

SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Nav Bharat Construction Company

C.A.No.2500 of 2001

(Tarun Chatterjee and R.M.Lodha JJ.)

08.01.2010

JUDGEMENT

Tarun Chatterjee,J.

1. The appellant, State of Rajasthan, invited tenders for construction of Bhimsagar Dam in which one of the tenderer was the respondent. The tender of the respondent was accepted. Accordingly, a contract was awarded to the respondent and under the contract the work was to be started on 16th of November, 1978 and the date of completion was fixed on 15th of May, 1981. One of the terms of the contract was that if any difference or dispute arises between the parties, such dispute or difference shall be referred to arbitration.

“However, the work was not completed within the time allotted and 1 time was thereafter extended. In spite of extension of time, the work was not completed. For that reason, the State of Rajasthan terminated the contract and got the remaining work done from some other contractor.”

2. The respondent raised various claims which were rejected by the State of Rajasthan. The respondent, therefore, moved an application under Section 20 of the Arbitration Act, 1940 (in short the `Act') for referring the claims mentioned therein to arbitration. The District Judge, Jhalawar by an order dated 11th of November, 1982 held that only one claim was referable to arbitration and refused to refer the other three claims to arbitration. The respondent filed an appeal before the High Court of Rajasthan at Jaipur and the High Court by its order dated 7th of June, 1984 held that it was for the Arbitrator to decide whether the claims were to be awarded or not and accordingly directed that all the four claims be referred to arbitration. The disputes were referred to two Arbitrators. The respondent, however, filed 39 claims amounting to Rs.42,59,155.56 before the Arbitrators. The parties led oral and documentary evidence. There was a difference of opinion between the two Arbitrators. Therefore, the Arbitrators referred the dispute to an 2 Umpire. The State of Rajasthan, the appellant herein, thereafter filed an application under Section 11 of the Act for removal of the Umpire on the ground of bias. This application was dismissed on 16th of November, 1993. The appellants

filed a revision case which also came to be dismissed by the High Court in January, 1995. The Umpire entered into the reference and passed an award on 29th of May, 1995.

3. The State of Rajasthan, the appellant herein, filed objections under Sections 30 and 33 of the Act which were dismissed by the trial court and in appeal the respondent filed a cross appeal claiming compound interest. The High Court by a judgment dismissed both the appeals. Feeling aggrieved, both the parties approached this Court and two Civil Appeals were registered. C.A.No.2500 of 2001 was by the State of Rajasthan which was aggrieved by the dismissal of their objection filed under Sections 30 and 33 of the Act and C.A.No.2501 of 2001 was by the respondent against the dismissal of their claim for compound interest. By a judgment and order dated 4th of October, 2005 passed in the aforesaid two appeals, this Court had set aside the award of the Umpire and the judgment of the High Court by the following directions:

"Under the circumstances and for reasons set out hereinabove, we set aside the award and appoint Justice N.Santosh Hegde, a retired Judge of this Court as the Umpire. The Umpire, Mr.V.K.Gupta shall forthwith forward all papers and documents to Justice N.Santosh Hegde at his residence i.e. 9, Krishna Menon Marg, New Delhi. The parties shall appear before Justice N.Santosh Hegde on 6.10.2005 at 5.p.m. at 9, Krishna Menon Marg, New Delhi. Justice N.Santosh Hegde shall fix his fees which shall be borne by both the parties equally. Justice N.Santosh Hegde is requested to fix the schedule and give his award with a period of 4 months from the date of receipt of all the papers and documents from the outgoing Umpire Mr.V.K.Gupta. The award to be filed in this Court.

We leave the question of grant of interest open to be decided by the Umpire in accordance with law.

Lastly, it is clarified that this is not a new reference but a continuation of the earlier proceeding and thus the Arbitration Act, 1940 shall continue to apply."

4. Accordingly, in compliance with the judgment of this Court as aforesaid, Mr.Justice N.Santosh Hegde, (as His Lordship then was), entered into reference and passed his award on 9th of September, 2006. Now the State of Rajasthan has filed an application for making the award a rule of the Court and at the same time the respondent filed an objection under Sections 30 and 33 of the Act. An Interlocutory Application was also filed by the respondent challenging the jurisdiction of this Court to make the award absolute and also to consider the objections raised by the respondent against the award 4 passed by the Umpire in pursuance of the order passed on 4th of October, 2005. According to the respondent, who appeared in person, the application and objections filed by the parties must be sent back to the court of competent jurisdiction for deciding the same in accordance with law, because after the judgment was passed and the earlier award was set aside by the impugned judgment, this Court had become functus officio to entertain such applications. Therefore, before we go into the question regarding the objections raised by the respondent under Sections 30 and 33 of

