

Union of India Vs. Fescon

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Court : Kolkata

Decided On : Sep-11-2012

Judge : Banerjee

Appellant : Union of India

Respondent : Fescon

Judgement :

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ORDER

SHEET APO No.109 of 2010 AC No.9 of 2003 IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction ORIGINAL SIDE UNION OF INDIA Versus FESCo.BEFORE: The Hon'ble JUSTICE BANERJEE The Hon'ble JUSTICE SHUKLA KABIR (SINHA) Date :

11. h September, 2012.

Appearance: Mr.Swapan Kr.

Banerjee with Mr.Deepak Kr.

Singh, Advocates For the Appellant.

Mr.Ajoy Krishna Chatterjee, Sr.Advocate with Mr.Bijon Majumder, Advocate For the respondent.

HEARD ON: September 06, 2012

JUDGMENT

ON: September 11, 2012.

The Court :- The subject appeal would relate to an award that was challenged before the learned Single Judge.

The learned Single Judge declined to interfere.

Hence this appeal.

The parties entered into a contract wherein 13 work orders were issued by the Railways in favour of the respondent.

The learned Single Judge by an order dated September 9, 1996 appointed a retired Judge of this Court as Arbitrator.

The Arbitrator considered the claims and counter claims and, ultimately, published an award for a lump sum amount of Rs.6 lacs that was challenged by the Railways.

The learned Single Judge vide judgment and order dated May 3, 2002 remitted the award back to the Arbitrator for giving break up of the said sum as the agreement would impose a responsibility on the Arbitrator to give break up of the awarded sum.

Accordingly, the Arbitrator re-examined the award and gave break up of the said sum of Rs.6 lacs.

The learned Arbitrator, however, did not interfere with the interest component that was incorporated in the original award.

Pertaining to note, the learned Single Judge vide judgment and order dated May 3, 2002 remitted the award back on the limited issue as referred to above.

The Railway challenged the award again.

The learned Single Judge vide judgment and order dated May 15, 2009 observed, the Court was not competent to sit in appeal over the award of the Arbitrator.

The award impugned was long and reasoned.

The challenge to the award did not sustain at the initial stage.

The Arbitrator gave claim-wise break up so awarded by her in terms of the earlier order of this Court.

Hence it was not available for challenge.

His Lordship further observed, the grounds urged were vague and devoid of material particulars. The ground of patent legal misconduct was totally vague and devoid of any particulars so as to ground of travelling beyond the scope of the contract.

The learned Single Judge also rejected the contention of the Railways on the interest component relying on the decision of this Court in the case of Union of India versus Pam Developments Pvt Ltd reported in Air 2005 Calcutta 332.

Being aggrieved, the Railways preferred the instant appeal that was heard by us on September 6, 2012.

Mr. Swapan Banerjee, learned Counsel appearing for the appellant relied on his written submissions that was submitted when the appeal was heard by the other Bench.

On perusal of the memorandum of appeal as well as written argument we find, the principal ground of challenge was as to the interest component.

According to the Railway, no interest was payable as per Clause 64(3A)(iv) of the General Conditions of Contract.

According to Mr. Banerjee, the Arbitrator should not have awarded interest without being authorized by the Contract.

Mr. Banerjee relied upon the decision in the case of Ramnath International Construction Pvt Ltd versus Union of India reported in (2007) 2 SCC 453.

Opposing the appeal, Mr. Ajoy Krishna Chatterjee, learned Senior Counsel appearing for the respondent-claimant relied on the decisions in the case of Executive Engineer, Irrigation, Galimala & Ors versus Abnaduta Jena reported in AIR 198.SC 1520. Secretary, Irrigation Department, Government of India vs. G.C.

Roy reported in AIR 199.SC 73. and Madnani Construction Corporation (P) LTD. versus Union of India reported in (2010) 1 SCC 549.

Citing the aforesaid decisions Mr. Chatterjee contended that the decision of the Apex Court in the case of Abnaduta Jena (supra) was no longer a good law as it was overruled by implication in the subsequent decision in the case of G.C. Roy (Supra). Relying on Madnani Construction Corporation (p) Ltd (supra) Mr. Chatterjee contended that once the agreement did not specifically bar in awarding interest the Arbitrator was within her power to award interest.

He relied on paragraph 39 of the said decision which is quoted below: 39. In the instant case also the relevant clauses, which have been quoted above, namely, Clause 16(2) of GCC and Clause 30 of SCC do not contain any prohibition on the arbitrator to grant interest.

Therefore, the High Court was not right in interfering with the arbitrator's award on the matter of interest on the basis of the aforesaid clauses.

We therefore, on a strict construction of those clauses and relying on the ratio in Engineers find that the said clauses do not impose interest.

any bar on the arbitrator in granting We have considered the rival arbitrator published her award that contentions.

The came up for challenge before the learned Single Judge.

The learned Single Judge upheld the award but remitted the same for a limited purpose.

Hence the plea adjudicated and on account attained of interest finality while component the learned stood Judge disposed of the application for setting aside by judgment and order dated May 3, 2002.

The Railway accepted the said decision.

Hence, they are precluded from taking such plea once again.

The learned Single Judge remitted the award to the Arbitrator only for the purpose of break up of the claim.

The Railway did not and could not find any flaw on the break up at, least not shown to us.

Hence the challenge to the award, in our view, could not sustain.

The learned Judge rightly declined, so do we.

We find from the award that the learned Arbitrator awarded interest @12% p.a.on and from November 14, 1994 being the date when the dispute arose and reference to arbitration was claimed till the date of the award being September 19, 1998 and further rate of interest @ 18% p.a.on the said sum of Rs.6 lacs from the date of the award till the date of the decree or payment, as the case may be.

We feel, interest of justice would subserve, if we streamline the rate of interest and direct the Railway to pay interest @ 12% p.a.on and from November 14, 1994 until payment.

The award stands modified accordingly.

There will be judgment upon award on the said sum subject to the rate of interest so modified.

Mr.Chatterjee prayed for cost to be assessed.

The Arbitrator already awarded cost.

We do not feel it necessary to award further cost.

Decree is to be drawn up expeditiously.

The appeal is disposed of without any order as to costs.

Urgent certified copy of this order, if applied for, be given to the parties upon compliance formalities.

(BANERJEE, J.) (SHUKLA KABIR (SINHA).J.) dg/ of usual

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