Orissa Mining Corporation Ltd.

Vs

Prannath Vishwanath Rawlley

Civil Appeal No. 769 of 1976

(A. C. Gupta, P. N. Shinghal JJ)

12.08.1977

JUDGMENT

KAILASAM, J. –

1. This appeal is preferred by the Orissa Mining Corporation Ltd., (a Government of Orissa undertaking) by special leave against the judgment and decree dated February 29, 1976 of the High Court of Orissa where by the High Court upheld the judgment of the subordinate Judge, Rourkela refusing to set aside the award of the arbitrator directing payment of certain money to the respondent hereon.

2. The respondent is a partnership firm carrying on business of transport, mining, loading and unloading etc., with its officer at Rourkela. The appellant called for a tender for the work of raising of iron ore in Khandadhar Mines and transporting it to Barsuan Railway siding, including wagon loading. An agreement was entered into between the appellant and the respondent for a period of one year with effect from May 25, 1971. The estimated value of the contract was Rs. 6,77,040. The respondent under the terms of the contract was required to work in quarries 1 and 2 in Khandadhar Mines but during the progress of the work, on the directions of the appellant, the respondent worked in quarry 5 also which was at a distance of about 2 kms., from quarries 1 and 2. As the respondent had to cover an extra distance between quarries 1 and 2 and quarry 5 he demanded extra cost for the transport. The respondent also demanded cost for construction of a road at the schedule rate provided by the State PWD, Orissa, and submitted two bills, bill 1 dated March 31, 1972 and bill 2 dated May 1, 1972 for Rs. 62,477 50 and Rs. 6,104.60 respectively amounting to Rs. 68,582.00 in all for the extra load in transporting. A claim was also made towards the cost of constructing a road from quarry 5 for Rs. 25,000. As in spite of repeated reminders the appellant did not pay for the bills the respondent called upon the appellant to refer the disputes for arbitration according to the contract. The respondent filed an application under Section 20 of the Arbitration Act for a direction to the appellant to file the agreement in court and for the appointment of a Superintending Engineer of the State PWD as the sole arbitrator and a reference to him to give his award on the dispute. The respondent, for the purpose of court fee and jurisdiction, valued the suit at Rs. 93,582. The Subordinate Judge, Rourkela, after notice to the appellant and after hearing the parties ordered "that the said agreement be filed, and it is further ordered that the following matters in difference specified in the said agreement 4/F-2 of 1971 arising in this suit namely for demand of payment of Rs. 93,582 on account of raising iron ore from quarries 1 and 2 at Khandadhar Mine and transporting the same to the Barsuan Railway siding including loading of wagons and also for the same work as per the subsequent order in respect of quarry 5 which was at a distance of 2 kilometers away from quarries 1 and 2 and for extra charges for this extra load of transporting and for construction of a road from quarries 1 and 2 to the quarry 5 be referred for determination. . . of

the Arbitrator".

3. The arbitrator on receipt of the order of reference issued notice to the parties calling upon to file their respective statements and the documents on which they intended to reply on and to produce witnesses. The parties filed their respective statements and the arbitrator took up the hearing of the dispute. The respondent in these proceedings made a claim of Rs. 68,582 under the head "4. Extra as the distance came to 1.4 kms. after verification from the same quantity mentioned in the bills 1 and 2". The arbitrator inspected the site and measured the distances. Regarding the claim of Rs. 25,000 for construction of the road the arbitrator found that the respondent is not entitled to it and rejected the claim.

4. Regarding the claim for transport of the iron ore for the extra distance from quarry 5, the respondent made an additional claim for Rs. 68,582 apart from the claim which he made in the plaint under bills 1 and 2 for Rs. 68,582 on the ground that the extra distance came to 1.4 kms. after verification. The arbitrator found the actual distance between quarries 1 and 2 and quarry 5 approximately 1.7 kms. and allowed a sum of Rs. 1,16,570 under this head. He also directed the appellant to release the security deposits and earnest money amounting to Rs. 32,954.48 and pay the respondent on or before August 31, 1974. The award also provided that the appellant shall pay interest to the respondent at the rate of six per cent per annum on the amount of award and on the amount of security and earnest money from the date of the passing of the award i.e. May 31, 1974.

5. Aggrieved at this award the appellant field an application before the Subordinate Judge, Rourkela, the Court that had made the reference to arbitration, for setting aside the award or in the alternative for remitting the award for further consideration. Various contentions were raised in the application. It is material for this appeal to refer only to the main ground of attack on the award, namely that the arbitrator had traversed beyond the reference made by the Court by its order of reference in that though the claim was only for Rs. 93,582 inclusive of the claim for road construction for Rs. 25,000 which was negatived by the arbitrator, he acted without jurisdiction in allowing any claim over Rs. 68,582. It was also contended that the arbitrator was in error in directing the return of the security deposits and earnest money.

6. The Subordinate Judge Rourkela, by his order dated February 11, 1975, found that there was no error apparent on the face of the record which may make the award unsustainable. It also found that the arbitrator did not exceed his jurisdiction and decreed the suit as per the term of the award.

7. Dissatisfied with the order of the Subordinate Judge the appellant, Orissa Mining Corporation Ltd., took up the matter in appeal to the High Court of Orissa. The High Court confirmed the order of the Subordinate Judge holding that the order of reference made by the Court to the arbitrator was not only in respect of the respondent's claim for Rs. 93,582 on account of raising of iron ore from quarries 1 and 2 and transporting the same to Barsuan railway station but also for the same work as per the subsequent order in respect of quarry 5 which was at a distance of 2 kilometers away from quarries 1 and 2. The main contention that was raised before the High Court was that the reference to the arbitrator being for determining the correctness of the respondent's claim of Rs. 92,582 only, the arbitrator went beyond his jurisdiction and authority by giving an ward for Rs. 1,16,570 towards transportation charges in favour of the respondent. The direction as to the refund of the security deposits and earnest money was also challenged.

