

**SUPREME COURT OF INDIA**

Kwality Manufacturing Corporation

Vs.

Central Warehousing Corporation

C.A.No.7121 of 2001

(R.V.Raveendran and Dr.M.K.Sharma JJ.)

23.02.2009

**JUDGEMENT**

**R.V.Raveendran, J.**

This appeal by special leave relates to the validity of an arbitration award made against the respondent. The respondent (also referred to as the 'Corporation') entered into a contract dated 9.6.1984 with the appellant (also referred to as the 'contractor') for supply of 32 lacs bamboo mats at a price of Rs.3.35 per mat to be supplied by the appellant, inclusive of sales-tax, F.O.R. destination. In pursuance of the said contract the respondent supplied 5,59,554 mats. The contractor sent various communications requesting for joint inspection and payment.

2. As its demands were not complied with, at the instance of the appellant, the disputes were referred to arbitration. The claims of the contractor were as follows:

“(i) Amount due towards supplies Price of 5,59,554 mats at Rs.3.35 each Rs.18,74,505.90 Less: Amount paid by respondent Rs. 4,86,114.75 Rs.13,88,391.15 (Initial claim : Rs.13,94,710.60 subsequently reduced) (ii) Loss of profit at the rate of Rs.1 lac p.m. from Dec., 1984 to May, 1985 Rs. 6,00,000.00 (iii) Loss of business on account of supply orders placed by the appellant with another agency Rs. 5,00,000.00 (iv) Refund of earnest money Rs. 25,000.00 (v) Interest on the balance sale price at 20&percent; per annum up to date of claims statement (30.9.1985) Rs. 2,87,340.82”

3. The respondent resisted the claim. It contended that the mats supplied were of sub-standard quality and did not conform to the specifications, and therefore the entire supply was rejected; that the appellant had failed to comply with the arrangements mutually agreed in the telex dated 15.12.1984 and letter dated 2.3.1985; that the appellant did not contact the Regional Offices for joint inspection of the defective mats; and that as the 3 appellant committed breach by failing to supply mats according to the specifications and failed to act in accordance with the arrangements arrived at between the parties, it was not entitled to any relief. The respondent made a counter claim for Rs.8,16,733/70, made-up of Rs.1,78,698.68

towards the extra cost incurred for risk purchase and Rs.6,38,035.02 towards storage charges for the rejected mats, which were not removed from the warehouses of the respondent.

4. The arbitrator made a reasoned award dated 31.8.1988. He rejected the claim of appellant for damages on account of loss of profit and loss of business as also the interest up to the date of claim statement. The arbitrator awarded a sum of Rs.11,80,132.48 towards the price of material supplied (at 85% of the price) and Rs.25,000/- towards refund of earnest money deposit, in all, Rs.12,05,132.48 with pendent lite interest at the rate of 11% per annum on Rs.11,80,132.48 up to the date of the award. The arbitrator rejected the counter claims of the respondent.

5. The said award was challenged by the respondent by filing a petition under sections 30 and 33 of the *Arbitration Act, 1940* (for short 'the Act') for setting aside the award in the High Court of Calcutta. A learned Single Judge of the High Court held that the award was well-reasoned, and made 4 after analyzing the evidence and applying judicial mind; that the award did not suffer from any infirmities; that the respondent failed to make out that the arbitrator had misconducted himself or the proceeding or that there was any error of law apparent on the face of the award; and that the correctness of factual findings and the reasonableness of the award could not be challenged under sections 30 and 33 of the Act. As a consequence, the application for setting aside the award was dismissed by judgment dated 20.3.1992.

6. Feeling aggrieved, the respondent filed an intra-court appeal. A Division Bench of the High Court allowed the appeal by judgment dated 25.5.2001, and set aside the award on the following grounds:

“(a) The appellant did not discharge its onus to adduce evidence that the mats supplied were in accordance with the specifications;

(b) that the respondent had rejected 1,30,300 mats on three grounds : (i) that the mats were of poor quality; (ii) that they were loosely woven; and (iii) that they were not in accordance with the specifications. But the arbitrator without the benefit of any expert opinion or inspection, had wrongly assumed that there were "no major defects in regard to the mats"; (c) that the Arbitrator had acted arbitrarily in holding that the entire quantity of mats supplied should be accepted by applying a 15% quality cut in the price and that amounted to an error apparent on the face of the award.

