

**Omvik Electronics Pvt. Ltd. Vs. Union of India**

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**Court :** Delhi

**Decided On :** Jan-30-1980

**Reported in :** AIR1980Delhi169

**Judge :** G.R. Luthra, J.

**Acts :** [Arbitration Act, 1940](#) - Sections 14

**Appeal No. :** Suit Appeal No. 88A of 1979

**Appellant :** Omvik Electronics Pvt. Ltd.

**Respondent :** Union of India

**Advocate for Pet/Ap. :** M.C. Sekharan,; I.C. Kumar and; Anil Kumar, Advs

**Judgement :**

**G.R. Luthra, J.**

(1) M/S. Omvik Electronics (here in after referred to as a 'Contractor') which is a private limited company incorporated under the Indian Companies Act, 1956 having its registered office at 4/276, Parbati Bagia Road, Kanpur. entered into a contract dated 5th November, 1976 with Union of India through the Director General of Supplies and Disposals, New Delhi for supply of 440651 shoulders and 495196 collars. According to the agreement the contractor was to be paid 95% of the price against the supply of goods from time to time and the balance of 5% was

to be paid on supply of the entire quantity. Office of the Director General of Supplies and Disposals withheld a sum of Rs. 73,946.00 from the bill of the petitioner against the 95% of the payment due to alleged reduction in rates and did not pay the balance 5% although the whole of the contracted shoulders and collars had been supplied. Disputes arose between the parties in respect of the withholding of the afore- said payment. In accordance with an arbitration clause in the Agreement Director General of Supplies and Disposals appointed Shri Bakshish Singh, Additional Legal Adviser to the Government of India as Sole Arbitrator. Contractor filed a claim for recovery of Rs. 73,946 in respect of withholding of the amount from his 95% bill and for recovery of Rs. 62,521.45 for balance of 5% of the bill. Arbitrator gave an award dated 30th December, 1978 to the effect that Union of India shall pay a sum of Rs. 62,521.45 to the contractor and that the remaining claim of the contractor shall stand dismissed.

(2) The contractor brought a petition under Section 14 of the Arbitration Act on 12th January, 1979 which was registered as Suit No. 88-A of 1979. He prayed for directing the arbitrator to file the award along with the proceedings taken by him. Accordingly the award was filed and notices of the filing of the award were given to the contractor as well as to the Union of India. The contractor filed objections on 16th May, 1979 which were registered as I.A. No. 2480 of 1979.

(3) It is contended in the objections that there was an error apparent on the face on the award because the same was contradictory inasmuch as 5 per cent of the total bill amounting to Rs. 62,521.45 had been allowed by the arbitrator at the original rates of contract while he did not allow the original agreed price for the remaining 95 per cent and disallowed the claim of the contractor for recovery of Rs. 73,946.00 which had been withheld due to alleged reduction in prices. It is also urged that the arbitrator misconducted himself by way of giving aforesaid contradictory findings and that the award is liable to be remitted for reconsideration to the claim of the contractor for arbitrator and giving a fresh award in respect of the recovery of Rs. 73,946.00 .

(4) Union of India contested the objections and urged that it is not open to the court to go into the mental thinking of the arbitrator and find out as to why part of

the claim of the contractor had been disallowed and that therefore the objections be dismissed. Following issues were framed :

1. Is there any error apparent on the face of the award is liable to be modified, corrected, set aside or remitted for reconsideration 2. Did the arbitrator misconduct himself as alleged in the objections ?

(5) Both the issues are being dealt with together because they are based on some alleged contradictory findings of the arbitrator. The learned counsel for the contractor referred to the claim of the contractor which was filed before the arbitrator to the effect that it was wrong on the part of the department concerned to have withheld Rs. 73,946.00 from 95% of the bill on account of the alleged reduction in price. The learned counsel urged that the arbitrator had awarded the balance of 5% amounting to Rs. 62,521.45 on the basis of original agreed price which meant that he had accepted the contentions of the contractor that there was no reduction of price subsequently. There was thus contradiction when he rejected the claim of the contractor with respect to Rs. 73,946.00 , on the ground of alleged reduction in price. He concluded that therefore not only the arbitrator had misconducted himself but that there was an error apparent on the face of the award.

