
(1975) 04 CAL CK 0015
In the Calcutta High Court
Case No : Award Case No. 147 of 1966

Union of India (UOI)

APPELLANT

Vs

National Builders

RESPONDENT

Date of Decision : 09-04-1975

Acts Referred:

Arbitration Act, 1940 — Section 30

Citation : AIR 1975 Cal 332 : 80 CWN 486

Hon'ble Judges : Ramendra Mohan Datta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ramendra Mohan Datta, J.—Union of India has made this application for setting aside the first award dated 4th August, 1966 and the final award dated 24th August, 1968 made after the said first award was remitted by the Court to the arbitrator. The Arbitrator was one O. P. Mittal, Engineer-Member, Delhi Development Authority, New Delhi and formerly Superintending Engineer (Arbitration) Central Public Works Department.

2. By an agreement in writing dated 16th October, 1949 the respondent National Builders agreed to execute the construction of administrative block of India Government Mint at Alipore in Calcutta. In course of execution of the said contract various disputes arose between the parties and the Additional Chief Engineer, Central P. W. D., New Delhi, appointed the said O. P. Mittal, Superintending Engineer, (Arbitration) as Arbitrator and sent to the said Arbitrator along with his letter dated 27th November, 1958 a Schedule wherein the claims of the respondent were tabulated and against each item thereof, an issue was framed for his determination.

3. The short point involved, in this application is whether the arbitrator was obliged to make his award showing the determination of each of the issues and answering them in the manner it was raised before him. Some of the relevant

claims and the respective issues raised in respect thereto are set out below to appreciate the nature of the terms of reference submitted to the Arbitrator by the said Additional Chief Engineer:

PART I

CLAIMS ISSUES

1.

The contractor was paid reduced rates for using inferior bricks. The contractor claims payment for first class bricks as they were supplied departmentally (Item No. 4)

Whether inferior bricks were used on the work, if so, the reduction in rate that should be effected.

5.

The contractor used vibrator for providing concrete of good quality. He claims extra for vibration of concrete (Item No. 31)

Whether extra rate is admissible for vibrated concrete, if so, how much.

9.

200 sq. ft. area of mosaic flooring done originally with grey cement was dismantled and replaced with white cement (Item No. 62)

Whether dismantling was done on the instruction of the department, whether any payment is due and if so, amount involved.

10.

The contractor claims payment for 1" thick red Patent Stone flooring done in Gold weight room at Rs. 150/- per sq. ft. (Item No. 63)

Whether payment is still due for this work and if so, how much.

12.

The contractor claims that the measurement cannot be taken in ft. -inch for this item (Item No. 66)

Whether measurement can be taken in ft. -inch for this item and if any relief is called for.

PART II

3.

The contractor claims payment for brick work done in recesses and chases in brick work for which deduction was made (Item No. 7)

Whether the deduction made is justified.

4.

The contractor claims that R. C. C. slabs have not been measured correctly including the full bearing (item No. 9)

Whether the measurement has been correctly recorded, if not, the excess quantity involved.

12.

The contractor claims that heavy compensation under clause (ii) is not justified.

Whether the contractor had made himself liable for compensation under clause (ii).

In the recital part of the said award dated 4th August, 1966, the said arbitrator, inter alia, referred to the letter dated 27th November, 1958 written by the Additional Chief Engineer, Central P. W. D. and the disputes is mentioned in the said letter and made his award, the relevant portion whereof read as follows :

"2. After hearing and examining and considering the statements of the parties and the oral and documentary evidence produced before me by them and having given due consideration to all the facts and documents, I award as follows except as mentioned in paragraph 4.

3. In full and final settlement of all the disputes referred to me, the Union of India should pay to M/s. National Builders a sum of Rs. 31,270/- (Rupees Thirty-one thousand two hundred and seventy only)."

In paragraph 4 of the said award the Arbitrator, inter alia, recorded that since the High Court had expressed reluctance to grant further extension of time to make the award and since the disputed item No. 4 of Part II would take sometime to decide the same he left undecided so that the same might be referred to the other Arbitrator who had been appointed by the Additional Chief Engineer in respect of some other disputes. As such he made the said award without deciding the said item.

4. After the said award was filed in court, the Union of India made an application for setting aside the award and upon hearing the parties the Court remitted the award to the said arbitrator for his decision in respect of the said disputed item No. 4 of Part II which was not decided by him for shortage of time. The court directed that the award would not be placed in the list until five months from the date of the order. The said arbitrator has since made another award in respect of the said item No. 4, Part II, the operative part whereof reads as follows ;

"4. After hearing, examining and considering the statements of the parties and the oral and documentary evidence produced before me by them and having given due consideration to all the facts and documents. I award that the Union of India should pay to M/s. National Builders a sum of Rs. 3,142/- (Rupees three thousand one hundred forty-two) in full and final settlement of the dispute as

given in Part I above. 5. The parties will bear their own costs of reference."

That award was signed by him on 24th August. 1968.

5. The present application has been made in respect of both the awards and the Union of India has prayed for setting aside thereof.