8. The High Court held that "In the order of reference of Rs. 93,582 has been referred to as a dispute on account of raising iron ores from quarries 1 and 2 and transporting the same to Barsuan railway

siding. The dispute relating to extra claim on account of raising and transporting iron ores as per the subsequent order from quarry 5 has also been specifically referred to the arbitrator as it appears from the order of reference. The correctness of the reference order not having been challenged the same is not open to question". It further held that "it is futile to argue that the reference made to the arbitrator was only confined to the respondent's claim of Rs. 93,582 and that the arbitrator in awarding Rs. 1,16,570 exceeded his authority and jurisdiction". We feel that the High Court has misconstrued the claim. There was no dispute in regard to raising of iron ore from quarries 1 and 2 and transporting it to the railway siding. The whole dispute was regarding the claim for transporting the iron ore for the extra distance from quarry 5. Paragraphs 5, 6 and 7 of the plaint make this position clear. Paragraph 5 states that while the respondent was executing the work in quarries 1 and 2 he was ordered to work in quarry 5 which was at a distance of about 2 kms. from quarries 1 and 2. According to paragraph 6 the respondent demanded extra cost for the transport from the said quarry as the distance increased. Paragraph 7 states that accordingly the respondent submitted bill 1 dated March 31, 1972 and bill 2 dated May 1, 1972 making a total claim of Rs. 68,582. The point of attack on the award was therefore missed by the High Court. It was that while the total claim under the plaint regarding the transport of extra distance was confined to Rs. 68,582 and the reference to the arbitrator was also for the same amount, the arbitrator acted beyond the scope of the arbitration in taking into account the claim which was put forward by the respondent for an extra sum of Rs. 68,582 the order of reference is wider in scope and included other claims beyond the claim for Rs. 93,582. The order of reference is rather vague and not clear and is in the following terms :

and it is further ordered that the following matters in difference specified in the said agreement 4/F-2 of 1971 arising in the suit namely for demand of payment of Rs. 93,582 on account of raising iron ore from quarries 1 and 2 at Khandadhar Mine and transporting the same to the Barsuan railway siding including loading of wagons and also for the same work as per the subsequent order in respect of quarry 5 which was at a distance of 2 km. away from the quarries 1 and 2 and for extra charges for this extra load of transporting. . . .

The order of reference appears to have been an attempt by the Court to put all the reliefs claimed for in the plaint in one sentence. As admittedly there was no claim for transport of the iron ore between quarries 1 and 2 and the railway siding, the only claim was for the transport of the iron ore for the extra distance. The view of the High Court was therefore on a misunderstanding of the relief prayed for by the respondent in the plaint.

9. Mr. Pai while admitting that the reference to arbitration was only as regards the transport of the iron ore for the extra distance submitted that the claim was not confined to Rs. 582 only but should be understood as a claim for the extra transport which may amount to more than Rs. 93,582. We refrain from going into the merits of the claim for not only the extent of the extra distance covered is in dispute but also the charges for transport for a kilometers. The plea of the respondent is that while he submitted bills 1 and 2 and claimed Rs. 68,582, the bills were on the basis that the extra distance was only 1 km. but actually the distance was 2 kms. and therefore he claimed twice the amount. The respondent submitted that the distance should be construed as 2 kms. though it was found to be 1.4 kms. On behalf of the appellant it was submitted that this plea should not be entertained as the original bills were on the basis of 2 kms, and as the distance has been proved to be shorter he would not be entitled even to the claim made in the plaint. The contentions on the merits need not be gone into.

10. On a reading of the plaint we are satisfied that the claim for transporting the iron ore for the extra distance is limited to Rs. 68,582 and the whole claim after including the claim for construction

of the road is confined only to Rs. 93,582. The arbitrator having disallowed Rs. 25,000 being the claim for construction of the road should have confined his award only to Rs. 68,582. The claim of additional Rs. 68,582 before the arbitrator was clearly beyond the order of reference which incorporated the reliefs prayed for in the plaint by the respondent herein. It would have been difficult if the entire claim relating to the transport of the iron ore for the extra distance was made without specifying the amount of claim. When the amount has been specified in the plaint and when the reference is confined to the claim made in the plaint, the arbitrator would have to restrict his award only to the claim. We are satisfied that in this case the arbitrator has exceeded his jurisdiction in embarking on the claim that was for the first time put forward before him by the respondent. There is therefore an error apparent on the fact of the award.

11. Section 20 (1) of the Arbitration Act, 10 of 1940, provides that where a difference has arisen and where any person have entered into an arbitration agreement they may apply to the court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in court. Sub-section (4) to Section 20 provides that the court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed by the parties. When an agreement is filed in court and order of reference is made then the claim as a result of the order of reference is limited to a particular relief and the arbitrator cannot enlarge the scope of the reference and entertain fresh claims without a further order of reference from the court. On a construction of Section 20 of the Arbitration Act the plea on behalf of the appellant will have to be accepted. In the circumstances of the case we do not think that the award should be set aside as the learned Counsel for the appellant has also no objection in accepting the award in so far as it relates to Rs. 68,582. We feel that the award to the extent of Rs. 68,582 and interest at the rate of 6 per cent per annum from the date of the award be confirmed. Regarding the direction as to return of security deposits and earnest money, as it is not the case of the appellant that the respondent is not entitled to the amount, we do not feel called upon to interfere with the order directing the appellant to pay the amount to the respondent with interest at 6 per cent per annum from the date of the award i.e. May 31, 1974. The parties will bear their own costs.

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