

(2008) 09 DEL CK 0324
In the Delhi High Court
Case No : CS (OS) 881A of 1989

Union of India (UOI)

APPELLANT

Vs

Surinder Kumar Khosla and Co. and Another

RESPONDENT

Date of Decision : 04-09-2008

Acts Referred:

Arbitration Act, 1940 — Section 13, 14, 14(2), 17, 30
Limitation Act, 1963 — Article 119

Citation : (2008) 152 DLT 782

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : R.V. Sinha and Amresh Kumar, for the Appellant; Amarjit Singh and R.C. Bhatia, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—In these proceedings under Sections 14 and 17 of the Arbitration Act, 1940, the correctness and legality of an award dated 28th February, 1989, has been called into question. The plaintiff, Union of India questions the correctness in so far as the award does not allow the full amount of claim made by it.

2. The brief facts necessary for purpose of this case are, the plaintiff entered into an agreement whereby the defendant (supplier) was to supply firewood charcoal and lime quick at the Supply Depot ASC, Delhi Cantonment, at agreed rates. The Union of India alleged that the defendant/supplier defaulted from the terms of the agreement and did not make his supplies as agreed in October 1987. It was alleged that defendant was called upon to resume supplies in accordance with the agreed schedule but without any success. In these circumstances, the dispute was referred to arbitration by one Lt. Col Azim Ahmad Chida.

3. The Sole Arbitrator, by his award dated 28.02.1989 directed that an amount of Rs.6,39,796.88 as mentioned in the statement of claim should be recovered from the defendant/supplier. The arbitrator in his two page award reasoned that the

material on record showed that the supplier was granted fair and reasonable opportunity to resume supply and that every time the plaintiff resorted to local purchase of the items and secured the rates from the market, it sent quotations to the defendant. The defendant admittedly submitted the quotation only once which was found to be the lowest.

4. The arbitrator held inter alia as follows:

4. From the perusal of the material and evidence available on record, it is clear that the Respondent defaulted in making the supplies; that the claimant had no other alternative but to procure the supplies from the market at the rates prevailing at the time; and that the Respondent was given fair and reasonable opportunity to resume the supplies which he failed to do. Under the circumstances, I feel that due to respondents default, the Claimant had to resort to the local purchase in order to keep the troops supplies with the essential necessities. The entire responsibility of suspending the supplies rests on the respondent and as such they should bear the loss as per the terms of the contract. In my opinion the Claimant is entitled to recover the losses sustained by the State due to making of local purchases at the risk and cost of the respondent in accordance with the terms of the contract.

5. There is no substance to the claim of the respondent that sufficient reserves were stocked. On the other hand it is evident from documents available that the Claimant had time and again given ample opportunity to the respondent to stock the reserves.

6. There is also no truth in the claim of the respondent that payments were not made on time. I have checked the documents and I am convinced that payments were made on the day the respondent had submitted his complete bills along with the connected documents.

7. An amount of Rs.639796.88, as detailed in the statement of claim of the Claimant be recovered from the Respondent aforesaid to indemnify the State against the losses caused due to the Respondent's default.

The parties shall bear their own expenses of this arbitration.

5. The Union of India has challenged the award u/s 30/33 of the Act; it alleges that the arbitrator misconducted himself in not considering that the total amount of claim was Rs. 7,37,284.88 which was recoverable and that no attempt was made by him to explain reason why the lower figure of Rs.6,37,248.88 was held to be payable by the defendants. The Union of India also contends having made an amendment to the claim during the pendency of the arbitration proceedings in January 1989, which however, is not reflected in the award.

6. Learned Counsel for the defendant submitted that this Court should not exercise its jurisdiction and adjudicate on the disputes raised or even make the award Rule of the Court to the extent it is available on the file. Learned Counsel contended that the entirety of the proceedings which include the pleadings of the

parties, documentary evidence and the depositions adduced before the arbitrator have not been made available as is evident from the order sheet/proceedings of various dates. Counsel took the Court through several order sheets made in this case right from the inception i.e. 1989 and submitted that despite repeated adjournments neither the Union of India nor the arbitrator had made the relevant records available.

7. Learned Counsel relied upon Section 14 of the Arbitration Act (hereinafter referred to as 'Act') and contended that this Court can take cognizance of arbitral award and proceed to make the award Rule of Court only in accordance with the procedure outlined in Section 14(2) of the Act, which in turn contemplates filing of the entire record only after which notice could be issued and objections heard. It was submitted that if these parameters are kept in mind, there is non-compliance with the substance of Section 14(2) of the Act, inasmuch as no arbitral proceedings are before the Court. If such records were made available, and notice issued on such basis, the defendant/respondent would have had the opportunity of questioning the award. In the absence of these mandatory conditions, it has to be necessarily held that due to material non-compliance with Section 14(2) of the Act, the Court should take no cognizance of merely the award and should reject the petition.

Learned Counsel relied upon the judgment of this Court in Union of India Vs. Vishkarma Sffilpi and Another, and the judgment of the Madras High Court reported as Engineering Construction Corporation, Ltd. Vs. Madras Port Trust, Madras and Another, .

