

SUPREME COURT OF INDIA

Union of India

Vs.

Hari Singh

C.A.No.7970 of 2010

(Dalveer Bhandari and Deepak Verma JJ.)

10.09.2010

JUDGEMENT

Dalveer Bhandari, J.

1. Delay condoned.
2. Leave granted.
3. This appeal is directed against the judgment and order dated 12.01.2007 passed by the High Court of Punjab and Haryana at Chandigarh in Arbitration Case No.34 of 2004.
4. Brief facts which are necessary to dispose of this appeal are recapitulated as under:

“The respondent contractor was awarded a contract by the Northern Railway vide Contract Agreement No.74- W/1/1/307/WA/CDG dated 01.05.2002, for execution of "Earthwork in formation in filling Construction of all minor bridges within the Zone, including retaining wall, side drains and other protection works and allied works in Zone No.8 from Km.25 to Km.42 in Punjab area in connection with new BG Rail Link from Chandigarh to Ludhiana". The Contract Agreement also provided for execution of Supplementary Agreement. The contract was executed by the respondent and the entire amount due and payable to the contractor - respondent was paid to him by a Supplementary Agreement dated 27.04.2004, which reads as under:

"SUPPLEMENTARY AGREEMENT Article of agreement made this day 27th April in the year two thousand four between the President of India, acting through the Northern Railway administration having his office at Dy CE/C-II/CD hereinafter called the Railway of the one part and nil of the second part.

Whereas the party hereto of the other part executed on agreement with the party hereto of the first part being agreement number 740/1/1/207 dated 13.2.2001 for the performance nil hereinafter called the 'Principal Agreement'.

And whereas it was agreed by and between the parties hereto that the works would be completed by the party hereto the second part on 31.10.2003 dated last extended' and whereas the party hereto of the second part has executed the work to the entire satisfaction of the party hereto of the first part already made payment of the party hereto of the second part diverse sums from time to time aggregating to Rs.19891584.07 including the final bill bearing voucher No.362-C/C-II/CDG dated 27.3.2004 the receipt of which is hereby acknowledged by the party hereto of the second part in full and final settlement of all his/its claims under the principal agreement.

And whereas the party hereto of the second part have received further sum of 26849531 through the final bill bearing voucher NO.362-C/0-II CDG dt. 27.3.2004 (the receipt of which is hereby acknowledge by the party thereto of the second part) from the party hereto the first part in full and final settlement of all his/its disputed claims under principal agreement.

Now it is hereby agreed by and between the parties in the consideration of sums already paid (by the party hereto of the first part to the party hereto of the second part against all outstanding dues and claims for, all works done under the aforesaid principal agreement including/excluding the security deposit the party hereto of the second part have no further dues of claims against the party hereto the first part under the said Principal Agreement. It is further agreed by and between the parties that the party hereto of the second part has accepted the said sums mentioned above in full and final satisfaction of all its dues and claims under the said Principal Agreement.

It is further agreed and understood by and between the parties that in consideration of the payment already made, under the agreement, the said Principal Agreement shall stand finally discharged and rescinded all the terms and conditions including the arbitration clause.

It is further agreed and understood by and between the parties that in consideration of the payment already made, under the agreement, the said Principal Agreement shall stand finally discharged and rescinded on the terms and conditions including the arbitration clauses.

It is further agreed and understood by and between the parties that the arbitration clause contained in the said principal agreement shall cease to have any effect and/or shall be deemed to be non-existent for all purposes.”

6. The respondent Contractor had sent a legal notice to the General Manager, Northern Railways, Baroda House, New Delhi immediately after receiving the entire amount in pursuance to the settlement of his full and final claim with the appellant. The legal notice sent by the respondent did not even mention the fact of entering into the supplementary agreement with the appellant and receiving the entire amount of Rs.2,07,49,099/-. The respondent deliberately suppressed the material facts and thereafter filed an Arbitration Case No.34/2004 before the High Court of Punjab and Haryana. The court without appreciating these facts, by an impugned judgment, referred the claim of the respondent-Contractor to the two arbitrators.

7. The appellant-Union of India is seriously aggrieved by the impugned judgment of the High Court and submitted that after receiving the entire amount, the respondent also signed the supplementary agreement and thereafter the respondent was not justified in invoking the arbitration.