The said judgment is challenged in this appeal by special leave.”

7. At the outset, it should be noted that the scope of interference by courts in regard to arbitral awards is limited. A court considering an application under section 30 or 33 of the Act, does not sit in appeal over the findings and decision of the arbitrator. Nor can it re-assess or re-appreciate evidence or examine the sufficiency or otherwise of the evidence. The award of the arbitrator is final and the only grounds on which it can be challenged are those mentioned in sections 30 and 33 of the Act. Therefore, on the contentions urged, the only

question that arose for consideration before the High Court was, whether there was any error apparent on the face of the award and whether the arbitrator misconducted himself or the proceedings.

8. We will first note how the arbitrator has proceeded. The arbitrator recorded a finding that 1,30,300 mats out of 5,59,554 mats were defective or sub-standard and there was nothing on record to help in assessing the extent of their defects. The arbitrator also found that a joint statement had been made by the parties on 29.6.1988 from which it could be inferred that the respondent had no serious objection in regard to the remaining 4,29,254 mats. He also found that after such joint-statement, the respondent had added an unilateral postscript which was not agreed to or signed by the appellant to the following effect : "82,646 mats were found conforming to specifications even after the post-inspection and remaining were rejected."

“The Arbitrator did not accept the said unilateral addition. The payment of Rs.4,86,114.75 by the Corporation demonstrated that it had accepted 1,45,109 mats (when calculated at the rate of Rs.3.35 per mat). If said number (1,45,109) for which payment was made, was deducted, the balance was 4,14,445 mats. Though 1,30,300 were stated to be defective, the arbitrator found that the complaint was only that they were loosely woven and not strictly in accordance with the specifications, and that respondent had not pointed out any major defects nor specified in what manner they were not in accordance with the specifications. He therefore proceeded on the basis the entire remaining supply of 4,14,445 mats should be treated as `accepted' by applying a fair and reasonable quality cut of 15&percent; in the price to meet the ends of justice, so that the appellant was penalized not only for 1,30,300 defective mats but in regard to the entire quantity of 4,14,445 mats out of which 2.84 lakh mats did not bear any remark in the joint statement dated 29.6.1988. The arbitrator therefore adopted the following calculation to arrive at the amount payable by the respondent-Corporation towards price of mats as Rs.11,80,132.48 :

7 Total value of 559554 mats supplied @ Rs.3.35 per mat Rs.18,74,505.90 Amount paid by the Corporation Rs.4,86,114.75 ----- A. Balance payable to contractor at Rs.13,88,391.15 contract price (A) B. 15&percent; by way of quality cut (B) Rs.2,08,258.67 ----- Net amount payable to contractor (A minus B) Rs.11,80,132.48 -----.”

9. The Division Bench, on consideration of the evidence held that following findings recorded by the Arbitrator were inconsistent with his conclusion that there were no major defects except that the mats were loosely woven and not strictly in accordance with the specifications and therefore, there should be only a cut in price by 15&percent; instead of rejection :

“(i) There was nothing from the side of the contractor to show that the mats were satisfactory and not defective as reported by the Corporation, or that the remarks given in the reports were incorrect.

(ii) There was no joint inspection and therefore there could not be any agreed quality cut.

(iii) There was nothing on record which may help in assessing the extent of defects in the sub-standard mats which according to the joint statement of 29.6.1988 would number to about 1.3 lakhs.

The Division Bench found that the respondents had rejected the mats on the ground that they did not conform to the specifications and were defective as they were loosely woven and of poor quality; that the contractor did not place any material to show that the mats supplied were in accordance with the specifications; and that therefore the finding of the arbitrator that the respondent should accept the entire supplies with a 15% cut for the inferior quality, was perverse. Consequently, it set aside the entire award.”

