Government of Karnataka Vs K. Sudhakar Reddy

Court: Karnataka High Court

Date of Decision: Sept. 8, 1992

Acts Referred: Arbitration Act, 1940 â€" Section 17

Citation: (1992) ILR (Kar) 3276

Hon'ble Judges: M. Ramakrishna, J; B.N. Krishnan, J

Bench: Division Bench

Advocate: S.G. Sunder Kumar, for the Appellant; K. Gopal Hegde, for the Respondent

Final Decision: Dismissed

Judgement

Krishnan, J.
The State has preferred this appeal against the order and decree of Civil Judge, Yadgir in Arbitration Case No, 10/90 by

which he made the award passed by the sole arbitrator Sri N.D. Deshpande, a rule of the Court and pronounced judgment according to the award

u/s 17 of the Arbitration Act, 1940 (for short "the Act").

2. The appeal was listed for admission and as both the parties were ready, by consent of the learned Counsel appearing on both sides, the appeal

was taken up for final disposal.

3. The matter relates to the work of ""Construction of Shahapur Branch Canal from KM.29.73 to KM. 35.00 - Reach No. V (Balance work

including structures)"". As a dispute arose between the State and the contractor in respect of the said work, it was referred to the sole arbitrator Sri

N.D. Deshpande, who gave his award dt 5.10.1990 and at the request of the contractor, the arbitrator filed the award in Court and after notices,

to all the concerned and after hearing all the concerned the learned Civil Judge made the award the rule of the Court. It is being aggrieved by the

same, that the State has preferred this Appeal.

4. The learned Government Advocate advanced the following contentions:

Clauses 31 and 32 of the tender agreement prohibited the arbitrator from awarding at any rate, in excess of the tendered rate and therefore, the

award at the rate in excess of the tendered rate for the extra quantity of work turned out by the contractor over and above the tendered quantity is

illegal and the same amounts to misconduct on the part of the arbitrator. The 2nd contention advanced is that in respect of certain other items of

work, the contractor by his letter dt. 10.9.1986 had undertaken to carry out the work beyond the tendered period at a certain rate and that the

items for which the arbitrator has awarded is much higher than the rate at which the contractor has agreed as per his letter dt.10.9.1986 and the

item for which the arbitrator has so awarded is practically similar to the items carried out by the contractor as per his letter dt. 10.9.1986 and

therefore, the arbitrator could not have awarded any amount higher than the rate permissible for the items undertaken by the contractor as per his

letter dt. 10.9.1986. The 3rd contention that was advanced was in respect of the items of work carried out beyond the stipulated date viz.

19.7.1986. The arbitrator has awarded over-head charges taking into consideration the value of the entire quantity of work turned out by the

contractor both during the period agreed upon and the items executed by him beyond the period and the over-head charges could have been given

only taking into account the quantity of work turned out beyond the period. The 4th contention urged was that the arbitrator awarded interest at

18% per annum and under any circumstances, there was absolutely no scope for the arbitrator to have awarded interest at that rate. The last

contention that was urged was in respect of the operative portion which relates to interest and it was urged that it has been so worded that it would

amount to grant of interest on interest already granted.

5. Before taking up consideration of these contentions advanced on behalf of the State, it would be useful to refer to the scope of such a

proceeding and the ambit in which the award of the arbitrator could be attacked. The position in law is fairly well settled by a series of Decisions of

the Supreme Court and the said aspect was considered by the Division Bench of this Court in M.F.A. 650/84, Government of Karnataka v.

Mahalingasetty & Co. after considering all the Decisions of the Supreme Court on the point. Justice M.N. Venkatachaliah (as he then was) in his

inimitable style has referred to the scope of a proceeding in this regard as hereunder:-

An arbitrator is a judge of the choice of the parties. A decision by an arbitrator is not susceptible to interference by the Civil Courts except on

special grounds. An erroneous decision, as the Civil Court may conceive it, does not by itself justify interference. The Civil Courts do not sit in

judgment over the awards of arbitrators as if in an appeal. Evidence accepted and acted upon by the arbitrator cannot be re-appreciated by the

Civil Court, so as to enable it to substitute a conclusion of its own in place of the one reached by the arbitrator. An award can, of course, be

interfered with provided the award is vitiated by misconduct; or suffers from an error of law apparent on the face of the award. The error of law

must be manifest and self-evident and one which is apparent on the face of the proceedings.

In yet another Decision of this Court in M.F.A. 1169 of 1986 , Government of Karnataka v. C.E. Enterprises the same learned Judge has referred

to the scope of these proceedings as hereunder:

Before examining these contentions, it is, perhaps, necessary to recall some principles which guide and regulate Courts'' interference with an

arbitral Award.

An arbitral Tribunal is a domestic Tribunal of the choice of the parties. Its decisions do not admit of interference by Civil Courts except on very

special grounds. The Arbitrator''s power is not taken away or the efficacy and finality of his Award whittled down by reason of any error in the

Award. An erroneous decision of the Arbitrator is as much binding as a correct one. Courts do not sit in judgment over the Awards as if in appeal.

