

(2009) 07 DEL CK 0390

Delhi High Court

Case No: FAO. No. 301 of 1995

Geep Industrial Syndicate Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: July 17, 2009

Acts Referred:

- Arbitration Act, 1940 - Section 30, 33, 39
- Contract Act, 1872 - Section 55
- Delhi High Court Act, 1966 - Section 10

Hon'ble Judges: Vidya Bhushan Gupta, J

Bench: Single Bench

Advocate: Rajesh Banati, for the Appellant; Nemo, for the Respondent

Final Decision: Dismissed

Judgement

V.B. Gupta, J.

Appellant has filed the present appeal u/s 39 of the Arbitration Act, 1940 (for short as ~~♦~~Act.) read with Section 10 of the Delhi High Court Act, 1966 challenging the judgment dated 7th April, 1995 of Additional District Judge, Delhi, vide which appellant's petition u/s 30 and 33 of the Act for setting aside the award dated 4th April, 1993, of the Sole Arbitrator was dismissed.

2. Brief facts of case are that, in response to an Invitation to Tender, appellant submitted its Rate Contract for the supply of Dry Batteries, which was accepted by the respondent. As per terms and conditions of Rate Contract, quarterly price escalation of rates was granted by respondent on the basis of average variance in M.M.T.C. declaration of monthly sale price of High Grade Electrolytic Zinc. It is alleged that prices for the quarters July to September, 1990 and October to December, 1990, were declared on 1st November, 1990 i.e. after a delay of more than two months and immediately after receipt of letter dated 1st November, 1990 from respondent, appellant moved an application to the excise department for

approval of the price which was approved w.e.f. 7th November, 1990. Immediately thereafter, appellant made dispatches to different consignees. It is alleged that respondent arbitrarily and illegally levied a penalty to the tune of Rs. 1,33,152.50 and withheld the said amount from 98% bills raised by appellant.

3. Dispute and differences having arisen between the parties, a request was made by appellant for a reference of the disputes/differences to an Arbitrator in accordance with Clause 24 of General Terms and Conditions of the Contract. Thereupon, Sh. Ram Bahadur, Additional Legal Adviser, to the Govt. of India, was appointed Sole Arbitrator for adjudication of the said disputes and difference. The above named Arbitrator entered upon the reference and made and published his award on 8th April, 1993 and filed the same in the court.

4. Notice of filing of the award was issued to the parties and in response thereof, appellant filed objections u/s 30 and 33 of the Act, challenging the award of the sole Arbitrator, inter alia, on the ground that the Arbitrator has misconducted himself by exceeding his jurisdiction and acting contrary to the terms and conditions of the contract; the Arbitrator further misconducted himself by not acting according to law; by ignoring the fact that there has been no complaint from the consignees about the quality of the stores supplied by appellant; there was no consequential loss to the respondent and the stores supplied by the petitioners were duly consumed by the consignees.

5. The award is also sought to be set aside on the ground that there is an error apparent on the face of the award, in as much as, respondent consumed the goods and, on the other hand, have asked for the refund of the prices, as also on the ground that the Arbitrator has erred in taking into account the question of MODVAT into consideration.

6. Respondent/Union of India contested the objections and filed its reply denying and controverting various grounds on which the award is sought to be assailed. It is stated that Arbitrator perused the entire pleadings of the parties and material brought before him before making the award. It is denied that the penalty imposed by the respondent was arbitrary. On the other hand, it is maintained that the penalty has been imposed as per contractual terms which is evident from the letter of the Pay and Accounts Officer dated 28th November, 1990 in which they have clearly stated "as per Clause 5(d), the stores are to be dispatched within 15 days from the issue of I-Note and in case it was delivered after 15 days, a penalty was leviable; that in this case the dispatch has been made after 15 days, so the penalty amount may be calculated and bills revised accordingly." Consequently, the bills were revised and according to the calculation given by appellant, penalty of Rs. 1,33,152.50/- was levied and the amount was withheld. It is denied that the award is liable to be set aside on any of the grounds and, on the other hand, it is maintained that the same is liable to be made a rule of the court.

7. Notice of this appeal was issued to the respondent. Respondent's counsel appeared earlier but after 15th November, 2007, she absented.

8. It is contended by learned Counsel for the appellant that Arbitrator misconducted himself and the proceedings, by ignoring the fact that there has been no complaint from consignee as to the quality of the stores supplied by the appellant and thus there is an error apparent on the face of the award.

9. Another contention is that Arbitrator came to the conclusion that appellant has not filed MODVAT benefits. There was no question of MODVAT in the present case. Thus, there is also an error apparent.

10. Further it is contended that award given by the Arbitrator is *ex facie* invalid, since the stores supplied by the appellant were duly consumed by the consignee and thus, there is no dispute in so far as store supplied by the appellant are concerned and respondent has not proved that they have suffered any loss and thus, the respondent is not entitled to withhold the amount. The Arbitrator misconducted himself, as respondent has not given any notice u/s 55 of Indian Contract Act as was required before levying any penalty.

