Union of India Vs Messrs. K.D. Mehta Manohar Singh and Co.

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 24, 1964

Acts Referred: Arbitration Act, 1940 â€" Section 14(2)

Hon'ble Judges: P.D. Sharma, J

Bench: Single Bench

Advocate: R.S. Narula with Mr. S.S. Chadha, for the Appellant; R.K. Bhutani, for the Respondent

Final Decision: Allowed

Judgement

P.D. Sharma, J.
The Governor-General of India in Council as representing the North Western Railway by an agreement dated 18th

November, 1944, let out to Messrs K.D. Mehta Manohar Singh and Company applicants the work of porterage at various goods sheds and

railway stations within the jurisdiction of Delhi Division. The applicants executed the above works from 15th may, 1944, to 31st May, 1956. As

dispute arose between the parties in regard to the payment claimed by the applicants and denied by the Union of India successor in interest of the

Governor-General of India in Council, Shri M.K. Kaul, the then General Manager of the Northern Railway, in terms of clause (sic)7 of the

agreement was appointed the sore arbitrator in the matter. The arbitrator after hearing the parties and recording their evidence on 8th August,

1960, awarded Rs. 17,060/- only to the applicants, but he did not file the award in the Court. The applicants, therefore, lodged the present

application u/s 14(2) of the Indian Arbitration Act with a prayer that the arbitrator should be directed to file the award in the Court. The arbitrator

in response to the notice of the Court produced the award in the Court.

2. The applicants attacked the validity of the award on the grounds that the arbitrator had ceased to be the General Manager of the Northern

Railway before 8th August, 1960, when be gave the award and as such he had no jurisdiction to give the same, that he failed to exercise the

jurisdiction which vested in him as he omitted to determine their claim for pre-partition loading and unloading works done by them at railway

stations within the area of Delhi Division before 15th August, 1947, and that he misconducted himself by ignoring principles of natural justice while

calculating their dues for works done at Hazrat Nizamuddin railway station from July, 1955 to May, 1956. They also said that the award was given

by the arbitrator after the expiry of the period of limitation which had not been extended by a competent Court earlier and for this reason also it

was invalid in law.

3. The Union of India-respondent maintained that under clause 17 of the agreement it was not necessary that Mr. M.K. Kaul should have been the

General Manager of the Northern Railway on the date of giving the award. He should have only been the General Manager of the Northern

Railway on the date the dispute between the parties was referred to him for arbitration. They further urged that the applicant"s claim for the works

done at the various railway stations within in the jurisdiction of the Delhi Division before 15th August, 1947, had been properly determined and that

the principles of natural justice had been observed by the arbitrator while calculating the dues of the applicants for the works done by them at

Hazrat Nizamuddin railways station from July, 1955 to May, 1956. They also contended that the arbitrator could not finish the proceedings before

the expiry of the period of limitation because of an adjournment sought by the applicants to agrue the matter before him. They prayed that this time

might be extended now to validate the award. The trial Judge framed the following issue:

Whether the award is liable to be set aside on the grounds mentioned in the objection petition? (This issue also includes the point as to whether the

said grounds exist?).

He found that Mr. M.K. Kaul was not the General Manager of the Northern Railway when he gave the award and that under clause 17 of the

agreement entered into between the parties it was necessary that he should have been General Manager of the Northern Railway at the time the

dispute between the parties was referred to him and also when he gave the award. He further found that the arbitrator did omit to determine the

dispute between the parties about the works done by the applicants at the various railway stations before 15th August, 1947, and further that he

assessed the amount of compensation payable to the petitioners for the works done at Hazarat Nizamuddin railway station during the crucial

period in an arbitrary way which was not permissible under the law. He, however, observed that it was clear from the arbitration proceedings held

on 4th June, 1960, that the evidence was concluded and the applicants themselves desired a longer date for arguments and so it was on the desire

of the applicants that a long date was given and the proceedings could not be concluded within the stipulated time. He went on to remark that he

would have extended the time had the award not been vitiated on other grounds. In the result the objection petition put in by the applicants was

allowed with costs and the award set aside. The Union of India has come up in appeal to this Court.