6. Counsel for Union of India contends that the arbitrator has failed to decide all the disputes; between the parties finally and conclusively inasmuch as the disputes which called for his decision by declaration as to methods and manner of measurement and/or calculations and not just money award, have been left out and not decided upon. It is contended that the terms of reference were sent by the Additional Chief Engineer, Central P. W. D. to the arbitrator and it was referred to the arbitrator for his decision in respect of each of the said issues. Under the circumstances, the arbitrator could not have made a lump sum money award and, having done so, he has miscondacted himself and the award should be set aside on that ground.

7. Counsel for Union of India has referred to the passages appearing in Russell on Arbitration 18th Edn. at Pages 185 and 273-274 and the Supreme Court case of Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others, . Counsel contends that neither any liability has been fixed nor have the quantum thereof been indicated in respect of the issues submitted to the arbitrator for his determination. Counsel also contends that admissibility of the extra rate claim for the vibrated concrete was required to be determined by the arbitrator but he had failed to do so. Not only so, on that basis he had also failed to determine and to indicate what amount was payable on account thereof. Further more, the arbitrator was obliged to give his decision on each issue and on that basis he should have arrived at the figure which was payable as the total amount by the Union of India.

8. The above Supreme Court case is distinguishable from the facts of the case before me. In that case, by paragraph 13 of the Partnership agreement the valuation of the firm was to be determined, by adopting some particular method prescribed therein and the arbitrator having followed a different method in arriving at his valuation by including the depreciation and appreciation of the property, outstandings and the dead stock, had travelled beyond his jurisdiction and his award became liable to be set aside. At p. 220 the Supreme Court observed :

"Question is not one of interpretation of paragraph 13 of the partnership agreement but of ascertaining the limits of his jurisdiction. The Primary duty of the arbitrator under the deed of reference in which was incorporated the partnership agreement, was to value the net assets of the firm and to award to the retiring partners a share therein. In making the "valuation of the firm", his jurisdiction was restricted in the manner provided by paragraph 13 of the partnership agreement."

9. In the case of Pannalal Paul and Others Vs. Sm. Padmabati Paul and Others, , a similar point, as is involved in this case, was sought to be argued and it was contended that it was the duty of the arbitrator to answer the several issues specifically. Bachawat, J. (as he then was) in delivering the judgment of the Bench at P. 696 observed :

"I am totally unable to accept this contention. The arbitrator is not bound to make a separate and distinct finding on each issue. He may award on the whole case. In the instant case the arbitrator has awarded that on the final taking of the accounts the appellants are liable to pay to the respondents a sum of Rs. 12,255/-. The arbitrator has given an award on the whole case whereby he has fully and finally determined the rights of the parties in respect of the subject-matter referred."

Upon those observations the Division Bench upheld the award and dismissed the appeal.

10. In Smt. Santa Sila Devi and Another Vs. Dhirendra Nath Sen and Others, the Supreme Court relied on the following observation of Parke, B in Harrison v. Creswick (1853) 138 ER 1254 : (13 CB 399):

"The silence of the arbitrator upon the subject placed before him means that the arbitrator has negatived such plea."

At p. 1680, the Supreme Court observed:

"Besides it is obvious that unless the reference to arbitration specifically so requires the arbitrator is not bound to deal with each claim or matter separately but can deliver a consolidated award. The legal position is clear that unless so specifically required an award need not formally express, the decision of the arbitrator on each matter of difference. (Vide. Re. Brown and the Groydon Canal Co.. (1839) Ad 9 and Ell 522 = (112 ER 1309) and Jewell v. Christie (1867) 2 CP 296. Further, as Parke, B. himself put it during the course of argument in (1853) 138 ER 1254:

"Unless the contrary appears the Court will presume that the award disposes finally of all the matters in difference."

and to repeat a sentence from the extract quoted earlier :

"where an award is made de praemissis, the presumption is that the arbitrator intended to dispose finally of all the matters in difference, and his award will be held final, if by any intendment it can be made so." From the above observation of the Supreme Court and the observation of Baron Parke, it appears that in the facts and circumstances of this case before me, the arbitrator was not not obliged to decide each of the issue separately and was quite justified in making a composite award of a lump sum amount. His two awards decide the whole of the dispute referred to him as the recitals in respect thereto would suggest.

11. It is to be noted that the terms of reference herein did not impose any

limitation upon the said arbitrator that he was obliged to answer each of the issues separately and make his award in that way. The arbitration agreement herein was very wide. It did not require the arbitrator to decide each issue individually and under the said arbitration agreement the arbitrator was quite justified in making a lump sum award without deciding the issues separately. The Court is not called upon to go into the question as to in what way the arbitrator arrived at the said decision and in what way his mind was reacting in arriving at his conclusion. All that the court is required to find out is whether there was any express limitation imposed of direction given on the arbitrator by the arbitration agreement or by the terms of reference, as was the case before the Supreme Court in Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others, . But the facts involved in this case do not warrant any such express limitation or direction on the arbitrator.

12. That being the position, I hold that the arbitrator did not exceed his jurisdiction in making the said two awards and accordingly, this application is bound to be and is hereby dismissed with costs.

13. The result, therefore, is that the respondent National Builders is entitled to judgment upon the said two awards with interest at the rate of 6 P. C. Per Annum from the date of the decree and is also entitled to costs of and incidental to the filing of the said two awards.