the Appellant that the Arbitrator was under some incapacity or that agreement was not valid or that there has been infraction of principles of natural justice, or that the dispute in question is not covered under the agreement. The subject matter of dispute was capable of settlement by the Arbitrator under law. The award cannot be said to be in conflict with the public policy of India. No fault can be found with the award given by the Arbitrator. The award is just and fair. The award towards claim No. 8 cannot be said to be beyond the scope of arbitration agreement. Nothing has been shown to the contrary either. The award of interest also falls within the domain of the Arbitrator, which in any event in the instant case, cannot be said to be on the higher side.

12. Consequently, we find no reason to interfere with the appeal and the same is accordingly dismissed.