

Union of India Vs. Baldev Singh

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Court : Delhi

Decided On : Apr-22-1975

Reported in : ILR1975Delhi278

Judge : S.N. Shankar and; F.S. Gill, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 30

Appeal No. : First Appeal No. 75 of 1970

Appellant : Union of India

Respondent : Baldev Singh

Advocate for Pet/Ap. : A.B. Saharia,; V.B. Saharya,; R.H. Dhebar and;

Judgement :

S.N. Shankar, J.

(1) Challenge in this appeal is to the order of the learned single judge dismissing the objections filed by the appellant under Sections 30 and 33 of the [Arbitration Act, 1940](#) and refusing to set aside the award.

(2) In an auction held on January 31, 1960, in pursuance of a public notice issued on behalf of the President of India, by the Managing Officer of the Regional Settlement Commissioner. Jamnagar House, New Delhi, in respect of a cinema in

Faridabad, the respondent gave the highest bid for Rs. 6,11,000. His bid was accepted and possession of the cinema was given to him after about two years of the acceptance of the bid. Later, disputes arose between the parties, amongst others, in regard to the machinery, building and the electrification of the cinema. On May 31, 1967 parties agreed to refer the same to the sole arbitration of Shri V. Nanjappa, Secretary to the Government of India, Department of Rehabilitation, New Delhi. On May 1, 1968 the arbitrator made his award and held that the respondent was entitled to a sum of Rs. 30,000 as compensation in respect of the machinery. 45,000 as compensation in respect of electrification and Rs. 40,000 in respect of building. He further held that the respondent had already paid a sum of Rs. 2,42,575.57 towards the purchase price of the cinema and subject to the receipt of reports in regard to certain other claims filed by him, the balance amount of the purchase price payable was Rs. 2,99,573.11 against which the amount awarded shall be adjusted leaving a balance of Rs. 1,84,573.11 to be paid by him within six months. The award was filed before a learned single judge of the court. On September 4, 1968 the appellant filed objections under sections 30 and 33 of the Arbitration Act alleging, amongst others, that the arbitrator had misconducted himself, the award was beyond the terms of reference, that the claims made by the respondent before the arbitrator were on the basis of Cinematograph Act and these claims were beyond the scope of reference, that the award was vague inasmuch as it did not show as to whether the claims were accepted by the arbitrator with reference to the terms of the auction notice or on the basis of expenditure incurred for the fulfillment of the requirement of Cinematograph Act. Certain other objections were also raised but they have not been canvassed and it is unnecessary to notice them.

(3) Respondent also filed objections against the award but the same were not pressed and nothing further need be said in respect of them.

(4) Parties led no oral evidence and relied on the record of the arbitration proceedings filed in court- By the impugned order, the learned single judge held that the first part of the award awarding compensation in respect of machinery, electrification and building was valid but the rest of the award dealing with the details of the balance of the purchase price and the mode in which it was to be

paid, being not covered by the reference, could not be sustained, but as it was severable from the first part of the award the whole award could not be set aside. Appellant's objections against the first part of the award were thus dismissed.

(5) Shri A. B. Sahariya, learned counsel for the appellant, urged that the jurisdiction of the arbitrator was inflexibly limited to the matters specifically referred to him which were claims on the basis of notice of auction : but he entertained and allowed claims based on the Cinematograph Act and as such exceeded his jurisdiction and the award for this reason is vitiated and is liable to be set aside- No moral turpitude of any kind was attributed to the arbitrator.

(6) To decide this contention, it will be appropriate to set out the relevant part of the reference relating to the matter referred, the claims as raised before the arbitrator and the part of the award accepting the claims and awarding compensation.

(7) In the agreement of reference dated May 31, 1907 it is stated that a cinema house at Faridabad Township was sold by auction by the appellant in favor of the respondent for a sum of Rs. 6,11,000.00 out of which the appellant made only a part payment and possession of the cinema was given to him subject to his making the payment of the balance. Then the agreement stated:

'WHEREAS the Second Party put in claim for certain deficiencies in machinery and defects in the building etc. which claim was not accepted by the First Party. . .'
WHEREAS it has been agreed between both the parties to refer the matter to the sole arbitration of the secretary to the Government of India, Department of Rehabilitation, Ministry of labour, Employment and Rehabilitation, without prejudice to the action to be taken under the provisions of the D.P.(C & R) Act, 1954.

(8) In the clauses following, the sole arbitrator was named and clause 5 which is being relied upon by Shri Sahariya read as under:

(A) Whether or not all the machinery specified in the notice of auction was supplied by the First Party to the Second Party? If the supply of the machinery was not in accordance with the notice of auction what would be the amount of compensation payable by the First Party to the Second Party?

