Rajasthan Rajya Sahakari Kraya-Vikray Sangh Ltd. Vs Gill and Co. Ltd.

Court: Bombay High Court

Date of Decision: Dec. 21, 1999

Acts Referred: Arbitration Act, 1940 â€" Section 33
Contract Act, 1872 â€" Section 69, 70

Citation: (2000) 2 ALLMR 19 : (2000) 3 BomCR 103 : (2000) 2 BOMLR 332 : (2000) 3 MhLj 300

Hon'ble Judges: D.K. Deshmukh, J

Bench: Single Bench

Advocate: Pradeep Sancheti, instructed by Purohit and Co, for the Appellant; S.U. Kamdar and H.N. Vakil, instructed by . Mulla and Mulla, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

D.K. Deshmukh, J.
By this petition, the petitioner challenges the award dated 5th November 1996 whereby the arbitrators have awarded

the amount of Rs. 73,700/- against the petitioner. The petitioner and the respondent had entered into agreement during the year 1992-93. The

dispute between the parties arose out of that agreement and therefore in terms of that agreement disputes were referred to the arbitrators. The

disputes between the parties were about payment of loading charges of Rs. 20,700/- and payment of transit insurance charges to the tune of Rs.

1,53,500/-.

2. The facts that are necessary and relevant are as under:-

That the parties entered into an agreement which was relevant for the year 1992-93 whereby the respondent agreed to procure the best offers

from the overseas buyers on F.O.B. Indian Ports for cotton bales owned by the petitioner. As per this agreement cotton bales were exported

through the agency of the respondent. The disputes arose between the parties about the liability of the petitioner for payment of the loading charges

and the transit insurance charges. Therefore, they were referred to the arbitrators. The arbitrators by the award found that the petitioner is liable to

pay an amount of Rs. 20,700/- towards loading charges and an amount of Rs. 1,53,000/- towards transit insurance charges.

3. The learned Counsel appearing for the petitioner submits that the claim of the respondent for the loading charges and the transit insurance

charges could have been awarded only if it was permitted by the terms of the agreement between the parties. The learned Counsel submits that the

terms of the agreement between the parties do not provide either for payment of loading charges as also transit insurance charges by the petitioner.

In the submission of the learned Counsel the construction put on the terms of the agreement by the learned arbitrators is impossible and perverse

and therefore in the submission of the learned Counsel the award is liable to be set aside at the hands of the Court. The learned Counsel further

submits that the liability of the petitioner for payment of the loading charges and transit insurance charges does not arise from the terms of the

agreement. As the arbitrators do not have any equity jurisdiction the arbitrators could not have made an award relying on the facts that other who

had entered into similar agreement have made payment of these charges.

4. The learned Counsel appearing for the respondent on the other hand submits that the buyers that were to be procured by the respondent for the

cotton bales of the petitioner were on F.O.B. Indian Ports. It means that the petitioner was to continue to be the owners of the cotton bales till they

reach the Indian Ports. Therefore, according to the learned Counsel, the liability for payment of insurance charges would be that of the petitioner

who was the owner of the goods while they were being transported from Rajasthan to Bombay, in the submission of the learned Counsel as the

petitioner continues to be the owner of the goods, it was the responsibility of the petitioner to ensure the goods, because if the goods are lost

during the transit it would be the loss of the petitioner, because the petitioner continued to be the owner of the goods. The learned Counsel further

submits that the transactions were pursuant to a global tender and that NAPHED, which is the Central Association has also made payment of the

transit insurance charges. In the submission of the learned Counsel, thus it was the established trade practice of payment of transit insurance

charges. In the submission of the learned Counsel, therefore, as the arbitrators after considering the terms of the agreement, existing market

practice and the correspondence between the parties have taken particular view of the matter, this Court would not have the jurisdiction to

interfere with the same in view of the law laid down by the Supreme Court in its judgment in Himachal Pradesh State Electricity Board Vs. R.J.

Shah and Company, . The learned Counsel submits that merely because it is possible for this Court to take another view of the matter would not

entitle this Court to interfere with the award made by the arbitrators. The learned Counsel also relied on the agreement entered into between the

parties for the subsequent orders in support of his submission.

5. Now, first taking up the award made by the arbitrators regarding loading charges, according to the learned Counsel for the respondent, the

liability of the petitioner for payment of the loading charges arises out of Clauses 7 and 8 of the agreement. Clauses (7) & (8) read as under:-

(7) The company shall handle all the jobs from the point of loading in Rajasthan upto shipment and procurement of relevant documents, etc.

including negotiations of the documents against L/C and remittance of proceeds to RAJFED.

(8) Arrangements for the despatch of approved bales will be made by the Company from the despatching stations in Rajasthan to Bombay but the

freight as per actual shall be paid by RAJFED. AH expenses including municipal taxes/levy if any except actual freight from the point of despatch in

Rajasthan upto shipment to Bombay shall be on the Company''s account against which a lump-sum payment of Rs. 60/- (Rupees sixty only) per

bale shall be released to the company against Bill of Lading.

