

Santosh Singh Arora

Vs

Union of India and others

Civil Appeals Nos. 10548-10550 of 1983

(M. N. Venkatachaliah, S. C. Agrawal JJ)

20.12.1991

JUDGEMENT

S.C. AGRAWAL, J.:-

1. The appellant was an Army Contractor. He entered into three contracts for building construction work with the Army authorities at Dehradun vide Agreements Nos. CWE/ DDN/ 34 dated December 3, 1966, GE/DDN/31 dated November 30, 1967 and CWE/DDN/35 dated December 15, 1967. These agreements contained a provision for arbitration in clause 70 where under all disputes between the parties to the contract other than those or for which the decision of the Commander Works Engineer (C.W.E.) or any other person was by the contract expressed to be final and binding, were required to be referred to the sole arbitration of an engineer to be appointed by the authority mentioned in the tender documents. Certain disputes arose between the appellant and the army authorities in relation to the performance of these contracts and the said disputes were referred to the arbitration of Lt. Col. L. K. Raisinghani who was appointed as arbitrator by the Chief Engineer (Northern Zone), Lucknow on December 18, 1968. The said arbitrator gave his awards in relation to those disputes on July 21, 1971. The appellant, not satisfied with the said award, moved applications under Sections 30 and 33 of the Arbitration Act, 1940 (hereinafter referred to as 'the Act') for setting aside the said awards. The Additional Civil Judge, Dehradun, by his judgment dated December 10, 1973 set aside the awards made by the arbitrator. The learned Judge however refused to supersede the reference. Thereafter, the Chief Engineer appointed Lt. Col. M. S. Gill as arbitrator but the said arbitrator expressed his inability to act as arbitrator and thereupon Lt. Col. S. K. Gill was appointed as arbitrator by the Chief Engineer. The appellant filed applications under Sections 5, 8 and 12 of the Act in the Court of District Judge, Dehradun wherein he prayed for revocation of the authority of the arbitrator appointed by the Chief Engineer and for appointment of another arbitrator by the Court. The said applications were dismissed by the District Judge, Dehradun by his order dated December 22, 1975. Aggrieved by the said order of the District Judge Dehradun, the appellant filed Civil Revisions Nos. 510, 501 and 511 of 1976 before the Allahabad High Court. The said revisions were dismissed by a learned single Judge of the High Court by judgment dated December 24, 1982. These appeals have been filed by the appellant after obtaining special leave to appeal against the said judgment of the High Court.

2. In its order dated November 23, 1983, this Court, after examining the provision in clause 70 of the General Conditions of the Contract and keeping in view the history of the litigation, expressed the opinion that it was now time to appoint an independent arbitrator who could as well have been appointed by the authority entitled to appoint the arbitrator in the dispute between the parties. By the said order, this Court, in the interest of justice without remitting the matter back to the authority having the right to appoint the arbitrator, with the consent of the parties appointed Shri Justice A. C.

Gupta, a retired Judge of this Court, as arbitrator in this matter. Shri Justice A. C. Gupta made his awards dated April 30, 1987 whereby in respect of the outstanding claims of the appellant under all the three contracts, he awarded a total amount of Rs. 65,505 / -. The appellant was, however, not satisfied with the said award and he raised objection against the same on the ground that there was an error apparent on the face of the awards inasmuch as under clause 70 of the General Conditions of the Contract, the arbitrator is required to indicate his finding along with the sum awarded on each individual item of dispute. The said objection was accepted by this Court by order dated October 6, 1987 and the matter was remitted to the learned arbitrator with a direction to make fresh awards in each of the cases. By the said order, the respondents were directed to pay a sum of Rs. 65,505 / - which had been awarded by the learned arbitrator subject to adjustment. In accordance with this direction the amount of Rs. 65,505 / - has been paid to the appellant on October 28, 1987. As Shri Justice A. C. Gupta was not prepared to act as an arbitrator any longer, this Court, by order dated August 11, 1988, referred the dispute to the arbitration of Shri Justice M. S. Gujral, retired Chief Justice of the Sikkim High Court who has made his award dated August 18, 1990 whereby, after adjusting the amount of Rs. 65,505 / -, which had already been paid to the appellant, a further amount of Rs. 75,245/- has been awarded to the appellant. The appellant is not satisfied with the said award of the learned arbitrator, and he has filed objections against the same under Sections 30 and 33 of the Act.

3. We have heard the appellant who has appeared in person and has made his submissions orally as well as in writing. We have perused the objections in the light of the written submissions filed by him in support of the said objections.

4. The appellant has submitted that in view of the arbitration clause contained in clause 70 of the General Conditions of the Contract, the learned arbitrator was required to indicate his findings on each individual item of dispute and that in making his award dated August 18, 1990, the learned arbitrator has not indicated his finding on the various items contained in the claim of the appellant. We have perused the consolidated statement of claims which was submitted by the appellant before the learned arbitrator. We find that apart from the claims which were earlier made by the appellant in relation to the three contracts and which had been referred to arbitration by the Chief Engineer, the appellant has incorporated in the statement of claims fresh items in respect of damages said to have been suffered by the appellant subsequent to the reference of the dispute to arbitration. In our opinion, the scope of the arbitration in these proceedings has to be confined to the disputes which were the subject matter of arbitration before the first arbitrator. It is not permissible for the appellant to raise new disputes in relation to damages claimed to have been sustained by him after the disputes have been referred to arbitration. The said claims were rightly rejected by the learned arbitrator while making the award dated August 18, 1990. The objections raised by the appellant with regard to the said claims cannot, therefore, be sustained and must be rejected..

