

Ganges Waterproof Works (P) Ltd.

Vs

Union of India

Civil Appeal No. 4975 of 1984

(Sujata V. Manohar, R. C. Lahoti JJ)

29.01.1999

JUDGMENT

R. C. Lahoti J.

1. The disputes arising between the parties out of a contract entered into in the year 1978 were referred for arbitration consistently with the arbitration clause in the agreement. The Arbitrator gave an award on 23rd August, 1982. Proceedings under Ss. 14/17 of the Indian Arbitration Act, 1940 (hereinafter referred to as 'the Act', for short) were commenced. The petitioner filed objections under Sections 30/33 of the Act which have been dismissed by a learned Single Judge of the High Court at Calcutta. An appeal preferred before the Division Bench has also been dismissed. The petitioner has preferred this civil appeal.

2. Challenge to the legality and validity of the arbitration proceedings has been laid on three grounds : Firstly, that the claimant - Union of India (respondent herein) filed an additional statement accompanied by documents before the Arbitrator on 11th August, 1982, which was the last day of hearing and that was taken into consideration by the Arbitrator without affording the petitioner an opportunity for contesting the same or even delivering copy thereof to the petitioner; secondly though no oral evidence was adduced by any of the parties, yet the Arbitrator has in his award expressed having heard the evidence which shows in application of mind to the record of the proceedings and material available before the Arbitrator; and thirdly, that the Arbitrator in the sitting held on 11.8.1982 heard the parties hardly for five or seven minutes in which limited time no real hearing could have taken place. It is submitted that the manner in which the Arbitrator has conducted himself, has resulted into violation of the principles of natural justice and vitiated the arbitration proceedings. Similar grounds were raised before the learned Single Judge as also in the intra-Court appeal before the High Court and have been turned down. Having heard the learned counsel for the parties, we are also of the opinion that here too the petitioner must meet the same fate.

3. As to the first contention the learned Single Judge had perused the record of the arbitration proceedings made available to the Court by the Arbitration. The learned Single Judge found that there was in fact nothing filed by or on behalf of the respondent - Union of India before the Arbitrator on 11th August, 1982. The proceeding of that date recorded by the Arbitrator states - "Union of India filed an additional statement and documents. Heard the parties. The case is closed for making the order. Let the Union of India submit the requisite stamp papers." This order is signed by Mr. P.K. Sen, the counsel for the petitioner, Mr. D.K. Shone, the counsel for the respondent as well as the Arbitrator. The learned Single Judge has found that the additional statement and documents were filed before the Arbitrator by the Union of India on 31st May, 1982 and it is that

set of papers which has been referred to in the record of proceedings dated 11th August, 1982, though it was already referred to in the previous proceedings. The learned Single Judge had afforded the parties an opportunity of filing supplementary affidavits so as to clarify the position as to what had really transpired before the Arbitrator on 11th August, 1982. The Union of India has not admitted having filed any new additional written statement or new documents before the Arbitrator on 11th August, 1982. On behalf of the petitioner also, no specific case was made out in the additional affidavit supporting the plea raised on its behalf. The learned Single Judge was convinced that there was no merit in the plea so raised on behalf of the petitioner.

4. The learned counsel for the petitioner submitted that in the record of the arbitration proceedings made available by the Arbitrator to the Court, proceedings dated 11th August, 1982 are not be found recorded and that creates a suspicion. The learned counsel submitted that the Arbitrator does not appear to have recorded any order sheet of the proceedings held on 11th August, 1982. We are not impressed. As already stated, the learned Single Judge having perused the record of the Arbitrator has noted in her order that the order sheet dated 11th August, 1982 was available and has reproduced the contents thereof in her order dated 2nd September, 1983, dismissing the objections preferred by the petitioner. The statement of fact recorded by the learned Single Judge in her order cannot be permitted to be disputed by oral submissions made at the Bar, more so, when we do not find any plea disputing the correctness of the factual observations made by the learned Single Judge in her order having been raised before the Division Bench of the High Court hearing the appeal. We are in entire agreement with the observations made by the learned Single Judge that no substantive statement or documents were filed on behalf of the Union of India on 11th August, 1982. The question of the same having been taken into consideration by the Arbitrator without affording the petitioner an opportunity of meeting the same does not arise. The first contention is accordingly rejected.

5. As to the second contention, we have perused the contents of the Award dated 23rd August, 1982. It is a non-speaking award. Just before recording the finding, the learned Arbitrator has stated "And Whereas I heard and examined and considered the statements of the parties and their evidence". It is the use of the word 'evidence' wherefrom the learned counsel for the petitioner has sought to build up a plea that the Arbitrator had in his mind the oral testimony of the witnesses while there is none adduced by the parties and hence none available on the record of the Arbitrator and this shows the non-application of mind on the part of the Arbitrator to the record of the proceedings. We find the plea so raised entirely mis-conceived. The learned Single Judge, as also the Division Bench, have rightly explained that the word 'evidence' as used by the Arbitrator does not necessarily mean oral evidence adduced. There were documents available on record of the Arbitrator which also amount to evidence and that is what the Arbitrator had in his mind. An inference as to non-application of mind or mis-statement on the part of the Arbitrator while pronouncing the award cannot be drawn by assigning the term evidence such a meaning as is sought to be assigned by the learned counsel for the petitioner. The second contention is also rejected.

6. The third and the last plea urged is equally devoid of any merit. The burden of substantiating the averment urged as an objection tantamounting to misconduct on the part of the Arbitrator or complaining of violation of principles of natural justice was on the petitioner. No evidence was adduced to substantiate the plea. The best person to depose as to what had actually transpired at the hearing and whether the same was a real hearing or an eye-wash merely was the counsel who actually made submission on behalf of the petitioner before the Arbitrator. The least that was expected of the petitioner was to have filed an affidavit of the counsel before the Court. That was not done. No timely protest was raised before the Arbitrator. The hearing was concluded on

11.8.1982 and the award was made on 23.8.1982. During these 12 days also, the petitioner company never urged before the Arbitrator that submissions on its behalf were not permitted to be made by the Arbitrator. The Learned Single Judge, as also the Division Bench, have arrived at a finding that the plea was an afterthought and certainly not substantiated. We also do not find any reason to take a view different from the one taken by the High Court. No other point was urged.

7. All the three contentions raised on behalf of the petitioner are found devoid of any merit and hence are rejected. The appeal is therefore dismissed with costs.