An Award can be interfered with when it is vitiated by misconduct or suffers from errors of law manifest on the face of the record. Misconduct in

this context has no pejorative implication in that it has no connotation of any moral lapse. It is legal misconduct and can be said to arise if the

Arbitrator, on the face of the Award, arrives at conclusions inconsistent with, and unsupportable on, his own reasoning and findings; or arrives at a

decision by ignoring material documents which have a bearing on the controversy. It is no misconduct on the part of an Arbitrator to come to an

erroneous decision whether his error is one of law or fact. There is no appeal from his verdict. The Court cannot review his Award and correct any

mistake in his adjudication, unless illegality of the Award is apparent on its face.

That this is the position in law has not been disputed on either side. Having an idea of the limited scope of this proceeding, we could now proceed

to examine the several contentions advanced on behalf of the State.

6. The main contention advanced by the learned Government Advocate is based upon the following portion in Clause 31 of the Tender Agreement:

However, the revised rate for the excess quantity shall not exceed the item rate quoted.

In order to understand the scope of this portion in Clause 31, it is better that we have an idea of the entire clause which reads as hereunder:

Clause 31 : Schedule of Quantities:

Variation in the quantities of work in the bill of quantities shall not vitiate the contract. The rates quoted for the individual items shall apply for the

quantities of work increased or decreased by not more than thirty percent for each of the items. Should the quantities of work actually involved

under any item exceed the quantities provided in that tender by more than thirty percent the rate for the excess over thirty percent of the tender

quantity may be revised in accordance with the procedure indicated under clause ""Extra items"". However, the revised rate for the excess quantity

shall not exceed the item rate quoted. Should the quantity of work actually involved under any item be reduced by more than thirty percent of the

quantity provided in the tender, the bid unit price for the affected item may be revised in accordance with the procedure indicated under ""Extra

items"". However, the total cost of such item should not exceed the cost of seventy percent of the item quoted. The payment for the item will

continue to be made at the original rate until the revised rate is decided.

A reading of the heading of this clause also the contents thereof would indicate that the parties were referring to the extra quantity of work that has

been turned out by the contractor. They have referred to the aspect that if the quantity of work is in excess of 30%, then in respect of such quantity

of work which is in excess of 30%, the contractor is entitled to be paid as an extra item. What is an extra item and as to how he should be paid in

respect of the same, has been dealt with in Clause 32. If this sentence relied upon by the learned Government Advocate, no doubt incorporated in

Clause 31, is to be given effect to, then under no circumstances could the contractor be paid anything over and above the tendered rate, whatever

be the excess quantity of work that he may have to turn out. If that was all the intendment of the parties, then instead of fixing the deviation limit at

30%, a clause whatever be the excess quantity of work that the contractor may be expected to turn out, he would be entitled to only at the

tendered rate, would have been incorporated in this clause and nothing more could have been incorporated. It we accept this contention of the

learned Government Advocate this fixing of this deviation limit at 30% would be rendered practically meaningless. The last portion of Clause 31

also gives us an indication that the parties may not have intended as contended by the learned Government Advocate, because as per that last

portion of Clause 31, the payment for the item should continue to be made at the original rate until the revised rate is decided. Therefore, this last

portion of Clause 31 also gives us an indication that the revised rate would be something different than the original rate and till that revised rate is

decided, the contractor should not be put to the difficulty of not being made any payment and as an ad-hoc basis he should be paid at the original

rate subject to the same being revised as provided for an extra item as contemplated by Clause 32. The learned Government Advocate invited out

attention to the Decision of the Supreme Court in S. Harcharan Singh Vs. Union of India, We do not find anything in this decision to support his

contention and on the other hand, the said Decision goes to strengthen our view expressed above. Their Lordships in the course of para 15

referred to the limit of variation called deviation limit upto a maximum of 20% prevailing in Central Public Works Department of the Government of

India and as to how the contractor is obliged to carry out the work up to that limit at the rates stipulated in the contract and for the work in excess

of that limit at the rates to be determined in accordance with Clause 12-A under which the Engineer-in-charge could revise the rates having regard

to the prevailing market rates. Therefore, we find that this Decision does not in our considered view assist the learned Government Advocate in

any way to accept his contention.

7. A copy of the general rules and directions issued for the guidance of contractors by the Karnataka Public Works Department was also made

available to us and we find that the deviation limit therein has been fixed at 125% and at page 19 Clause 13 (b) reference has been made to the

way in which payment should be made in respect of the additional quantity which exceeds 125%. Suffice it to note that in this clause it has not been

prescribed that where the quantity exceeds 125% or otherwise, the contractor will be entitled only to the tendered rate as contended by the

learned Government Advocate has not been incorporated. Therefore, it is clear that the conclusion reached by the arbitrator that this particular

raider which occurs in Clause 31 of the agreement has to be ignored is absolutely justified.

