
(1963) 04 CAL CK 0011
In the Calcutta High Court
Case No : Award Case No. 467 of 1962

Union of India (UOI)	Vs	APPELLANT
Salween Timber and Construction Co. (India) and Another		RESPONDENT

Date of Decision : 05-04-1963

Acts Referred:

Arbitration Act, 1940 — Section 13, 16(1), 2

Citation : AIR 1964 Cal 240

Hon'ble Judges : A.N. Ray, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.N. Ray, J.—This is an application for setting aside an Award. The petitioner is the Union of India. By an agreement dated April 8, 1957 the respondent Salween Timber and Construction Co. (India) agreed to supply certain quantities of timber at certain rates mentioned therein. Disputes and differences arose between the parties. In accordance with the Arbitration Agreement disputes were referred to the Arbitration of Sri A. K. Gupta. The Award is dated July 20, 1962. The Award is annexed to the petition and marked with the letter "D". The Award is inter alia as follows:

"I hereby award that the respondent, Union of India, at present represented by the Sleeper Control Officer, South Eastern Railway, Calcutta, do forthwith pay to the claimant, the Saiween Timber and Construction Co. (India), 32/1, Dalhousie Square, South Calcutta, the sum of Rs. 34,971.51 nP. only being the amount due to claimant together with interest thereon at the rate of 6 per cent per annum from June 3, 1958 to June 3, 1962 amounting to Rs. 8,393/- only etc. etc. aggregating Rs. 63,83/.01 nP.

2. On August 4, 1962 the Timber company assigned the Award in favour of the Banking company. A copy of the assignment is annexed to the petition and marked with the letter "A".

3. On January 14, 1963 a notice u/s 14(2) of the Arbitration Act was served upon the petitioner.

4. Counsel on behalf of the petitioner impeached the Award on these grounds. First, that the contract was repudiated on June 3, 1958 and the Arbitrator was caned upon to enter the reference by letter dated March 12, 1962, and the Arbitrator has awarded interest from June 3, 1958 to June 3, 1962. It is therefore contended that the Arbitrator has awarded on a claim which is barred by limitation. Secondly, it is contended that the Arbitrator has awarded interest which amounts to interim interest of the nature provided in Section 34 of the CPC and that the Arbitrator has no jurisdiction to do the same. In any event the Award in regard to interest should be set aside. Thirdly, it is contended that the contractor asked for Arbitration against the President of India but the Award is made against the Union of India. It is contended that the proceedings which were set in motion rendered the proceeding void ab initio.

5. The Award shows that interest has been awarded from June 3, 1958 to June 3, 1962. As to whether the claim is barred by limitation or not depends on the facts and circumstances of this case. All that happened before the Arbitrator. The Arbitrator heard the parties and gave his verdict. It is contended on behalf of the respondent that no portion of the claim was barred by limitation because of a case of trust having been made by the respondent against the petitioner. I am unable to hold that there is any error of law appearing in the face of the award. It cannot in my opinion be said that the Arbitrator has on the face of the Award stated any proposition of law that a claim which is barred by limitation has yet been given effect to by the Arbitrator. The Arbitrator is to judge all facts and all legal contentions advanced by the respective parties. He can go right or wrong. I am unable to accede to the contention on behalf of the petitioner that the Award is bad on the ground of limitation of claim made by the respondent Timber company.

6. As to the second contention counsel for the petitioner relies on the recent decision of the Supreme court Seth Thawardas Pherumal Vs. The Union of India (UOI), . it was held there that an Arbitrator is not a Court within the meaning of the Code and therefore an Arbitrator cannot award interest after the suit on the analogy of Section 34 in the Present case the Timber company filed its statement of claim and claimed interest at the rate of six per cent. That will appear from the statement of claim. Annexed to the Affidavit in opposition is a notice dated May 28, 1958 written by the Timber company to the Sleeper Control Officer. In that letter the Timber company claimed interest under the Sale of Goods Act. Counsel for the petitioner contended extracting from that letter of the Timber company its claim for interest under the Sale of Goods Act that such a claim could be entertained only by Court and therefore the Arbitrator was unable to award any interest. I am unable to accept the contention of the petitioner. The claim for interest is a part of the disputes and differences between the parties and it will appear in Seth Thawardas Pherumal Vs. The Union of India (UOI), that

interest can be awarded if there is a debt and if the debt is payable at a certain time and if there has been a demand of interest. Counsel for the respondent relied on an unreported decision in Award case No. 9 01 1961 (Cal), Union of India v. Salween Timber and construction (India), where the Arbitrator had made an Award for interest and that portion of the Award was challenged. The Award was upheld inasmuch as the claim for interest rested there on a certain sum which was payable at a certain time and that there was a demand for interest. All these conditions are fulfilled in the present case. Furthermore, it is within the province of the Arbitrator to deal with such a claim. I do not find any material to hold that the Award of interest is wrong.

7. The third contention on behalf of the petitioner that the proceedings were void ab initio is rounded by relying on the letter dated March 12, 1962 written by the Timber company to the Arbitrator. It is true that in that letter the Timber company stated that By agreement between the President of India and the Timber company it was agreed that disputes and differences would be referred to Arbitration and that the Timber company called upon the Arbitrator to constitute a Court and to send notice or notices to the office of the respondent the President of India. A statement of claim was filed by the Timber company. That statement was answered by the Union of India. The appearance was by the Union of India. The Award is made against the union of India, I am therefore of opinion that there is no substance in the contention of the petitioner.

8. The fourth contention which was advanced was that the assignment of the Award was bad and the taking out of notice by the assignee is bad. I am of opinion that taking out of notice is not a ground for setting aside the Award. As to whether the assignment is valid or not I do not wish to express any views. For these reasons I am of opinion that there is no substance in any of the contentions advanced. The petition is dismissed with costs.