

(1960) 10 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 43 of 1960

Union of India (UOI)	Vs	APPELLANT
Shambhu Dial Piare Kishan		RESPONDENT

Date of Decision : 14-10-1960

Acts Referred:

Arbitration Act, 1940 — Section 16(1), 30

Citation : AIR 1961 P&H 204

Hon'ble Judges : Shamsheer Bahadur, J

Bench : Single Bench

Advocate : K.S. Kawatra, Asst. Advocate General, for the Appellant; Jagan Nath Talwar, for the Respondent

Final Decision : Dismissed

Judgement

Shamsheer Bahadur, J.—This appeal has been preferred by the Union of India from the order of the Senior Subordinate Judge, Jullundur, making the award dated 29th of June 1959 of Brigadier Annon Singh as arbitrator a rule of the Court.

2. The respondents entered into a contract with the appellant, Union of India, for a period of one year commencing from 1st of April 1947 for hired animal transport for Jullundur. It appears that the communal disturbances of 1947 impeded the execution of the contract and the respondents approached the army authorities as early as 24th of June 1947 for modification of its terms with regard to rates. The respondents were informed on 20th of November 1947 that the question of enhancement of rates would be given consideration after the contract had been executed.

The respondents, as suggested by the Union of India continued with the work on contractual rates and after its execution the rate was enhanced by 100 per cent. In consequence of this decision a sum of Rs. 16,155-2-0 was paid to the respondents. As the Deputy Commissioner of Jullundur had reported on enquiry

by the Area Commander that the respondents were entitled to an enhancement of at least 300 per cent according to the prevailing rates, a demand was made by the contractors for increase of rates according to the report of the Deputy Commissioner.

Computing their claim on this basis, the respondents put in a claim of Rs. 63,200-13-6 and deducting the sum of Rs. 16,155-2-0 already paid to them, a demand was made for a sum of Rs. 47,045-11-6. They also claimed interest at the rate of 6 per cent per annum. An application u/s 20 of the Indian Arbitration Act was preferred by the respondents on 30th August, 1957 in the Court of the Senior Subordinate Judge, Jullundur. The Union of India did not offer opposition to this petition and the respondents agreed to the proposal which originated from the Union of India, that Brigadier Anoop Singh as Arbitrator would settle the dispute which had arisen between the parties.

The award was made by Brigadier Anoop Singh on 29th of June 1959 whereby a sum of Rs. 20,375-11-5, inclusive of interest, over and above the sum of Rs. 16,155-2-0, which had already been paid, was directed to be paid to the respondents by the Union of India. Both sides felt dissatisfied with the award and one side filed objections and the other an application under Ss. 15 and 16 of the Indian Arbitration Act. Both the objections and the application have been dismissed by the learned Senior Subordinate Judge, who has affirmed the award made by the arbitrator and has made it a rule of the Court.

3. In the appeal preferred by the Union of India, two points have been raised by the learned counsel, Mr. Kartar Singh Kwatra, It has been urged, in the first instance, that the claim of the plaintiffs was barred by time and secondly, that the respondents were estopped from claiming anything more than Rs. 16,155-2-0, after having received payment of this amount in full and final settlement. It is contended by the learned counsel for the appellant that keeping these objections in view the arbitrator in awarding the amount in favour of the respondents has fallen into an error of law which is manifest on the face of it.

4. It cannot be disputed that an arbitrator is competent to decide both questions of law and fact when they are referred to him. The question which falls for decision is whether an error of law, if any, has been committed by the arbitrator, and if so, if that error is manifest on face of the award. The law on the subject has been succinctly summarised in *Russell on Arbitration* (16th Edn.) at p. 299 as under:

"Where an arbitrator makes a mistake either in law or in fact in determining the matters referred, but such mistake does not appear on the face of the award, the award is good notwithstanding the mistake, and will not be remitted or set aside.

The general rule is that, as the parties choose their own arbitrator to be the judge in the disputes between them, they cannot, when the award is good on its face object to his decision, either upon the law or the fact. In this respect the Courts do not recognise any distinction between the awards of legal and of lay

arbitrators.

5. In AIR 1923 66 (Privy Council) , the Judicial Committee of the Privy Council gave a ruling on this matter at 1923 AC 487 : AIR 1923 PC 69 in these words:

"An error in law on the face of the award means, in their Lordships' view, that you can find in the award or a document actually incorporated thereto, as for instance a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party that opens the door to seeing first what the contention is, and then going to the contract on which the parties' rights depend to see if that contention is sound. Here it is impossible to say, from what is shown on the face of the award, what mistake the arbitrators made."

6. Mr. Kwatra has drawn my attention to the proceedings before the arbitrator on the first day where the contentions of both the parties on the two questions of law formulated aforesaid were elucidated. It was pleaded by the respondents before the Arbitrator that the payment of Rs. 16,155-2-0 by the Union of India amounted to an acknowledgement which entitled the claimant to extend the period of limitation. The arbitrator was also alive to the second objection which has now been raised on behalf of the Union of India that the claimants were estopped from making this claim having received the payment of Rs. 16,155-2-0 in full and final settlement.

The reply of the respondents to this assertion was that the payment was taken without any prejudice to their claiming higher amount. There is nothing decisive or conclusive in the documents to support the contention of either party though the award does not make any mention of these contentions it must be assumed that the arbitrator had applied his mind to these matters in coming to his decision.

7. It seems to me that the errors of law which have formed the foundation of the Union's contention in this appeal are, in the first place, not apparent in the award itself and it is not legitimate to look into the proceedings of the Arbitrator to see what questions were raised before him. In any event, the answer to these questions fell within the purview of the arbitrator who is both a judge of law and facts. It is well to remember that the Union of India never raised the question of limitation in the reply filed by them to the claimant's application u/s 20 of the Indian Arbitration Act.

8. A large number of authorities were cited at the Bar by the learned counsel but the legal position is now firmly settled by the recent Supreme Court decision in *Alopi Parshad and Sons Ltd. Vs. Union of India (UOI)*, . Reliance was placed in *Alopi Parshad and Sons Ltd. Vs. Union of India (UOI)*, on Lord Dunedin's observations in the Privy Council decision to which reference has been made above, 1923 AC 480 : (AIR 1923 PC 60). Mr. Justice Shah, in his judgment, stated the law to be in these terms:

"The award of an arbitrator may be set aside on the ground of an error on the face thereof only when in the award or in any document incorporated with it, as for instance, a note appended by the arbitrators stating the reasons for his decision, there is found some legal proposition which is the basis of the award and which is erroneous. If, however, a specific question is submitted to the arbitrator and he answers it, the fact that the answer involves an erroneous decision in point of law, does not make the award bad on its face so as to permit of its being set aside.

In such a case, the decision being of Arbitrators selected by the parties to adjudicate upon those questions, the award will bind the parties".

9. Applying these legal principles to the facts of this case, the award does not disclose any manifest error either legal or factual and it is impossible to say that it was based on any erroneous proposition of law.

10. In this view of the matter, the appeal fails and is dismissed. The parties are, however, left to bear their own costs.