(B) Whether the electrification of the building was or was not as specified in the auction notice? If it was not what would be the amount of compensation payable by the First Party to the Second Party?

(C) Whether the building and the equipment handed over to the second party was otherwise not in accordance with the terms of the auction notice? If not what would be the amount of compensation payable by the First Party to the Second Party'.

(9) We have set out the relevant clauses preceding the appointment of the arbitrator as they have a bearing on the controversy and the scope of the matter which the parties agreed to refer to arbitration as we shall presently show.

(10) After the arbitrator entered on the reference, the respondent put in a detailed claim stating, amongst others, that "at the time of auction. it was announced in clear term' that the said cinema was a running one and that the intending purchaser will not experience any difficulty in obtaining license from the appropriate authority', but on taking possession of the Cinema he found several items missing. None of the items including the building was in conformity with the Cinematograph Act and license for running the cinema could neither be issued nor renewed. That by his letter dated November 2, 1961 he had informed the authorities about the condition of the building, electric fittings etc. but to no effect and that he had incurred heavy expenses which the appellant was liable to pay. After stating these and the other facts, the concluding part of the claim was in the following words:

'ANDWHEREAS, I, The sole Arbitrator appointed herein entered upon the reference, have read the pleadings and documents filed on behalf of the parties, and Whereas I have duly considered and deliberated over the respective contentions advanced on behalf of the parties in respect of all the claims in terms of the reference herein above mentioned....

Now, I hereby make and publish my award as follows: (i) That Shri Baldev Singh shall be entitled to a sum of Rs. 30,000.00 as compensation in respect of machinery; (ii) That Shri Baldev Singh shall be entitled to a sum of Rs. 45,000.00 as compensation in respect of electrification ; (iii) That Shri Baldev Singh shall be

entitled to a sum of Rs. 40,000.00 in respect of building.

(11) The argument of Shri Sahariya is that according to para (5) of the deed of reference the disputes referred for decision of arbitrator were disputes based on claims made with reference to the notice of auction but in the plaint filed before the arbitrator the respondent raised claims not on the basis of auction notice but on the basis of Cinematograph Act. The arbitrator, the learned counsel maintained, had no jurisdiction to entertain these claims, much less to uphold them in the award.

(12) To our mind, the objection is wholly misconceived. Scope of reference in the case has to be determined not by reference to clause 5 of the agreement alone but with reference to the whole agreement because the reference to arbitration was made after disputes had arisen and the reference-deed in terms says that the parties agreed to refer this matter to arbitration. This is borne out by the clauses of the reference-deed extracted above, preceding the appointment of the arbitrator.

(13) The respondent has produced before the arbitrator the claims that he had raised prior to the agreement of reference. This he did by his letter dated November 2, 1961 addressed to the Regional Settlement Commissioner, New Delhi. The relevant part of this letter reads as under :

'THE provisional possession of the Cinema building at Faridabad was given to us by you yesterday. The discrepancies found in the machinery and equipment have already been written by us on the inventory of the articles. Numerous defects were noticed in the Cinema building some of which are detailed below.

2. The electric installations wherever they exist are not as per Cinematograph Act. Three separate circuits are required under this Act but they do not exist at site. Many of the fittings are only dummy and there are no connections to the same. These things could not be checked as there was no electric connection in the building. Some fittings which were available at the time of auction, are now missing.

3. There is no acoustic treatment in the building at all.

4.The spacing of the exit doors, urinals and water closets and Projection Room etc. is not as per provision of the Cinematograph Act. There is no ceiling in the building which is essential to fulfill the requirements of Cinematograph Act.

(14) The respondent also produced before the arbitrator copy of a letter dated November 10, 1961 sent by the Regional settlement Commissioner, New Delhi to the Sub-Divisional Officer, Palwal. District Gurgaon forwarding his application for renewal of cinema license with the recommendation that the same may be done at an early date to enable the respondent to run the cinema as also copy of a letter dated February .1, 1962 sent. by the Deputy Commissioner and District Magistrate, Gurgaon, to Chief Electric Inspector. Government of Punjab. Patiala. stating that the cinema had been sold by auction and purchased by the respondent who had applied for grant of license and that the Chief Electric Inspector may examine the electric appliances installed in the cinema building at an early date and intimate whether these electric installations comply with the provisions of the Cinematograph Act: and the Rules framed there under. According to the endorsement on this letter its copy was also forwarded by the District Magistrate to the Executive Engineer, P. W. D. B. R. Gurgaon with the request to inspect the cinema building and 'intimate whether the building conforms to the conditions of the license and Cinematograph Rules'. This shows that from the very start it was the respondent's case that he was entitled to be delivered possession of a cinema capable of being licensed under the Cinematograph Act and not just a building of the cinema. The appellant did not accept this position also.