8. Learned Additional Solicitor General appearing on behalf of the Union of India has strenuously submitted that the matter is no longer res integra and is covered by a series of judgments for almost a century. He referred to the judgment of Privy Council in *Payana Reena Saminathan v. Pana Lana Palaniappa*¹ (reiterated in *Union of India v. Kishorilal Gupta & Bros.*²) which reads as under:- ".....The 'receipt' given by the appellants and accepted by the respondent, and acted on by both parties proves conclusively that all the parties agreed to a settlement of all their existing disputes by the arrangement formulated in the 'receipt'. It is a clear example of what used to be well known as common law pleading as 'accord and satisfaction by a substituted agreement'. No matter what were the respective rights of the parties inter se they are abandoned in consideration of the acceptance by all of a new agreement. The consequence is that when such an accord and satisfaction takes place the prior rights of the parties are extinguished. They have in fact been exchanged for the new rights; and the new agreement becomes a new departure, and the rights of all the parties are fully represented by it."

9. He submitted that this judgment has been approved and followed by this court even in the year 2009.

10. Learned Additional Solicitor General also placed on record the judgment of this court in *State of Maharashtra v. Nav Bharat Builders*³. In this case, the court observed that the dispute between the parties were conclusive and the respondent fully and finally accepted the claim and thereafter received the amount.

“Thus, there was accord and satisfaction of the claim relating to labour escalation charges and thereafter the matter could not have been referred to the arbitration.”

11. Learned Additional Solicitor General also relied on another judgment of this court in *M/s P.K. Ramaiah and Company v. Chairman & Managing Director, National Thermal Power Corpn.*⁴. In this case also the respondent received the amount in full and final settlement of

his claim. Consequently, there was an accord and satisfaction and thereafter no arbitrable dispute remained for reference to the arbitration.

12. This court in *Nathani Steels Ltd. v. Associated Constructions*⁵ also had an occasion to examine the similar case. The court observed that after settling the entire matter and receiving the payment, it was not open to the respondent to treat the settlement as non est and proceed to invoke the Arbitration clause.

13. This court in a relatively recent case has examined the legal position once again in the case of *National Insurance Company Limited v. Boghara Polyfab Private Limited*⁶. In para 25 of the said judgment, the court observed as under:-

“25.....Where both parties to a contract confirm in writing that the contract has been fully and finally discharged by performance of all obligations and there are no outstanding claims or disputes, courts will not refer any subsequent claim or dispute to arbitration.

Similarly, where one of the parties to the contract issues a full and final discharge voucher (or no due certificate as the case may be) confirming that he has received the payment in full and final satisfaction of all claims, and he has no outstanding claim, that amounts to discharge of the contract by acceptance of performance and the party issuing the discharge voucher/certificate cannot thereafter make any fresh claim or revive any settled claim. Nor can he seek reference to arbitration in respect of any claim.”

14. The court further observed in para 29 as under:- "29.....It is thus clear that the arbitration agreement contained in a contract cannot be invoked to seek reference of any dispute to arbitration, in the following circumstances, when the contract is discharged on account of performance, or accord and satisfaction, or mutual agreement, and the same is reduced to writing (and signed by both parties or by the party seeking arbitration):

“(a) Where the obligations under a contract are fully performed and discharge of the contract by performance is acknowledged by a full and final discharge voucher/receipt. Nothing survives in regard to such discharged contract.

(b) Where the parties to the contract, by mutual agreement, accept performance of altered, modified and substituted obligations and confirm in writing the discharge of contract by performance of the altered, modified or substituted obligations.

(c) Where the parties to a contract, by mutual agreement, absolve each other from performance of their respective obligations (either on account of frustration or otherwise) and consequently cancel the agreement and confirm that there is no outstanding claims or disputes.”

15. In this case the court relied on earlier judgments of this court and reiterated the legal position which has been crystallized by a series of judgments where both the parties to a contract confirmed in writing that the contract has been fully and finally discharged by the parties and there was no outstanding claim or dispute and thereafter the matter could not have been referred to the arbitration.

16. In a celebrated book, Russell on Arbitration, 19th Edn., p.396, it is stated that "an accord and satisfaction may be pleaded in an action on award and will constitute a good defence".

17. In our considered view, on the basis of the above settled legal position that when the parties by a supplementary agreement obtained a full and final discharge after paying the entire amount, which was due and payable to the contractor, thereafter the contractor would not be justified in invoking arbitration because there was no arbitral dispute for reference to the arbitration.

18. In view of the settled legal position, the impugned judgment is unsustainable and is accordingly set aside.

The appeal is allowed accordingly. The parties to bear their own costs.

¹14 (1913-14) 41 IA 142

²AIR 1959 SC 1362

³1994 Supp (3) SCC 83

⁴1994 Supp (3) SCC 126

⁵1995 Supp (3) SCC 324

⁶(2009) 1 SCC 267