

Steeman Ltd

Vs

State of H. P. Others

I.A. No. 1 in T.P. (C) No. 233 of 1980 with SLP (C) No. 15978 of 1986

(Dr. A. S. Anand, K. Venkataswami JJ)

06.03.1997

JUDGMENT

VENKATASWAMI, J. –

1. On a close and careful scrutiny of the facts we find that the dispute in these matters lies in a very narrow compass, but long-winding arguments were addressed by referring to matters which have no real relevance to the actual disputes in these matters.

2. The brief facts leading to the filing of these two matters are the following :

The work of construction of Sitla Bridge over River Ravi at Champa was awarded after negotiation to the applicant/petitioner (M/s Steeman Ltd.) on 31-12-1969. We are not giving details as they are not necessary. As there was some dispute between the parties regarding the progress of the work and payments for the same, the petitioner Company submitted disputes/differences for adjudication by an arbitrator as per clause 29 of the agreement. While so, the Executive Engineer, Champa Division imposed penalty of Rs. 63,000 in addition to rescinding the contract on 5-7-1971. Against the order rescinding the contract and imposing penalty, the petitioner Company successfully appealed to the Government of Himachal Pradesh. Consequently, the Company was allowed to proceed with the work and the disputes were referred to an arbitrator.

3. As the arbitrator originally appointed was not acceptable to the petitioner Company, one Mr. R. K. Sarkar was appointed as arbitrator by mutual consent of parties. The said arbitrator entered upon the reference.

4. While the arbitration proceedings were going on, the respondents again rescinded the contract finally on 7-6-1972.

5. On 7-10-1972, the petitioner Company submitted additional claims before the arbitrator consequent upon the rescinding of the contract finally. The petitioner Company also raised a question of law before the arbitrator, namely, "whether the respondent was competent to rescind the contract on the ground of slow progress when the matter in dispute was sub judice before the arbitrator during the pendency of the case". The arbitrator referred that question for opinion of the Himachal Pradesh High Court under Section 13(b) of the Indian Arbitration Act. While that was pending, it appears that in the place of Mr. R. K. Sarkar one Mr. O. B. Sablok was appointed as arbitrator. The petitioner challenged the substitution of the arbitrator before the High Court. The

High Court while setting aside the removal of Mr. R. K. Sarkar and the appointment of Mr. O. B. Sablok as arbitrator, did not continue Mr. R. K. Sarkar as arbitrator. Since no orders were passed by the High Court for proceeding further with the arbitration matter, the petitioner Company moved this Court by filing Transfer Petition No. 233 of 1980 for transfer of the cases to some other High Court. This Court disposed of the transfer petition on 12-3-1984 by appointing one Mr. G. N. Ramaswamiah, Chief Engineer (IPH) HP PWD with the mutual consent of the parties with a direction to the said arbitrator to enter upon the reference and directing both the parties to appear before him on 3-9-1984.

6. The said arbitrator duly entered upon the office, held as many as 10 sittings/hearings and drew minutes of every meeting in detail. Based on that an award had been passed on 14-6-1985.

7. The High Court (before which the question of law above mentioned, was referred to by Mr. R. K. Sarkar, the previous arbitrator) disposed of the matter on 3-7-1986 stating that since the successor arbitrator had made the award, there was no need to answer the question. On that view, the High Court dismissed the reference matter. Aggrieved by that the above special leave petition has been filed.

8. When we asked the learned Senior Counsel appearing for the petitioner whether anything survives in the special leave petition not only in view of the issues raised before the arbitrator for adjudication but also having regard to the arbitrator appointed by this Court passing the award, the learned counsel frankly submitted that the special leave petition has become infructuous. Accordingly, we dismiss the same as having become infructuous.

9. The award has been filed in this Court. The petitioner has filed objections to the award.

10. Challenging the award as such, the learned counsel raised four points.

11. The first point raised is that the arbitrator should have answered the question of law raised before the predecessor arbitrator and the failure to do so vitiates the award.

12. Secondly, the arbitrator has made a non-speaking award and, therefore, it is not possible to find out whether he has applied his mind to that part of the claim amounting to Rupees two lakhs eighteen thousand which represented the goods seized after rescinding the contract.

13. Thirdly, the arbitrator has not given reasonable opportunity of meeting the case of the respondents and also in establishing the petitioner's case. In support of this contention he placed reliance on *Suresh Ragho Desai v. Vijaya Vinayak Ghag* ((1988) 4 SCC 591) and *Raipur Development Authority v. Chokhanmal Contractors* ((1989) 2 SCC 721)

14. And the last point is that the interest awarded was at too low a rate as the claim was for 18% and the award was at 6%.

15. So far as the first point is concerned, we do not think that the said question arises out of the present arbitration proceedings inasmuch as this Court appointed the present arbitrator to go into the disputes between the parties and the parties were directed to place before the arbitrator their respective disputes. As a matter of fact by consent of both the parties, the arbitrator framed issues for adjudication and it does not appear from the issues that the question of law now being raised was one of the issues. Further the so-called question of law loses its relevance, after the appointment of the new arbitrator by this Court, as indeed no act of rescinding the contract took place after this

Court appointed the arbitrator. Therefore, there is no substance in the first point.