11. Lastly, it is contended by learned Counsel for the appellant that if the value of the claim in a reference exceeds Rs. 1 lac, Arbitrator has to give reasoned award but in the present case, no reasons have been given by Arbitrator and in the absence of reasoned award, Arbitrator misconducted himself. On this point learned Counsel for the appellant cited *College of Vocational Studies v. S.S. Jaitley* AIR 1987 Delhi 134, in which it was held;

In case of reasoned award, the Arbitrator is required to indicate the trend of his thought process but not his mental meanderings, the purpose of commercial arbitration, being speedy certainly and a cheaper remedy. When the finding of the Arbitrator is based on no evidence, then certainly the court can go into such finding and set aside such an award as being perverse. The Arbitrator is entitled to decide rightly or wrongly but if an error of law appears on the face of the award, then the court can interfere and set aside the award.

12. The question to be seen in the present case is, as to whether Arbitrator has misconducted himself or not.

13. Supreme Court in [Food Corporation of India Vs. Chandu Construction and Another](#), laid down as to what constitute misconduct, it held;

While considering objections u/s 30 of the Arbitration Act, 1940 (for short "the Act"), the jurisdiction of the Court to set aside an award is limited. One of the grounds, stipulated in the Section, on which the Court can interfere with the award is when the Arbitrator has "misconduct". himself or the proceedings. The word "misconduct" has neither been defined in the Act nor is it possible for the Court to exhaustively define it or to enumerate the line of cases in which alone interference

either could or could not be made. Nevertheless, the word "misconduct" in Section 30(a) of the Act does not necessarily comprehend or include misconduct or fraudulent or improper conduct or moral lapse but does comprehend and include actions on the part of the Arbitrator, which on the face of the award, are opposed to all rational and reasonable principles resulting in excessive award or unjust result.

14. In another decision of Supreme Court in [Markfed Vanaspati and Allied Industries Vs. Union of India \(UOI\)](#), it observed that scope of interference is extremely limited in a non speaking award. The Court held;

15. The decided cases of this Court demonstrate that this Court has consistently taken the view that scope of interference in a non-speaking award is extremely limited. The Court cannot probe into the mental process of the Arbitrator. The court should endeavour to support a non-speaking arbitration award provided it adhered to the parties agreement and was not invalidated due to Arbitrator's misconduct.

16. Russell on Arbitration 19th Edition at Pages 110-111 described the entire genesis of arbitration as under;

An Arbitrator is neither more or less than a private judge of a private court (called an arbitral tribunal) who gives a private judgment (called an award). He is a judge in that a dispute is submitted to him: he is not a mere investigator but a person before whom material is placed by the parties, being either or both of evidence and submissions: he gives a decision in accordance with his duty to hold the scales fairly between the disputants in accordance with some recognized system of law and rules of natural justice. He is private in so far as (1) he is chosen and paid by the disputants (2) he does not sit in public (3) he acts in accordance with privately chosen procedure so far as that is not repugnant to public policy (4) so far as the law allows he is set up to the exclusion of the State Courts (5) his authority and powers are only whatsoever he is given by the disputants agreement (6) the effectiveness of his powers derives wholly from the private law of contract and accordingly the nature and exercise of those powers must not be contrary to the proper law of the contract or the public policy of England bearing in mind that the paramount public policy is that freedom of contract is not lightly to be inferred with.

15. In the light of above principles, it is to be seen as to whether Arbitrator has given reasons or not and whether he has misconducted The reasons given by Arbitrator for disallowing the claim of the appellant are as under;

1) Clause 5 (D) of the A/T page 10 in the document filed by the claimants has been agreed upon and acted upon by them.

2) The claimants have not filed MODVAT benefits, if any to the respondents as required by them.

3) Delayed supply of the stores, has lessened the self-life of battery, hence damage to the U.O.I.

4) The rulings cited by the claimants are not applied to this case because in them the contractor did not agree for penalty in the contract itself.

5) The Arbitrator in this case has to interpret the terms of the contract. It is beyond his jurisdiction to add or subtract any condition of contract.

6) Late dispatch is admitted by the claimant/contractor at page 2 of the Annexure C-4 filed by them.

16. In view of the above reasons given by Arbitrator, there is no force in the plea of the appellant. In any case, the appellant is not entitled to raise any plea with regard to the merits of the case in order to assail the findings of the Arbitrator. In view of the above settled legal position as Arbitrator is the sole Judge of the quantity and quality of the evidence, there is no merits in the present appeal. Thus, no infirmity or illegality can be found with the impugned judgment of the trial court.

17. The appeal is accordingly dismissed with no order as to costs.

18. Trial court record be sent back forthwith.