the Act and the application for making the award a rule of the Court, we must first deal with the Interlocutory application, that is to say, whether this Court still retains the jurisdiction to entertain the award passed by the Umpire or to consider the objections to the same or the matter should go back to the court of competent jurisdiction for considering the said application and objections in accordance with law. According to Mr. Mool Chand Luhadia, appearing in person, this Court is ceased to have jurisdiction after the appeal was disposed of and a new Umpire was appointed who passed an award on 9th of September, 2006. In support of this contention that this Court cannot have the jurisdiction to entertain the application filed by the appellant to make the award a rule of the court 5 and also the objection filed under Sections 30 and 33 of the Act, he had relied on certain decisions of this Court out of which strong reliance was placed on the decision in *Garwal Mandal Vikas Nigam Ltd. vs. Krishna Travel Agency*¹ and also the decision in *Bharat Coking Coal Ltd. vs Annapurna Construction*². This submission of Mr.Luhadia, who appeared in person was contested by Mr.Pallav Shishodia, learned senior counsel appearing on behalf of the State of Rajasthan. According to Mr.Shishodia, in view of the decision of a three-Judge Bench of this Court in *Mcdermott International Inc. vs. Burn Standard Co. Ltd and Others*³, this question is no longer res integra. In our view, the submission of Mr.Shishodia must be accepted. From the judgment of this Court dated 4th of October, 2005, it has been made clear by this Court in the operative part of the same, as noted herein earlier, that the award that would be passed by the Umpire must be filed in this Court and secondly it was clarified in the judgment itself that this was not a case of a new reference but a continuation of the earlier proceeding and thus the Act shall continue to apply. In *Mcdermott International Inc.* (supra), a three- Judge Bench decision of this Court clearly observed that since the 6 Arbitrator was directed to file his award in this Court, the objections as well as the entertainability of the application of the appellant for making the award a rule of the Court must be filed in this Court alone and, therefore, this Court has the jurisdiction to entertain the application of the appellant and also the objections filed by the respondent. In view of the discussions made herein above and in view of the three-Judge Bench decision of this Court, namely, *Mcdermott International* (supra), it would not be necessary for us to deal with the other two decisions as referred to herein earlier. That apart, in the judgment dated 4th of October, 2005, it has been made clear that the award was to be filed in this Court and that this was not to be taken as a new reference but a continuation of the earlier proceeding, thus the Act shall continue to apply. Accordingly, the question regarding entertainability of the aforesaid two applications namely, the application for making the award a rule of the court and the objections under Sections 30 and 33 of the Act filed in this Court could not arise at all.

5. Let us now consider the objections filed by the respondent against the award passed by the Umpire under Sections 30 and 33 of the Act. Since we have already overruled the objections raised by the 7 respondent about the entertainability of the two applications by this Court, we now deal with the objections filed by the respondent in respect of the various claims made by them for passing an award in their favour. According to Mr.Luhadia, since the first award of the Umpire Mr.V.K.Gupta was set aside, and a new Umpire was appointed after setting aside the said award it would be evident from the judgment of this Court that the intention of this Court was to permit the respondent to raise all their objections to the claims put forward by it

including the claim No.2 and 26. We are unable to accept this contention of Mr.Luhadia. So far as Claim No.2 and 26 are concerned, on a perusal of the judgment of this court, it is difficult to accept the argument of Mr.Luhadia as we find from the said judgment that the claim Nos. 2 and 26 were elaborately considered in the judgment and this Court in the said judgment came to a clear finding with regard to Claim No.2 and 26 that the respondent would not be entitled to such claims. While rejecting Claim Nos. 2 and 26, this Court categorically made the following observations which we reproduce herein below :

"As regards claim No. 2 Mr. Luhadia fairly admitted that Clause 5.11(iii) of the Contract requires chiseling of stones on all sides. He however submitted that the rates given in Schedule G were only for chiseling of stones on 8 one side. He submitted that this was clear from Note 1 under Schedule G which stated that Schedule G was based on B.S.R. 1975. He submitted that B.S.R. 1975 showed that such rates were only for chiseling stones on one side. He submitted that when the stone has to be chiseled on all sides the rates given in B.S.R. 1975 were to be applied. He submitted that claim No. 2 was based on those rates. We are unable to accept this submission of Mr. Luhadia. The Contract is very specific. The work specified in the Contract has to be done at the rates specified in Schedule `G`. Even though Schedule G may be based on B.S.R. 1975 it is not exactly as B.S.R. 1975.

Where in respect of a work specified in the contract the rate has been given in Schedule G that work could only be done at that rate. Works specified in the Contract does not become extra work. It is only in respect of extra work that rates specified in B.S.R. 1975 can be applied. To us it is clear that the claim No. 2 is contrary to the terms of the Contract. It is barred by Clauses 57, 60 and 61 of the Contract. As regards claim No. 26, *Mr. Luhadia relied upon the case of Tarapore & Co. v. State of M.P.*⁴. In this case, the question was whether the contractor was entitled to claim extra amounts because he had to pay increased wages to his workers. This Court has held that the contractor would have tendered on the basis of the then prevailing wages and as the contract required the contractor to pay the minimum wages if the minimum wages increased it was an implied term of the contract that he would not be entitled to claim the additional amount. However, it must be noted that, in this case, there was no term in the contract which prohibited any extra claims being made because of the increase in wages. Clause 31 of the Special Conditions of the Contract, which has been reproduced hereinabove, specifically bars the contractor from claiming any compensation or an increase in rate under such circumstances. Not only that but the Respondent had with their initial tender put in a term which provided that if there was any increase in the minimum wages by the Government the rates quoted by him would be increased 9 by the same percentage. At the time of negotiation this clause was dropped. Thus, the Respondent had themselves specifically agreed not to claim any compensation or increase by reason of increase in wages. This claim could therefore not have been granted."