6. The learned Counsel for the respondent in so far as transit insurance charges are concerned relied on Clauses 7 & 8 of the agreement as also

the stipulation in Clause (3) of the agreement Clause (3) reads as under:-

The company shall procure the best offers from the overseas buyers on F.O.B. Indian Ports.

Now, reading of the agreement between the parties and especially Clauses 7 & 8 of the agreement, makes it clear that though cotton bales were to

continue to be the ownership of the petitioner, the arrangement for loading of the goods in Rajasthan upto their shipment was entrusted to the

respondent. It was the responsibility of the respondent to make all arrangement for transportation of the bales from Rajasthan to Bombay. All

expenses necessary for that purpose were to be borne by the respondent. The petitioner was to make payment only of the actual freight and Rs.

60/- per bale for covering other expenses. In my opinion, therefore, loading charges which were required to be paid for loading the bales into

transport for transporting them from Rajasthan to Bombay would be included in other expenses against which Rs. 60/- per bale was to be paid by

the petitioner to the respondent. Similarly insuring the goods during the transport was also part of the expenses required to be incurred in the

course of transportation of the goods. Therefore, the charges payable for insuring the goods during their transport from Rajasthan to Bombay

would also be included in Rs. 60/- per bale payable by the petitioner to the respondent. Reading of Clauses 7 and 8 leaves one in no manner

doubt that making arrangement for transportation of the goods was entirely the responsibility of the respondent and all that he was entitled to

against the work of transportation was the actual freight that is paid by him and Rs. 60/- per bale for other expenses. Payment of insurance charges

during the transportation would be included in the expenses necessary for transportation of the goods. Perusal of the award shows that the

arbitrators have relied on two circumstances for holding that it is the responsibility of the petitioner to pay the transit insurance charges namely (i)

that the insurance charges were required to be paid for safeguarding the interest of the petitioner and therefore the transit insurance charges are

payable by the petitioner; (ii) that the insurance policy was taken in the name of the petitioner. In my opinion, two circumstances relied on by the

arbitrators are totally irrelevant. It is to be seen that the agreement entrusted the responsibility and duty of transporting the goods and making

arrangement for its transport from Rajasthan to Bombay entirely on the respondent. It also made him obliged to pay all expenses necessary for

transportation. He was to be reimbursed by the petitioner for the actual freight and the respondent was also to be paid Rs. 60/- per cotton bale,

irrespective of the fact whether actual expenditure on transport, apart from freight, comes to Rs. 60/- per bale or not. It goes without saying that

insurance of the goods during the transport was necessary expenditure which had to be incurred by the respondent and therefore it is obvious that

it was covered by Rs. 60/- per bale payable by the petitioner to the respondent. Similar is the case with the loading charges for transportation of

the goods. It was necessary to load the goods into transport and therefore that amount was also included in Rs. 60/- per bale payable by the

petitioner to the respondent. I find from the award that for holding the petitioner liable for loading charges the arbitrators have relied on Clause 3 of

the agreement, which shows that the respondent shall procure the best offers from the overseas buyers on F.O.B. Indian Ports. In my opinion,

reference to Clause 3 in relation to loading charges is totally irrelevant. Thus, I find that the construction put up by the arbitrators on the terms of

the agreement between the parties is totally impossible and perverse. Perusal of the judgment of the Supreme Court in H.P. State Electricity Board

relied by the learned Counsel for the petitioner shows that this Court cannot interfere with the arbitration award only because it is possible for this

Court to take another view of the matter than the one that is taken by the arbitrator. However, it is now settled law that if the Court finds that the

construction placed on the terms of the agreement by the arbitrator is perverse or impossible, it becomes the duty of the Court to interfere with

such award.

7. It is pertinent to note here that if the liability of the petitioner to pay the loading charges and transit insurance charges does not flow from the

agreement between the parties, the arbitrators will not get jurisdiction to make the award in that regard relying on any trade practice, the

jurisdiction of the arbitrators is to award the amounts that are payable by the parties under the agreement. In so far as reference made by the

learned Counsel for the respondent to the agreement between the parties for the subsequent years is concerned, in my opinion, the terms of the

agreements of the subsequent years reinforce the case of the petitioner. It is to be seen from those agreements that in the subsequent years a

specific provision was made for payment of transit insurance. In my opinion, the facts that in the agreement for the subsequent years a specific

mention was made of the transit insurance, which was also to cover the expenses and against which a lump-sum of Rs. 75/- per bale was to be

made, shows that during the previous year also it was covered by expenses against which lump-sum payment was to be made. Thus, looking from

any point of view, it is clear that there is an error of law apparent on the face of the award and therefore the award is liable to be set aside. It is

accordingly set aside. Petition is granted in terms of prayers (a) and (b).

Certified copy expedited.

8. Petition granted.