16. Regarding the second point, the facts are like this. The petitioner Company's demand in the original claim under clauses I and II read as follows :

(in round figure of 1000 Rupees) I. The work done by the Company up to 16-9-1972 when it was forcibly dispossessed, approximately 12,00,000 Less value received from HP PWD, in the shape of cash or material 3,00,000 ----- 9,00,000 Plus for property of the company illegally and forcibly taken over on 16-9-1972 by the Department (+) 4,18,000 Less value of material handed over to the Company (-) 2,00,000 ----- 11,18,000 Total amount on account of work done and property forcibly taken over plus interest @ 18 p.a. from 16-9-1972 to 15-9-1984, i.e. for 12 years (+) 24,15,000 The total sum to which the company is entitled as on 15-9-1984 under this head 32,33,000 II. Damages on account of criminal breach of trust, fabricating false evidence, mischief, forgery, cheating, with intent to cause unjust loss and injury to the petitioner. The Company claims a sum equal to the money it was illegally deprived of 11,18,000##

The above claims were modified before the present arbitrator which read as follows :

Claims Preferred by the Petitioner : I. (a) Claim on works done by the Company up to 16-9-1972 Rs. 11,18,000 (b) Interest on the amount under I(a) @ 18% per annum for a period of 12 years Rs. 24,15,00 II. Claims made by the Company under 'for reasons whatsoever as per clause of the agreement' Rs. 11,18,000##

(Other clauses omitted as not relevant)

17. The arbitrator has passed the award on the basis of the amended claim as follows :

#-----"S. No. Claims preferred Amount Awarded amount by the petitioner claimed (Rs.)----- I. (a) Claim on works 11,18,000 I award Rupees Forty-two done by the thousand Nine hundred and Company up to Forty-nine and Sixty-three 16-9-1972 paise only. (Rs. 42,949.63) (b) Interest on the 24,15,000 I award simple interest of amount under I(a) six per cent for 12 years up to this date amounting to Rupees Thirty thousand Nine hundred and Twenty-three paise only (Rs. 30,923.73) II. Claims made by 11,18,000 I award Rupees Twenty-three the Company on thousand Two hundred damages (This is Twenty-five lying in amended claim from deposit with the the earlier item respondent. Further I award 'for reasons Rupees Fifty thousand on whatsoever as per inventory of stores etc. clause of the totalling Seventy-three agreement'), and thousand, Two hundred and amount is the Twenty-five only). same (23,225 + 50,000 = 73,225.00)"-----##

18. The arbitrator was in our opinion quite justified in not awarding any amount under a separate head for the property of the Company forcibly taken possession of in the light of the amended claims presented before him. There is thus no substance in the argument that the claim as originally put forward regarding company property allegedly taken possession of by the respondent illegally and forcibly, was not separately considered by the arbitrator. The answer is obvious viz. no such separate claim was made by the petitioner in the amended claim. Hence we have no hesitation to

reject the second point also.

19. So far as the third point is concerned, namely that the petitioner was not given reasonable opportunity to substantiate the case, we do not think that we can accept that contention after perusing the detailed minutes of the arbitrator drawn at the sittings which extended to 10 in number. As a matter of fact, we find that the arbitrator had called upon the petitioner Company time and again to furnish documents to support the claims. But, the petitioner has only partly complied with the directions of the arbitrator. The arbitrator had given full and reasonable opportunity to both parties to put forward their respective claims. At the last sitting dated 5-4-1985, the arbitrator observed as follows :

"As far as oral hearing is concerned, it is closed but in case any clarifications are needed by the court after receipt of final reply from both the parties within the dates stipulated above, the parties may be summoned at short notice to seek such clarifications needed by the court."

20. Pursuant to the above, it appears the arbitrator sent letters to both parties seeking certain clarifications. Taking advantage of that, learned counsel for the petitioner argued that the arbitrator has not given reasonable time to the petitioner to clarify the doubts. The learned counsel also invited our attention to a post-script found at the concluding part of the proceedings dated 30-5-1985. The post-script reads as follows :

"That during the course of hearing, petitioner requested for an interval to see the documents and give clarifications. Accordingly, the court adjourned for half an hour during the course of the proceedings."

21. According to the learned counsel, the time given by arbitrator was totally inadequate to clarify the doubts and therefore, there was no reasonable opportunity. As pointed out earlier, after going through the minutes of the arbitrator drawn during the sittings, we do not think that there is any substance in the argument. Further neither of the counsel was in a position to explain as to who made the post-script and when was it entered in the proceedings of the arbitrator. The decisions cited by the learned counsel for the petitioner in support of his argument that want of reasonable opportunity would vitiate the award may not come to his aid as we are satisfied on the facts of the case, from the record including the minutes drawn meticulously, that the arbitrator had given full and reasonable opportunity to both parties. Accordingly we find no force in this point as well.

22. As regards the last point concerning the interest, we are informed that there is no clause in the agreement regarding interest. Before the arbitrator both parties appear to have agreed on the rate of interest at 18%. However, the arbitrator in the facts and circumstances of the case awarded interest at 6%. The agreement between the parties does not mean that the arbitrator was bogged down to that rate irrespective of other facts and circumstances of the case on hand. We have no good reason to think that the arbitrator has awarded interest at 6% as against 18% claim without taking into account the relevant facts and circumstances of the case. Further the jurisdiction of the Court to interfere with the award is confined to matters enumerated in Section 30 of the Arbitration Act. We do not think that the last point raised before us would fall within the ambit of Section 30 to interfere with the award.

23. In the result the Interlocutory Application 1 of 1996 in Transfer Petition (Civil) No. 233 of 1980 as well as Special Leave Petition (Civil) No. 15978 of 1986 stand dismissed. However, there will be

no order as to costs.