10. But the High Court did not notice that the respondent was itself not very consistent in its stand. At one point of time, it had rejected all the mats which were supplied by the appellant as being defective. It subsequently stated that 82,646 mats were in accordance with the specifications. It also paid Rs.486,114.75 towards the cost of 145109 mats which implied that it accepted the said quantity. Therefore the findings of fact recorded by the Arbitrator ought not to have been interfered, except to the extent of inconsistency in the findings. We find that the approach of the Division Bench is contrary to well settled principles relating to interference with arbitral awards under sections 30 and 33 of the Act. The Division Bench has proceeded as if it was sitting in appeal over the award of the arbitrator and has reassessed the evidence. A careful reading of the award shows that the 9 inconsistency referred to by the Division Bench relates to only a clearly separable issue relating to 1,30,300 mats. The High Court ought to have therefore modified the award only to that extent instead of setting aside the entire award.

11. We however agree with the Division Bench that the award is inconsistent in regard to 1,30,300 mats. The arbitrator has recorded the following finding in para 20.8 of the award : "We have, therefore, to take it that 1.30 lakh mats out of 5.59 lakhs were defective or sub standard in one way or another." The arbitrator thereafter did not record any finding that the rejection of 1,30,300 on the grounds that they were of poor quality, they were loosely woven and they were not in accordance with the specifications, was erroneous. If that was so, the Corporation was justified in rejecting the said 1,30,300 mats. In the circumstances, the direction of the Arbitrator that the respondent should accept the said 130,300 rejected mats as there were no major defects in them, and pay for them at the contract rate less 15%, is vitiated on account of an apparent inconsistency in findings which amounts to an error apparent on the face of the award. Having recorded a finding that the 1,30,300 mats were defective and sub-standard and having found that parties had jointly stated that 1,30,300 mats were rejected by the respondent-Corporation, in the absence of any evidence about their quality or personal inspection, the arbitrator could not have assumed that the defects were not major defects, nor could he force the respondent to accept them by providing a 15% cut in the price. The award, in so far as it relates to the said 1,30,300 mats,

directing payment (at the rate of Rs.3.35 per mat with a discount of 15%) is thus arbitrary and inconsistent with the findings about their rejection, recorded by him. It is clearly unsustainable. That portion should be separated from the remaining part of the award and set aside. But in so far as the remaining quantity of 4,29,254 mats (which includes the quantity that is deemed to have been accepted by full payment), the arbitrator on the basis of the evidence which included a joint-statement, has recorded a finding that there was no valid rejection. He has also directed that they should be accepted at a price of Rs.3.35 per mat by applying a cut of 15%. This finding being a finding of fact arrived at after considering the evidence, was not open to interference by the High Court by re-examining the evidence or drawing different inferences from the material placed before the arbitrator.

12. The appellant had not also challenged the award in regard to the quality cut of 15% applied by the Arbitrator. In view of it, the amount to which the contractor will be entitled is worked out as follows:

“7 Total mats supplied 5,59,554 7 Mats deemed to have been accepted (by making payment of Rs.4,86,114.75 at the rate of Rs.3/35 per mat) 1,45,109 ----- Balance quantity of mats 4,14,445 7 Less: Mats rejected as defective 1,30,300 ----- 7 Quantity for which payment should be made 2,84,145 7 Amount payable for 284,145 mats at the rate of Rs.3.35 per mat Rs. 8,09,103 (with a cut of 15%) Plus : Refund of earnest money deposit Rs. 25,000 (awarded by Arbitrator) ----- Total amount due to the contractor Rs. 8,34,103 ----- We, accordingly, reduce the amount payable by the respondent-Corporation to the appellant as Rs.8,34,103/- instead of Rs.12,05,132.48 awarded by the Arbitrator.”

13. The arbitrator has not awarded any interest from the due date till the date of entering upon the reference. The appellant has not challenged the 12 said refusal. The Arbitrator has awarded interest at 11% per annum only pendent lite, that is from the date of his entering upon the reference up to the date of the award. The appellant will therefore be entitled to interest at 11% per annum on the award amount from 2.9.1985 till date of award and at the same rate from the date of award till date of payment.

14. The appeal is accordingly allowed in part and there shall be a decree in terms of the award for Rs.834,103/- with interest at 11% P.A. from 2.9.1985 till date of payment. Parties to bear their respective costs.