8. It may be noticed that this aspect of the matter had come up for consideration before another Bench of this Court in M.F.A. Nos. 1923, 1927

to 1933, 1941, 1958 and 1960/1990 decided on 6.11.1990, Government of Karnataka v. C.E. Enterprises of which one of us (Justice B.N.

Krishnan) was a Member and the contention urged in this regard was rejected in the said batch of Appeals. As the reasoning for the said

conclusion had not been recorded and as the appeals were dismissed at the admission stage, at the request of the learned Government Advocate,

we have adverted to the reasoning to buttress the said conclusion. We are in respectful agreement with the said conclusion reached by the said

Division Bench.

9. Even assuming for a moment that another conclusion is possible on the same set of facts, having regard to the limited scope of the proceeding

before the Civil Court in respect of an award passed by an arbitrator, it is clear that by itself also would be no ground to interfere with the award.

As pointed out in the Division Bench Decision of this Court extracted at an earlier stage, an erroneous decision, as the Civil Court may conceive it,

does not by itself justify interference and the Civil Courts do not sit in judgment over the awards of arbitrators as if in an appeal and the Civil Court

cannot substitute its conclusion in the place of the one reached by the arbitrator. Therefore, even if a different view is possible, that could not also

have been a ground for interference with the award of the arbitrator. In yet another Decision of a Division Bench of this Court in M.F.A. 781 of

1990 decided on 15.2.91, Savakka v. Ayasar of which one of us (Justice M. Ramakrishna) was a Member, this point relating to interpretation of

Clause 31 had come up for consideration and the award of compensation at a rate higher than the tendered rate despite this raider in Clause 31

was up-held and we are also given to understand that this Decision has not been challenged before the Supreme Court and the Government have

accepted the Decision in their No. LAW 706 LBS 88 dt. 13.5.1991. Therefore, we find that there is no substance in this first ground of attack

against the award of the arbitrator.

10. So far as the second contention is concerned it appears to us that the same has to be just mentioned to be rejected because no such plea has

been taken before either the arbitrator or the lower Court that the extra quantity of work turned out by the contractor was identical with the type of

work undertaken by him pursuant to his letter dt. 10.9.86 and therefore, no rate in excess of the rate awarded to the said work could have been

given. If there is no such plea and much less evidence in that regard before the arbitrator, there could have been absolutely no scope for the

arbitrator to have recorded a finding in that regard, nor could it be said that the finding granting rates higher than the rate in respect of that work

amounts to a misconduct as to warrant interference at the hands of the Civil Court.

11. So far as the 3rd contention is concerned, it was urged that the over-head charges should have been paid only taking note of the balance of

quantity of work that was remaining unexecuted beyond the period and that the over-head charges could not have been given on the entire quantity

of work. As pointed out by the learned Advocate for the contractor, whatever be the quantity of work that remains over, his client should have

been in readiness to complete the work and for that purpose he should keep his entire establishment and machinery idle for the entire subsequent

period. In that view of the matter, it cannot be said that the over-head charges should have been calculated only on the quantity of work that

remained over, beyond the period in question. Hence, there is no substance even in this third contention advanced on behalf of the State.

12. The 4th contention that was urged was that the rate of interest awarded viz. 18% is too excessive and that it amounts to misconduct on the part

of the arbitrator. It may be noticed that in respect of this very contract, the contractor was entitled to payment of certain amounts as mobilization

advance not exceeding 5% of the contract amount and the clause with reference to interest on the said advance is to the following effect:

The above advance shall bear simple interest at the rate of 18% PA

If the State wants to recover 18% interest on the mobilization advance given to the contractor, there could hardly be any justification in its

grievance that the learned arbitrator could not have awarded interest at that rate or that awarding at that rate amounts to a misconduct as to

warrant interference at the hands of the Civil Court. Therefore, there is no substance even in this contention urged on behalf of the State.

13. So far as the last point is concerned, the learned Government Advocate urged that the arbitrator has awarded interest at 18% p.a. on the

amounts awarded under the claims 1 and 2 for the periods 1.12.87 to the date of reference viz., 25.11.89. In the immediate next paragraph, para

6 he has awarded simple interest at 18% on all the amounts awarded hereinabove which would also include in its ambit the simple interest awarded

on claims 1 and 2 and that is impermissible. Learned Advocate for the respondent - contractor stated that despite this award it may be taken that

he cannot sustain this award of interest on the interest already granted. To that extent the award may be clarified. Therefore, it is made clear that all

the amounts mentioned in para-6 of the award of the arbitrator in respect of which 18% interest has been awarded shall not include the 18%

interest awarded under claims 1 and 2 granted under the immediate preceding paragraph for the period 1.12.1987 to 25.11.1989.

Subject to this clarification, the Appeal stands dismissed.