(6) The law in this respect as laid down by the Supreme Court in *I M, Allen Berry & Co. Private Ltd. v. The Union of India* : [1971]3SCR282 is as under :

'THE rule thus is that as the parties choose their own arbitrator to be the Judge in the dispute between him they cannot, when the award is good on the face of it, object to the decision either upon the law or the facts. therefore even when an arbitrator commits a mistake either in law or in fact in determining the matters referred to him, but such mistake does not appear on the face of the award or in a document appended to or incorporated in it so as to form part of it, the award will neither be remitted nor set aside notwithstanding the mistake'.

Some view was expressed in *N. Chellappan v. Secretary, Kerala State Electricity Board* and another : [1975]2SCR811 where the proposition of law was laid as under :

'THE umpire as sole arbitrator was not bound to give a reasoned award and if in passing the award he makes a mistake of law or of fact, that is no ground for challenging the validity of the award. It is only when an erroneous proposition of law is stated in the award and which is the basis of the award, can the award be set aside or remitted on the ground of error of law apparent on the face of the record.'

(7) In the present case the award does not show any self-contradiction. It is silent as to why and how Rs. 62,521.45 had been awarded and as to why the rest of the claim was disallowed. The award is non-speaking. For the purpose of finding if there is contradiction, reference has to be made to the claim of the contractor filed before the arbitrator. That claim was neither incorporated nor appended nor formed part of the award. thereforee the said claim cannot be looked into for the purpose of finding out mistake in the award.

(8) The learned counsel for the contractor contended that in some cases the award can be set aside by way of looking into the documents which did not form part of the award. He gives an instance that when an arbitrator awards an amount more than the one claimed by a person, the awards has to be set aside as being without jurisdiction. The learned counsel also relied upon a judgment of Sultan Singh, J. in M/s. American Referigeration Co. Ltd. v. The All India Institute of Medical Sciences 1980 Dlt 66(3) to the effect that an error apparent on the face of an award included an error which could be found by mere making reference to the award and the agreement between the parties, which was the basis of the award. The learned counsel for the contractor urged that when an agreement between the parties, which did not form part of the award, could be referred for the purpose of finding if there was an error apparent on the face of the award or not surely claim filed by the contractor could also be referred for the said purpose.

(9) It is true that when arbitrator awards an amount more than the one claimed, that matter can be looked into. The reason is that in that case the arbirator has given on award beyond the scope of reference. Here the award had been given within the scope of reference and thereforee no document can be looked into for the purpose of finding an error apparent on the face of the award. With due

respect, in view of the clear Supreme Court opinion expressed in the authorities cited above I am not in agreement with the view of my learned brother Sultan Singh, J. It has been clearly laid down by the Supreme Court that no part of an agreement can be referred to for the purpose of finding an error apparent on the face of the record unless that part of the agreement is incorporated in the award itself. When this is the clear view of Supreme Court how can an agreement or any part thereof be referred to for finding out if there is an error apparent on the face of the award. Hence the claim of the contractor filed before the arbitrator cannot be looked into. Under the above circumstance the objections of the contractor have no force and both the issues are decided in favor of the Union of India.

(10) As a result of the findings of both the issues, I dismiss the objection petition (being I.A. No. 2489 of 1978) and make the award a rule of the court. A decree sheet shall be prepared in terms of the award and a copy of the award shall be attached and form part of the decree sheet.

(11) The Union of India is given two months' time to pay the decretal amount otherwise it shall have to pay interest at the rate of 9% per annum from the expiry of those two months till the payment of the amount to the contractor.

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