4. The learned counsel for the appellant maintained that a plain reading of clause 17 of the agreement indicated in unmistakable terms that it was

not necessary for Mr. M.K. Kaul to be General Manager of the Northern Railway on the date of giving the award. The only condition attached is

that he should have been the General Manager on the date the matter in dispute between the parties was referred to him for arbitration. This clause

runs as under:

In the event of any difference of opinion between the railway and the contractors as to the respective rights and obligations of the parties

hereunder, or as to true intent and meaning of these presents or any articles or conditions thereof, such differences of opinion shall be referred to

the General Manager for the time being of the North Western Railway, who after hearing such statements or explanations as the parties wish to lay

before him shall deliver his decision thereon and such a decision shall be taken and deemed to be final and conclusive between the parties thereof.

The words used are ""such differences of opinion shall be referred to the General Manager for the time being of the North Western Railway"". It

admits of one interpretation only, i.e., the arbitrator should be the General Manager at the time the dispute is referred to him for arbitration and not

necessarily that he should also be the General Manager at the time of giving the award. A similar question came up for decision before the Orissa

High Court in Union of India v. Ch. Radhanath Nanda AIR 1961 Ori 144, where it was observed:

The question whether the words ""shall be referred to the arbitration of the Superintending Engineer of the Circle for the time being"" in the

arbitration clause of the agreement should be construed to mean that the Arbitrator must be the Superintending Engineer of the Circle concerned

not only on the date on which reference was actually made to him, but must also continue to be so until the date of his passing the award, depends

on a construction of the expression ''for the time being'' in that clause.

Thus where parties to the contract knew fully well that officers of the Union Government were liable to transfers to distant parts of India at short

notice, they were also aware that the arbitration proceeding may take some time and thus with full knowledge of all these facts the parties omitted

to make any provision in the agreement as to what should be done in the event of the Superintending Engineer of the Circle for the time being to

whom the reference was originally made being transferred elsewhere and being succeeded by another officer, it must be held ""that the words"" for

the time being ""in that clause refer only to the date on which the reference was made to the Arbitrator, and cannot be extended to include the date

on which the actual decision was given by the Arbitrator. In other words if on the date of reference the Arbitrator was the Superintending Engineer

of the Circle within whose jurisdiction the work in question was completed, he may dispose of the reference even though, he may be transferred

elsewhere prior to his giving his decision.

I am in respectful agreement with the above observations which fully apply to the instant case. The learned counsel for the respondents relied on a

decision of this Court in Daulat Ram Rala Ram Vs. State of Punjab, , where Chopra, J. while interpreting a clause in an arbitration agreement

which provided that ""in the matter of dispute, the case shall be referred to the Superintending Engineer of the Circle"" observed :

As the nomination of the arbitrator is not by name, but by virtue of his office, on the transfer or retirement of the Superintending Engineer entitled to

act, his successor is to take his place as the arbitrator.

It will be seen that the agreement between the parties in the cited case was not in the same terms as in the instant case. There was no provision that

the dispute would be referred to the Superintending Engineer for the time being which exists in the present case. It is correct that the dispute

between the parties was initially referred to Mr. Mathur who was the General Manager of the Northern Railway at the time and on his transfer the

dispute was again referred to the arbitration of Mr. M.K. Kaul but this did not alter merits of the case. Parkash Narain (R.W. 1) explains that it

was for the convenience of the parties that after the transfer of Mr. Mathur, Mr. M.K. Kaul was appointed as arbitrator. The parties accepted the

appointment of Mr. M.K. Kaul without any objection. In my opinion the mere fact that Mr. M.K. Kaul was not the General Manager on the date

he give the award did not invalidate the same.