8. It is evident from the above discussion that the award in this case was made on 28.02.1989. Soon after that, this Court directed the present petition to be registered on 04.04.1989. The subsequent order sheets dated 25.05.1989 and 11.09.1989 show that the Court was apprised of the fact that the arbitrator had filed only the original award. On 24.11.1989 the Court issued the following order:

S. No. 881-A/89

It is stated by the counsel for the petitioner that except the award there are no other proceedings and as such the award filed may be treated as one filed along with the proceedings.

Let notice of the filing of the award be issued to the parties without process fee for 15th February, 1990 calling upon them to file objections against the award if any in accordance with law.

9. Section 14 of the Act reads as follows:

14. Award to be signed and filed " (1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3) Where the arbitrators or umpire state a special case under Clause (b) of Section 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of, the award.

10. It is a matter of record that till date the arbitrator has not filed the pleadings in the arbitration or proceedings recorded by him, so far. The Union of India, which is objector, has also made no attempts to place any such records on the file of this Court.

11. The effect and meaning of Section 14 was first considered by the Supreme Court in the judgment reported as Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others, . The Court there was concerned with the question of limitation in filing objections. The Court also considered the meaning of the expression "notice" and held that it did not necessarily mean communication in writing and that the expression "give notice" in Section 14(2) of the Act simply meant giving intimation of filing of the award which was to enable the parties to take further steps. The court rendered its decision in the context of Article 158 of the Old Arbitration Act. Subsequently in the judgment reported as Secretary to Government of Karnataka and another Vs. V. Harishbabu, it was held that if an award is filed by one of the parties, the authority of the arbitrator to the party concerned to file it should be established and the onus lies on such party authorized by the arbitrator to file an award. The Court considered its previous rulings in Ningashetti case (Supra) and held that period of limitation for filing objections for setting aside the award starts from the date of service of notice, issued by the Court upon the parties regarding filing of the award u/s 14(2). The Supreme Court made a distinction between mere presence or awareness of the representative or counsel of one party before the Court, and actual issuance of notice which meant taking cognizance of the case, by it, it was held in the facts of that case that the mere lodging of the award in the Court with the further knowledge of such lodging on the part of the respondent did not imply issuance of notice.

12. The real issue in this case is whether the notice u/s 14(2) was issued in these proceedings on 24.11.1989. The judgment of the Madras High Court, in the opinion of this Court is an authority on this point. The Court there was concerned with whether in the absence of records, the issuance of notice would define the period of limitation under Article 119 (b) of the Limitation Act. The Court in that context held as follows:

(14) When objection is raised as to the filing of the award, the Court has to pronounce judgment declaring that the award has been properly filed and also issue notice of the filing of the award and only then limitation would commence to run. If the depositions and documents are not filed, and if no objection is taken and a decree is passed in terms of the award, later on, the award cannot be attacked on the ground that Section 14(2) of the Act, the depositions and documents are not filed along with the award. But a party, at the time of filing of the award is entitled to insist upon the Arbitrator filing the depositions and the documents and the Court is bound to hear such objections and pass some order and it is only then the stage would reach to the filing of the award.

17. If an award had been filed by the Arbitrator himself without any proceedings by either of the parties, u/s 14(2) calling the Arbitrator to file the award mere knowledge of the filing of the award would not be sufficient and the Court should give notice in writing in conformity with Section 14(2). But even in the case of an arbitration without the intervention of the Court if a proceeding is initiated by either of the parties calling upon the Arbitrator to file the award and if in such proceeding when both sides are represented to counsel the Arbitrator files the award in Court to the knowledge of the respective counsel, notice u/s 14(2), thereafter, may not be necessary.

13. In this case the order dated 24.11.1989 itself makes it apparent that the arbitration records were absent. Neither were the depositions, nor pleadings, nor even order sheet or proceedings in arbitration produced before this Court. The Court no doubt issued notice to the defendant, yet a facial reading of Section 14(2) suggests that notice has to be issued after the court receives a copy of the award together with depositions and documents filed in arbitration proceedings are lodged in Court. These pre-conditions have not been fulfilled so far. The Union of India which filed the present proceedings has not taken care to ensure that in case for any reason such arbitral proceedings and depositions etc. are not there, leave should have been sought to produce copies of the same to place them on the record of the court file. The Court therefore was left with no option but to issue notice to the arbitrator who at one stage wrote back saying that he had filed whatever he had in his possession. The order sheet also reveals that the arbitrator is no longer residing in India.

14. Section 14(2) of the Act was wanted as a measure of public policy to ensure that the Court should take into account the entirety of arbitral proceedings including depositions, pleadings and the orders or minutes of arbitration records, before proceeding to pronounce its legality and giving its imprimatur by making award the Rule of Court. The quintessence of legal proceedings are their regularity, testified and evidenced by the record. This is the objective underlying Section 14(2) which enjoins the Court to issue notice after the award and the relevant arbitral record are placed on the record. Such being the pre-condition of the enactment before which even notice cannot be issued, the absence of the record in the opinion of this Court has proved fatal to this case.

15. The Court had adjourned the matter on numerous occasions, to enable the Union of India to take appropriate steps, which are not forthcoming. In the circumstances, the Court cannot proceed further, since the notice issued in 1989, cannot be treated as one in accordance with law u/s 14(2).

16. In view of the above reasons, the Court is of the opinion that no relief can be granted. The suit is accordingly dismissed.