

Union of India (Uoi) Vs. Mehta Construction Co. and anr.

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Court : Mumbai

Decided On : Sep-25-1990

Reported in : 1991(1)BomCR400

Judge : D.R. Dhanuka, J.

Acts : [Arbitration Act, 1940](#) - Sections 29

Appeal No. : Arbitration Petition No. 90 of 1988 in Award No. 144 of 1987

Appellant : Union of India (Uoi)

Respondent : Mehta Construction Co. and anr.

Advocate for Def. : T.N. Subramaniam and ;T.G. Vora, Advs., i/b., Chitnis Vaity & Co.

Advocate for Pet/Ap. : V.N. Lokur, ;T. Satyavathy and ;Meena Masurkar, Advs.

Judgement :

D.R. Dhanuka, J.

1. This is a petition to set aside an award dated 15th October 1987 made by Arbitrator Shri G.D. Chopra. By the said award the learned Arbitrator has directed the petitioner to pay a sum of Rs. 1,69,616. 12 p. with interest at the rate of 12 per cent per annum with effect from 11-6-1985 till the date of payment or decree

whichever event may be earlier, to the claimants in full and final settlement of all the claims and counter claims referred.

2. For the reasons set out hereinafter, I delete the interest awarded by the Arbitrator for the period from 11-6-1985 until 15-10-1987 and maintain and affirm the award in respect of the principal amount of Rs. 1,69,616.12 and interest on the said amount at the rate of 12% per annum from the period commencing from 16-10-87 till passing of the decree.

3. The facts and circumstances of the case are as under :

The Executive Engineer, Bombay Central, Division VIII, CPWD invited tenders for carrying out work of construction of 2600 quarters at Bombay for General Pool Residential accommodation under Crash programme at S.M. Plot, Bombay, Superstructure for 280 Nos. Type 'A' Quarters including internal water supply, etc. The tender submitted by respondent No. 1 was accepted. The respondent No. 1 completed the work by 11-3-1983. The respondent No. 1 accepted the final bill under protest on 27-4-1985 as averred in paragraph 5 of the petition.

4. Disputes and differences arose between the parties regarding the payment of the final bill. Ultimately Mr. Chopra was appointed as an Arbitrator in accordance with the arbitration clause being Clause No. 25 contained in the said agreement. The learned Arbitrator decided various claims and counter claims and made his award on 15-10-1987.

5. Mr. Lokur, learned Counsel for the petitioner has challenged the said award on various grounds. It appears to me that the challenge to the said award by the petitioner is misconceived save and except in respect of award relating to the claim of the 1st respondent for interest. It has been argued that the learned Arbitrator could not have awarded claim No. 2 because the site order book shown to the Arbitrator would have shown that the defects were brought to the notice of the claimants during the defect liability period. In my judgment, this is a factual question. The arbitrator was an experienced person. Several documents were produced by both sides before the arbitrator and it was for him to record the findings of fact and make the necessary award.

6. It has been argued that under the agreement the petitioner was entitled to claim recovery at double the rate for excess consumption of cement. The arbitrator has awarded the claim for part of the amount having regard to the various facts and circumstances set out in the award. It has been argued that the arbitrator ought to have awarded the claim for storage charges. The arbitrator has given various factual reasons for not awarding the said amount and accepting the claim of respondent No. 1 for deduction. It has been stated in ground (i) of paragraph 7 of the petition that the arbitrator recorded that the steel which was issued to respondent No. 1 was not of the required diameter. Mr. Lokur has relied upon Clause 42(1) of the agreement. The said clause by itself cannot conclude the issue and it was open to the arbitrator to consider various factual matters to which his attention was drawn by the parties.

7. As regards the claim No. 16 is concerned, the respondent No. 1 had made a claim for Rs. 1,82,200/-. The Arbitrator awarded a sum of Rs. 20,000/- in respect of the said claim. It has been urged with all solemnity in paragraph 10(j) of the petition that on 20th August 1985 the respondent No. 1 withdrew the said claim and it was not open to the arbitrator to award any amount when the claim itself was withdrawn. This averment has been denied by the respondent No. 1 in paragraph 18 of the affidavit-in-reply. I invited Mr. Lokur to point out any material or any documentary evidence to support the contention of the petitioner that the said claim was withdrawn by the petitioner. After taking some time and verifying the papers and records. Mr. Lokur informed me that no documentary evidence was available to support the statement made in paragraph 10(j) of the petition.

8. Similar challenge made in respect of claim Nos. 20, 21, 22 & 23 is based on factual disputes. I am not exercising any appellate powers as I have none and the grounds of challenge to the award are confined to what is set out in section 30 of the [Arbitration Act, 1940](#). Hence, I have no hesitation in rejecting each of the ground of challenge to the amount awarded save and except the challenge in respect of award of interest to which I shall now refer to.

9. It has been conceded on behalf of the petitioner that there is no clause providing for interest in the agreement. It has also been conceded on behalf of the

petitioner that no notice was given claiming interest at the rate of 21% to the petitioner at any time. Mr. Subramaniam has however invited my attention to corrigendum issued by the Chief Engineer stating that the claim made by respondent No. 1 being claim No. 28 was also referred to arbitration. The said claim No. 28 reads as under :

'Claim No. 28.

The claimants claim interest @ 21% per annum from the respondent from 1-6-85.'

10. Mr. Lokur has also invited my attention to the judgment of the Honourable Supreme Court in the case of Executive Engineer, Irrigation, Galimala & others v. Abhadura Jena, : [1988]1SCR253 . Mr. Subramaniam has invited my attention to the judgment of Supreme Court in the case of Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) Pvt. Ltd. & another, : [1989]1SCR318 . In view of the abovereferred judgments and in view of the fact that there is no clause for payment of interest in the agreement, and in view of the fact that no notice was served claiming interest, the Arbitrator could not have awarded interest for the period commencing from 16-8-1985 until the date of making of the award.

11. Under section 29 of the [Arbitration Act, 1940](#) the Court can award interest only from the date of the decree.

12. The arbitrator however can award interest from the date of the award till passing of the decree. Paragraph 16 of the judgment in the case of Gujarat Water Supply & Sewerage Board : [1989]1SCR318 reads as under :

'16. We would, however, delete the interest awarded by the arbitrator for the period from 22-8-1984 till the date of the award and confine the interest on the principal sum of Rs. 57,65,273/- to interest at 9 per cent from 6-8-1981 till 21-8-1984 (which has been worked out at Rs. 29,82,443). However, in exercise of one powers under section 3 of the Interest Act, 1978 and section 29 of the [Arbitration Act, 1940](#), we direct that the above principal sum or the unpaid part 6 thereof should carry interest at the same rate from the date of the award (19-7-1985) till the date of actual payment.'

In this view of the matter, I have modified the award and deleted the award of interest on the said sum of Rs. 1,69,616.12 for the period commencing from 11-6-1985 until 15-10-1987 and maintained the award of principal amount as well as interest for the date thereafter following the precedent of the Supreme Court judgment in the case of Gujarat Water Supply & Sewerage; Board (supra) as stated above.

13. Having regard to the facts and circumstances of the case, there shall be no order as to costs.

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