From a reading of this paragraph 30 of the judgment of this Court, it is clear that this Court in the judgment has, in detail, considered Claim Nos.2 and 26 and on consideration of the materials on record and the terms of the contract between the parties rejected the aforesaid two claims. In this view of the matter, we must accept the finding of the Umpire that since these two claims were clearly and elaborately considered and thereafter rejected by this Court in the said judgment, it was not open for him to reconsider the same while passing the award. In view of this conclusion arrived at by this Court in the aforesaid judgment, the Umpire was fully justified in not reconsidering the same while passing an award.

6. The jurisdiction of the court to set aside an award under Section 30 of the Act has now been settled by catena of decisions of this Court as well as by the different High Courts in India. Taking those principles into consideration, it would thus be clear that under Section 30 of the Act it must be said that the court is not empowered to re-appreciate the evidence and examine the correctness of the conclusions arrived at by the Umpire in considering an application for setting aside the award. In this connection, we may refer to a decision of this Court in the case of *Bhagwati Oxygen Ltd. vs. Hindustan Cooper Ltd.*⁵. In that decision, this Court observed in paragraph 25 as follows :-

"This Court has considered the provisions of Section 30 of the Act in several cases and has held that the court while exercising the power under Section 30, cannot re-appreciate the evidence or examine correctness of the conclusions arrived at by the Arbitrator.

The jurisdiction is not appellate in nature and an award passed by an Arbitrator cannot be set aside on the ground that it was erroneous. It is not open to the court to interfere with the award merely because in the opinion of the court, another view is equally possible. It is only when the court is satisfied that the Arbitrator had mis-conducted himself or the proceedings or the award had been improperly procured or is "otherwise" invalid that the court may set aside such award."

7. Similarly in the case of *Food Corporation of India vs. Chandu Construction*⁶ in which one of us (Chatterjee, J.) was also a party, it was held that when the Arbitrator or the Umpire as the case may be, had ignored the specific terms or had acted beyond the four corners of the contract, it was open for the court in the exercise of its power under Section 30 of the Act to set aside the award on the ground that the Arbitrator could not ignore the law or misapply the terms of the contract in order to do what he thought was just and reasonable. That apart, the law is also settled as referred to herein earlier that the jurisdiction of the court under Section 30 of the Act is not appellate in nature and the award passed by the Umpire cannot be set aside on the ground that it was erroneous. It is also not open to the court to interfere with the award merely because in the opinion of the court, another view is equally possible. Keeping these principles as laid down by this Court in the aforesaid two decisions, let us now consider the award passed by the Umpire in respect of the claims of the respondent excluding Claim Nos. 2 and 26.

8. Since Claim Nos.4, 6, 9, 13, 23, 32, 33, 36 and 38 of the respondent were accepted by the Umpire and the Award has been passed in respect of the said claims in favour of the respondent, it would not be necessary for us to deal with this part of the award any further. So far as Claim Nos. 1, 3, 5, 7, 8, 10, 11, 12, 14-22, 24, 25, 27, 28, 29,30, 31, 34, 35, 37 and 39 are concerned, we find that the Umpire after going through the objections of the respondent and after hearing the parties in respect of these claims rejected the same and 12 we do not find any reason to set aside the said award on the ground that the jurisdiction of the court is not appellate in nature nor such an award could be found to be erroneous. Accordingly, we do not find any reason to accept the objections of the respondent in this regard. The objections are overruled.

9. Before parting with this judgment, there is another aspect to be considered at this stage. As noted herein earlier, the respondent has claimed compound rate of interest which was not granted by the Umpire. The claimant had claimed compound interest with quarterly rest while the respondent had opposed the said rate of interest. While rejecting the said claim of the claimant, the Umpire had rightly observed that there was no necessity for him to fix any other rate of interest because on the basis of the award passed by the Umpire, the claimant had to return the substantial amount received by him. In view of that, the Umpire in his award directed that difference of amount which has now become refundable by virtue of the award would be returned back to the State of Rajasthan with interest from the date of recovery by the claimant and the same was allowed by the previous Umpire till the date of repayment/recovery.

10. We do not find any reason to differ from the award of the Umpire on this score, because the Umpire has rightly considered the entire aspect of interest and passed an award which can never be said to be erroneously rejected by him.

11. For the reasons aforesaid, we allow the application for making the award a rule of the court and reject the objections filed under Sections 30 and 33 of the Act by the respondent. There will be no order as to costs.

¹[2008 (6) SCC 741]

²2008 (6) SCC 732

³2005 (10) SCC 353

⁴1994 [3] SCC 521

⁵2005 (6) SCC 462

⁶2007 (4) SCC 697