5. The learned counsel for the Appellant next urged that the arbitrator could not be said to have omitted to give any decision in regard to the

respondents'' pre-partition claim about the work done at various railway stations before 15th August, 1947. The arbitrator while dealing with this

part of the respondents'' claim observed as under:

As regards the claim of Rs. 37,098.00, this claim as stated by the petitioners originally exceeded one lac and out of this Rs. 80,000,00 to Rs.

85,000.00 have already been received by them after verifications by the Special Pre-Partition Organisation created by the two countries namely

India and Pakistan. This claim of the petitioners relates to Inter-Dominion liability for which separate organisations have been created by the two

Governments viz., India and Pakistan for verifications and payments. Without the necessary verification of the said claim by the Pakistan

Government, the same is not payable to the petitioners. The petitioners have not given data to show as to what was originally due to them and what

actually was paid to them and why the remaining claim remained unpaid and to which station and works it related to. I, therefore, consider that the

petitioner"s claim has received due consideration and payments made from time to time as verified by the Special Pre-Partition Organisation. If any

further amount may still be found due as a result of verification by the Special Pre-Partition Organisation, the petitioners may be paid accordingly.

It will this be seen that thus disputed part of the respondent" claim received the arbitator"s due consideration. The respondents have already

received Rs. 80,000.00 to Rs. 85,000.00. The Special Pre-Partition Organisation established by India and Pakistan jointly has jurisdiction to go

into the claims of contractors of the category of the respondents and the amounts so determined by the Organisation are payable by the country

concerned. In these circumstances the arbitrator could not have done anything better than to hold that the petitioners would be entitled to the

amount found due to them as a result of verification by the Special Pre-Partition Organisation. The learned counsel for the respondents was not

able to point out anything substantial to attack this part of the award.

6. The learned counsel for the appellant went on to urge that the arbitrator after due consideration of the surrounding circumstances correctly held

that Rs. 6,000.00 only were due to the respondents for the works done by them at the Hazrat Nizamuddin railway station. The arbitrator observed

that the respondents" (contractors") labour as well as the supervisory staff of the railway went from New Delhi to Hazrat Nizamuddin by a train

arriving there at about 10.00 hours and in the evening left by a train at about 17.00 hours, while their normal working hours were 9.00 and 17.00

hours. This there was loss of one hour per porter per day. He also averred that in addition there was only one line at Hazrat Nizamuddin and the

wagons for transhipment could not be placed in juxtaposition as at other transhipment stations and due to all this the contractors had to employ

some more labour than if the transhipment work had continued at New Delhi. He assessed this increase in labour of about 25 per cent, and

accordingly awarded Rs. 6,000.00 to the respondents. The arbitrator indeed had taken into consideration all the circumstances prevailing at Hazrat

Nizamuddin railway station when the transhipment of goods was effected there. His assessment of the increase in labour at about 25 per cent,

cannot be challenged on any ground. The learned counsel for the respondents was not able to suggest any other criteria for assessing this increase

in labour. The arbitrator was a judge of both facts and law and his finding on this part of the respondents'' claim indeed cannot be legitimately

assailed.

7. The learned trial Judge had conceded that he would have extended the time for giving the award if in his view the same would not have been

vitiated on any other ground. As already pointed out the arbitrator could not give the award within the stipulated period as the respondents

themselves desired a longer date for arguments. It is commonly admitted that the arbitrator for the first time entered on the reference on 15th

March, 1960, and gave the award on 8th August, 1960. The time for giving the award by the arbitrator is extended up to 8th August, 1960, when

the award was given by him.

8. The other objections mentioned by the respondents in their objection petition against the validity of the award were not pressed by them before

the Court below or this Court and so these have not been noticed here.

9. For the reasons given above, the appeal is allowed and the order of the trial Judge accepting the objection petition of the respondents against

the validity of the award is set aside. Consequently, the award is made a rule of the Court and a decree in terms thereof is allowed to is

respondents against the appellant. The parties are, however, left to bear their own costs.