(15) It was all these disputes which are covered by the expression 'matter' used in the extracted clause of the reference-deed which the parties agreed to refer and did refer to arbitration by means of the reference-deed. Para (5) of the reference-deed simply set out the heads of these claims. Claims in the claim-petition before the arbitrator, it is not denied, conform to these heads. It is, therefore, not right to say that the claims raised before the arbitrator were something different from the 'matter' that the parties agreed to refer to arbitration. Reference to the Cinematograph Act in the claim petition was only a plea in justification of the claim and not a claim by itself.

(16) Even if it be assumed for the sake of argument that para (5) of the reference-deed set out the claims, we find nothing in the agreement to limit the jurisdiction of the arbitrator to debar him from taking into consideration the provisions of Cinematograph Act in upholding those claims. The reference-deed did not provide that in determining the claim the arbitrator shall refer to the auction notice alone and shall not take into consideration anything else.

(17) We are, therefore, unable to accept the submission of the learned counsel that the arbitrator had no jurisdiction to entertain the claims as filed before him only because they made a reference to the Cinematograph Act.

(18) We further find- that factually there is no basis for the grievance of the learned counsel. The arbitrator in his award has now- here said that the claims of the respondent were being sustained by him because of any provision in the Cinematograph Act. The arbitrator has said in the award that he had read the pleadings and documents filed on behalf of the parties and duly considered and deliberated over the respective contentions. The plea now raised was also urged before the arbitrator. The award is a non-speaking award. This Court is precluded to gauge the mind of the arbitrator or to examine the considerations that entered his mind in arriving at his conclusion. There is nothing on the record, therefore, to suggest that in the award the arbitrator awarded compensation because of the provisions in the Cinematograph Act. The whole grievance, is thus misconceived and without basis.

(19) In *Smt. Santa Sila Devi and another v. Dharendra Nath Sen and others*: : [1964]3SCR410, the Supreme Court has laid down certain basic considerations that the Court should be guided by in the matter of interfering with the award of the arbitrator. These are: (1) a Court should approach an award with a desire to support it, if that is reasonably possible, rather than to destroy it by calling it illegal; (2) unless the reference to arbitration specifically so requires the arbitrator is not bound to deal with each claim or matter separately, but can deliver a consolidated award; (3) unless the contrary appears the court will presume that the award disposes finally of all the matters in difference: and (4) where an award is made 'do praemissis' (that is, of and concerning' all the matters in dispute referred to the

arbitrator), 'the presumption is that the arbitrator intended to dispose finally all the matters in difference ; and his award will be held final, if by any intendment can be made so'.

(20) For all these reasons, we are firmly of the view that in the facts of this case and the award as it is, it cannot be said that the arbitrator exceeded his jurisdiction either in entertaining the claims of the respondent or in allowing compensation to the respondent in terms of the award.

(21) Shri Sahariya referred us to Narsingh Narain Singh v. Ayodhya Prosad Singh and another : 1912 Ind Cas 118 in support of the proposition that the arbitrator had no jurisdiction to go beyond the precise questions submitted to him. In this case, the question submitted to the arbitrator was whether the plaintiff had a right of way over a specified strip of land but the arbitrator in his award laid out a new path on a piece of land over which neither party alleged a right of way. It was in this context that it was observed that he cannot go beyond the precise questions submitted to him and determine any claim or demand which the parties did not refer. Reference was next placed by the learned counsel on Jagar Hari Bepin Behary Poddar v. Moran and Co. '. A.I.R 1915 Cal 713 where it was held that an award was bad if the arbitrator went beyond the scope of reference and decided disputes not submitted to it. This conclusion was arrived at on the finding that the dispute about 447 bales involved in the case was not at all covered by the original contract but formed the subject matter of another contract between the parties in regard to which there was no arbitration clause, No exception can be taken to the abstract proposition of law laid down in these cases. But they do not in any manner assist the learned counsel.

(22) The learned counsel then urged that the award was bad because the arbitrator failed to determine the specific dispute contained in the first part of sub-paragraphs (a) and (b) of para 5 of the reference-deed, namely, whether the machinery and the electrification was not as specified in the notice of auction. This finding, it was argued, was a condition precedent to give jurisdiction to the arbitrator to award damages and this having not been done the award of damages is without jurisdiction. This submission is as much without merit as the previous one.

