SUPREME COURT OF INDIA

Gora Lal

Vs.

Union of India (UOI)

C.A.Nos.4350-4351 of 2002

(V. N. Khare CJI. and S. H. Kapadia J.)

18.12.2003

JUDGMENT

V.N. Khare, CJI.

1. The appellant and the respondent herein entered into a written contract on 4.1.1982 whereby and whereunder certain work contracts were awarded to the appellant herein. The said contract stipulated that in the case of any dispute arising out of the contract the dispute would be referred to an arbitrator. It is alleged that during the period of contract, the respondent took additional work from the appellant. It is not disputed that the appellant completed the allotted work. However, certain disputes arose as regards the final payment for the work undertaken by the appellant. It is alleged that the appellant accepted the final bill under protest.

2. Subsequently, the appellant moved an application before the High Court under Section 20 of the *Arbitration Act, 1940* (hereinafter referred to as "the Act") seeking reference of dispute to an arbitrator. The respondent contested this application. However, a learned single Judge of the High Court referred the matter to the arbitrator and on 5.2.1990, one Col. M.P. Sikka was appointed as sole Arbitrator who entered upon reference and invited claims and counter-claims of the parties by issuing notices to them. The parties put up their claims before the Arbitrator and subsequently the Arbitrator gave his award on 3.11.1990. Thereafter, the award was filed in the Court for being made rule of the Court. The respondent filed an objection petition under Sections 30 and 33 of the Act. However, the learned single Judge of the High Court by an order dated 12.2.1998, with certain modification, directed that the award be made rule of the Court.

3. Aggrieved, me respondent flied a letters patent appeal before a Division Bench of the High Court. The appellant also filed a counter cross-objection in the said appeal. The Division Bench of the High Court allowed the letters patent appeal preferred by the respondent. The Division Bench set aside the award and directed the respondent to appoint a new Arbitrator to enter upon the reference and make a speaking award. It is against the said judgment of the High Court, the appellant is in appeal before us by way of special leave.

4. Shri P.P. Rao, learned senior counsel appearing for the appellant urged that there is a distinction between the expressions 'finding' and 'reason'; the expression 'reason' is not akin to the expression 'finding'; the expression 'finding' denotes 'conclusion' and not 'reason'; and since the Arbitrator has already given 'findings' in his award, the order and judgment under challenge suffers from legal infirmity and is liable to be set aside. We do not find any substance in the argument. The borderline between the expressions 'finding' and 'reason' is very thin.

5. The arbitration Clause 70 of IAFW 2249, inter alia, provided as under:

> "The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of case and pleadings in defence.
>
> The Arbitrator may, from time to time, with the consent of the parties, enlarge the time upto but not exceeding one year from one year the date of his entering on the reference, for making and publishing the award.
>
> The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, alongwith the sums awarded, separately on each individual item of the dispute."

6. A perusal of the aforesaid clause would show that the Arbitrator is required to indicate a finding along with the sum awarded separately on each individual item of the dispute. While giving a finding, the Arbitrator necessarily has to take into consideration the disputes, claims and counterclaims of the parties and after considering the evidence on such claims and the legal position, has to record his finding on each disputed item. In the present case what we find is that the Arbitrator on each item has awarded a sum which according to us is not a finding but it is merely a conclusion.

7. The point for determination in this case is: Whether the Arbitrator ought to have given reasons in support of his findings, along with the sums awarded, on each items of dispute. To decide this point, we have to go by the text and the context of Clause 70 of the arbitration agreement quoted above. Under the said Clause, the Arbitrator was required to identify each individual item of dispute and give his findings thereon along with the sum awarded. In this context, one has to read the word "findings" with the expression "on each item of dispute" and if so read it in clear that the word "finding" denotes "reasons" in support of the said conclusion on each item of dispute. The word "finding" has been defined in 'Words and Phrases, Permanent Edition 17, West Publishing. Co.' to mean "an ascertainment of facts and the result of investigations". Applying the above test to Clause 70, we are of the view that the Arbitrator was required to give reasons in support of his findings on the items of dispute along with the sums awarded. We make it clear that this order is confined to the facts of this case and our interpretation is confined to Clause 70 of the arbitration agreement in this case.

8. In such a situation as in the present case, there having been no finding recorded on each item as required by the arbitration clause, the High Court was justified in setting aside the award. We, therefore, do not find any merit in these appeals. They are accordingly, dismissed.

9. Before we part with the case, we would like to clarify that we are not expressing any opinion on any other matter and all contentions available to the parties may be raised before the Arbitrator. The Arbitrator shall give his award within a period of four months from the date of receipt of this order.