5. As regards the disputes which were initially raised by the appellant and which were referred to the arbitration under the three contracts, the learned arbitrator, in his award dated August 18, 1990, has awarded a total sum of Rs. 90,000/-.

6. The learned arbitrator has considered the claims of the appellant in respect of each contract separately and has made separate awards in respect of such claims. We do not find any infirmity in the same and the objections raised by the appellant against the award of a sum of Rs. 90,000/- against the claims in respect of the three contracts are rejected.

7. The learned arbitrator has awarded interest @ 12% per annum on the said amount of Rs. 90,000/-

from November 21, 1983 to October 28, 1987, the period when the dispute was under arbitration before Shri Justice A. C. Gupta and after deducting the amount of Rs. 65,505/-, paid to the appellant on October 28, 1987 from the sum of Rupees 90,000/- found payable, the learned arbitrator has awarded interest @ 12% per annum on the sum of Rs. 24,495/- for the period October 28, 1987 to August 18, 1990. On that basis, the learned arbitrator has awarded a sum of Rs. 75,245/- after adjusting the amount of Rs. 65,505 / - that has already been paid to the appellant on October 28, 1987.

8. The appellant has raised an objection that interest should have been awarded for the entire period i.e. with effect from April 1, 1968, the date the respondents withheld the payments and the appellant took legal action in the matters, and that it should not have been confined to the period during which the matter was pending arbitration before the learned arbitrator and his predecessor, Shri Justice A. C. Gupta. We find considerable merit in this submission. In Secretary, Irrigation Department, Govt. of Orissa v. G. C. Roy (C.A. No. 1403 of 1986, decided on December 12, 1991) : (reported in 1992 AIR S CW 389), a Constitution Bench of this Court has dealt with the question of award of interest pendente lite by the arbitrator and it has been laid down that in a case where the agreement between the parties does not prohibit grant of interest and the parties have referred all their disputes to arbitration without reference to the Court, the arbitrator has a power to award interest pendente lite. Here, the matter has been pending in arbitration ever since the Chief Engineer appointed Lt. Col. L. K. Raisinghani as the arbitrator by order dated December 18, 1968. The learned arbitrator has awarded interest @ 12% per annum for the period November 21, 1983, the date on which the dispute was referred to the arbitration of Shri Justice A. C. Gupta, till the date of the award made by the learned arbitrator. This indicates that the learned arbitrator wanted to award interest in respect of the period during which the matter was pending in arbitration before him and Shri Justice A. C. Gupta. Since interest was being allowed for the period during which the matter was pending in arbitration before Shri Justice A. C. Gupta and the learned arbitrator the interest should also have been allowed in respect of the period during which the matter had been pending in arbitration ever since the Chief Engineer, appointed Lt. Col. L. K. Raisinghani as the arbitrator by order dated December 18, 1968 and the matter was pending before the said arbitrator or his successors or in the courts in connection with proceedings arising out of the said arbitration. We are of the opinion that the appellant is entitled to be compensated for denial of his legitimate dues during the period from December 18, 1968 till the date of the award of the learned arbitrator. The appellant is also entitled to be compensated for the costs incurred in prosecuting his remedies before the arbitrators as well as in the courts below and before this Court.

9. Keeping in view the aforesaid facts and circumstances, we consider appropriate to direct that instead of a sum of Rs. 75,245/that has been awarded by the learned arbitrator, a consolidated sum of Rs. 2,50,000/- be paid to him in full and final settlement of his dues till the date of this judgment, and the award that has been made by the learned arbitrator would stand modified accordingly. This figure has been arrived at after; adjusting a sum of Rs. 65,505 / - which has already been paid to the appellant.

10. In this context, we may mention that the appellant in his consolidated statement of claims has claimed interest and compensation at the rate of 6000 /-per month for 21 years on the ground he was deprived from earning his livelihood by withholding his legitimate payments and has also claimed journey expenses from Canada to India three times as well as expenses in India for 66 months. We are not inclined to allow these fanciful and exorbitant claims of the appellant. Whatever amount which we consider appropriate has to be awarded towards interest and cost to the appellant while prosecuting his remedy has been included by us in the sum of Rs. two lakhs fifty thousand fixed

above and no further amount is payable to him on that score.

11. The appeals are accordingly disposed of with the direction that a sum of Rs. 2,50,000 / - be paid to the appellant in full and final settlement of his claims under the three contracts which were the subject-matter of reference to arbitration under clause 70 of the General Conditions of the Contract. The said amount shall be paid to the appellant within a period of one month from today. No orders as to costs. Order accordingly.

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