

(2005) 08 DEL CK 0018
In the Delhi High Court
Case No : OMP 336 of 2001

Union of India (UOI)

APPELLANT

Vs

Sham Sunder

RESPONDENT

Date of Decision : 11-08-2005

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 28(3), 34

Citation : (2005) 08 DEL CK 0018

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : Jagjit Singh and Pranay Dwivedi, for the Appellant; P.N. Kumar and Anurag Kumar, for the Respondent

Judgement

R.C. Jain, J.—Union of India through Divisional Engineer, Northern Railway has filed this application/objections u/s 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award of the Arbitral Tribunal dated 20.6.2001.

2. Disputes/differences arose between the parties in connection with a work contract of deep screening of stone ballast up to cess level etc. for a length of 12.25 Kms in section of AEN/N Railway/Meerut Cantt and were referred to the Arbitral Tribunal of R.N. Singh, Dy.CE/Const./N.Railway, Patel Nagar, New Delhi and Smt. Shalini Darbari, Dy.FA and CAO/Const./N. Railway, Kashmeregata, Delhi, who in turn appointed Shri P.K.Jain, Dy.CE/Const/Design/N.Railway, Kashmeregata, Delhi as the presiding Arbitrator. The Arbitral Tribunal entered the reference on 20.3.2000. The contractor filed four claims before the Arbitral Tribunal. Claim No. 2 was in two parts. Claim No. 1 was towards final bill and security deposit amounting to Rs. 2,50,000/- and the Tribunal has allowed the said claim partly in sum of Rs. 1,93,296/-. Claim No. 2(a) was in the sum of Rs. 78,720/-, the balance payment for unloading of PRC Sleepers from Railway wagons, and the Tribunal has given a Nil award against the said claim. Claim No. 2(b) was for a sum of Rs. 2,15,280/- in connection with leading of released P.Way material from the site to the PWI/Store under relevant SOR item and the

Tribunal has awarded a sum of Rs. 1,75,000/- against this claim. Claim No. 3 related to litigation charges and the Tribunal has awarded a sum of Rs. 8,000/- towards litigation expenses, but has not allowed claim No. 4 in regard to grant of interest.

3. The award of the Arbitral Tribunal is sought to be challenged, inter alia, on the grounds that it is bad in facts and law and contrary to various provisions of the Arbitration and Conciliation Act. The award against claim No. 1 is stated to be against the terms and conditions of the agreement; the award against claim No. 2(b) for alleged transportation of released permanent material from site to PW1 Store is sought to be challenged on the ground that the said claim has been allowed by the Arbitral Tribunal on the basis of some other agreement(s) of similar nature which the Arbitrator could not do and as the parties were governed by the terms and conditions of the specific agreement entered into between the parties rather than by similar agreements entered with other contractors; the grant is against the specific conditions of the agreement; the Arbitrator had no jurisdiction to go beyond the terms of the contract which did not provide payment of any amount towards transportation of released permanent material from site to PW1 Store.

4. In the reply the respondent/contractor has controverted the objections and grounds pleaded by the applicant/objector and has maintained that the award of the Arbitral Tribunal is legal, final and binding on the parties and is not liable to be set aside on any ground(s).

5. I have heard Mr. Jagjit Singh, learned counsel representing the objector and Mr. P.N. Kumar, learned counsel appearing on behalf of the respondent/contractor and have given my thoughtful consideration to their respective submissions.

6. During the course of hearing Mr. Jagjit Singh has not assailed the award of the Arbitrator against claim No. 1 and rightly so because the Arbitral Tribunal has given cogent reasons for accepting the claim of the petitioner, though partly.

7. Mr. Jagjit Singh, learned counsel for the petitioner has, however, urged that the award of Rs. 1,75,000/- in connection with the leading of released P.Way material from the site to the PW1 Store under relevant SOS item is wholly contrary to the special conditions of the agreement and has invited the attention to clauses 1.15 and 1.16, which read as under: G??G??1.15 New materials viz. Fittings and fastenings will be supplied by the Rlys. to the contractor at PWI-Store and contractor will have to make his own arrangement for leading the same to site of work. Nothing extra will be paid for any lead, lift, crossing of track etc. except as provided in Schedule, PRC Sleepers shall be made available near the site of work by Rly. Wagons, unloading to be done by Contractor.

"16 The Contractor is responsible for leading back and stacking all the released materials viz. sleepers and fittings, fastenings from the site of work to the PWI store and nothing extra will be paid for any lead, lift crossing of track etc. except as provided in Tender schedule."

8. The Arbitral Tribunal has, in fact, taken notice of these conditions in their award but still ignored the same and rather ventured to place reliance on other agreements of the division such as Agreement No. 128-W/28/KUN/52/97-98/W-1, Agreement No. 16-PNP/DSE-1/W-1 and 128-W/268/94-95/W-1, which revealed that the item of transportation of released material from the site to the PWI Store is separately payable in spite of contradictory language in the general description of item No. 1 which was being copied in all agreements, probably due to inadvertence. The core question, Therefore, is as to whether the Arbitral Tribunal could disregard the terms and conditions of the agreement between the parties and on the strength of some other agreements of the division could allow the claim of the contractor on that account. In the opinion of this Court, the answer would be a plain "No" because Section 28(3) of the Arbitration and Conciliation Act clearly provides that in all cases the Arbitral Tribunal shall decide the matter in accordance with the terms of the contract. In the case in hand the Arbitral Tribunal has consciously ignored the terms of the agreement and have allowed the claim of the contractor based on certain other agreements which might contain different terms and conditions. If the agreement between the parties did not provide for payment of any amount for this item e.g. the work of transportation of released material from site to PWI Store and rather specifically prohibited the same, the Arbitral tribunal was not at all justified in awarding any amount under this head. The award of the Arbitral Tribunal against claim No. 2(b) has, Therefore, to be set aside.

9. In the result, the objections u/s 34 of the Union of India are partly allowed and the award of the Arbitral Tribunal, so far as it has awarded a sum of Rs. 1,75,000/- against claim 2(b), is hereby set aside.