(23) According to Halsbury's Laws of England, para 609 page 321, unless the agreement of reference prescribes in what form the award is to be made, it may be made in such form as the arbitrator or umpire thinks fit. On page 322, (para 610) of the same book. after stating the proposition that found recognition from the supreme Court in : [1964]3SCR410 (Supra) that the Court should approach the award with a desire to support it rather than destroy it. It is observed that the burden of proving that the arbitrator failed or omitted to award on matters which were referred, lies on the party who seeks to impeach the award. According to Russell 'On Arbitration' Seventeenth Edition, Page 243, in a case where several claims are made between the parties, the award must decide upon each of them. But it is unambiguously provided that the award will be sustained even though the arbitrator has omitted to notice some claim put forward by a party, if, according to the fair interpretation of the award, it is to be presumed that the claim has been taken into consideration.

(24) In this case, as we have pointed out above, the arbitrator in his award has stated that he has 'considered and deliberated' over the respective contentions of the parties to arrive at the conclusions recorded by him. On a fair interpretation of the award, in these circumstances, it cannot, therefore, be said that the arbitrator omitted to consider any claim urged before him so as to vitiate the award. There is no material on the record even to indicate, much less prove, that the parties by the reference deed intended the arbitrator to separately record his finding in regard to the first part of sub-paras (a) and (b) of Para 5 of the reference or to give his award in a particular form. The appellant has miserably failed to discharge the onus that lay on it to support this plea. The objection is, therefore, wholly without merit and is repelled.

(25) Shri Sahariya relied on Union of India v. Firm ./. P. Sharnui & Sons : . In this case there was a dispute between the Railway Administration and Railway contractor who claimed certain amounts from the Railway for different items of work done by him. The dispute was referred to an arbitrator. A joint list of issues was submitted to the arbitrator by the parties. The arbitrator awarded a consolidated sum to be paid to the contractor. On the interpretation of the reference, in the facts of the case, the Court found that the real dispute between

the parties that was referred to the arbitrator was about the applicability of correct rate for the job done by the contractor. The Court observed : regarding in the actual amount that may be payable once the question of rate was adjudicated upon'.

THE award did not indicate any decision of the arbitrator in regard to rate that was to be applied to the various items of work. It was, therefore, held incomplete and defective. After noticing the rival contentions of the parties and exhaustively dealing with the case law on page 112 of the report, the legal position was set out by the Bench in the following words :

IN the light of these observations we now proceed to deal with the merits of the case in hand. The crux of the matter is whether the disputes or differences as a whole subsisting between the parties were referred to arbitration or whether it is only the issues framed by the arbitrator that constituted the subject-matter of the dispute as referred to the arbitrator. In other words, if the issues were merely the points for decision as a Court would frame them, then according to the dicta of the several cases referred above, the arbitrator was not bound to decide each issue separately and he could have awarded a consolidated sum. On the other hand, if we can predicate that it were the issues that were the several disputes referred to the arbitrator and he was specifically required to deal with or to decide each claim or matter separately then he could not deliver a consolidated award without deciding each point as required in the submission to adjudication.

THESE observations very aptly support the view that we have taken. The 'matter' that was referred for decision of the arbitrator in this case was the determination of compensation that the respondent claimed under the heads specified in paragraph 5 of the referenced deed and the arbitrator has given his finding in that regard. Nothing referred to him thus remains undetermined to vitiate the award.

(26) The learned counsel also referred us to *Indian Minerals Co. The Northern India Lime Marketing Association* : AIR 1958 All 692 where it was held that when the parties agree to refer the matter to arbitration there is an implied condition in the submission of the parties that the arbitrator shall dispose of all the matters. In this case) in an application under section 20 of the Arbitration Act the court had

formulated the points for decision by the arbitrator. It was held that the failure to perform the essential duties which are cast on the arbitrator, even if there be no moral turpitude, would be a legal misconduct and as the arbitrator was bound to decide the points submitted to him for decision and he had failed to do so, the award could not be sustained. On page 696 of the report, it was observed that when a submission is made to an arbitrator and the points in dispute are referred to him, the arbitrator would not be justified in ignoring the points formulated by the court for his decision and in framing other points. It is in this context that it was held that when the parties agree to refer the matter to arbitration, there is an implied condition in the submission of the parties that the arbitrator shall dispose of all matters. There can be no dispute with the broad proposition of law enunciated but that is not attracted to the facts of this case. Reference to the agreement dated May 31, 1967, shows that even though in paragraph 5 of the agreement separate heads of the disputes were mentioned by what he arbitrator, in substance, was to decide was 'what would be the amount of compensation payable by the First Party to the Second Party'.

(27) For reasons aforesaid, we find no merit in this appeal. The same is accordingly dismissed with costs.