

Des Raj and Sons Vs. Union of India

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Court : Delhi

Decided On : Mar-08-1984

Reported in : 1984RLR519

Judge : A.B. Rohatgi and; G.C. Jain, JJ.

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

Appeal No. : Regular First Appeal No. 35 of 1980

Appellant : Des Raj and Sons

Respondent : Union of India

Advocate for Pet/Ap. : R.K. Saini and; D.K. Kapur, Advs

Judgement :

Avadh Behari, J.

(1) Avadh Behari J.-This is an appeal by a building contractor from the order of a learned single judge of this Court, dt. 22.1.80. The contractor did work for the respondent Union of India. Disputes arose between the parties. They were referred to an arbitrator. He gave his award. He made a non-speaking award.

(2) The Union of India objected to the award on two grounds. Firstly they questioned the jurisdiction of the arbitrator to award damages on account of

suspension of work. A sum of Rs. 44,078.72 was awarded to the contractor on account of the fact that the work had been suspended by the Government during a certain period for no rhyme or reason. On this part of the award the learned Judge held that under clause 9 of the contract no claim was admissible for compensation due to suspension of work and the arbitrator had acted beyond his jurisdiction in awarding compensation for suspension.

(3) The 2nd claim which the arbitrator allowed was for Rs. 8,073.25 against rise in labour wages. On the construction of clause 3.1 which provides that the contractor shall have no claim whatsoever if on account of any local regulations or otherwise he is required to pay wages in excess of fair wages shown in the schedule, the learned judge held that the arbitrator went wrong in allowing this claim because the contract states that no extra wages can be claimed.

(4) Accepting these objections of the Union of India the learned Judge set aside that part of the award which awarded these two claims. From this judgment the contractor appeals.

(5) In our judgment in M/s Om Prakash Baldev Krishan Vs, U.O.I. F.A.O. (OS) 14/80 pronounced today we have dealt with this case at some length. We have held that Des Raj v. U.O.I. was wrongly decided.

(6) This precise question arose for decision before one of us (Avadh Behari J.) in Rawala Con. Co. v. U.O.I., 1982 Rajdhani L.R. 19. At

(7) The reasoning of the learned Judge in the impugned decision has not commended to us. He failed to appreciate that he was not hearing an appeal from the decision of the arbitrator. He was hearing a motion to set aside the award u/s 30 of the Arbitration Act. It is not open to us to set aside the award only because we might ourselves have come to a different conclusion. The mere dissent of the court from the arbitrator's conclusion on construction does not empower it to set aside the award. In a non-speaking award the scope of judicial review is very much reduced almost to a vanishing point. An award is not invalid merely because by a process of inference and argument it may be demonstrated that the arbitrator has gone wrong in law in arriving at his conclusion. (Jivraj bhai Vs . Chintaman rao

: [1964]5SCR480 .

(8) To the arbitrator claims and disputes of the contractor were referred. He gave his decision on them. He was concerned with the interpretation of the relevant clauses of the contract as well as their application to the facts and circumstances of the case. On the whole he gave to the contract that 'business efficacy' which the parties as reasonable men must have intended it to have. These exceptions clauses are generally drawn in extravagantly wide terms and would produce absurd results if applied literally. *U.G.S. Finance Ltd. v. National Mortgage Bank* (1964) 1 LR 446. See also *U.O.I. v. M/s Vish Karma Shilpi I.L.R. (1975) Del. 788* words are not to be considered in vacuo. The presumed intention of the parties has to be discovered. So the arbitrator has to give a sensible interpretation having regard to the facts, allegations and claims and the evidence submitted in support thereof. Of this he is the sole judge. Questions of law and fact are entirely within his domain and province. It is not for the court to sit in appeal over the decision of the arbitrator and to set aside the award merely on the ground that it might have come to a different conclusion on the construction of the clauses in the contract. This principle has to be constantly borne in mind when the court is dealing with an award which does not state any legal proposition which can be said to be erroneous on the face of it.

(9) The law is succinctly summarised in *Russell on Arbitration* (18th ed) at p 367.

'Where an arbitrator makes a mistake either in law or in fact in determining matters referred, but such mistake does not appear on the face of the award, the award is good notwithstanding the mistake, and will not be remitted or set aside. The general rule is that, as the parties choose their own arbitrator to be the judge in the disputes between them, they cannot, when the award is good on its face, object to his decision, either upon the law or the facts. In this respect the courts do not recognise any distinction between the awards of legal and of lay arbitrators. An error of law on the face of award means.. that you can find in the award or a document actually incorporated thereto as, for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous. Unless upon the face

of the award we can distinctly collect what the arbitrator intended to decide, and that we can see that he has decided wrongly, the court will not interfere.'

(10) The locus classicus on the subject is *Champsey Bhara & Co. v. Jivraj Balloo S. and W. Co. Ltd.* Air 1923 Pc 66. The law is clear. The difficulty is in its application. In this case there is no difficulty at all. The contract is not part of the award. The award does not open the door to look at the contract because it happens to be mentioned in the recital. A mere reference to the contract in the award does not entitle us to look at the contract. In the present case there is no specific reference to any particular clause of the contract in the award. So there is no incorporation of the contract in the award. As long ago as 1867 Cockburn Cj warned 'We must not be over-ready to set aside awards when the parties have agreed to abide by the decision of a tribunal of their own selection, unless we see that there has been something radically wrong and vicious in the proceedings.' *Re Hopper* 1867 L.R. 2 Q.B. 367.

(11) It is but right to mention here that the claim regarding raise in labour wages (Claim No. 16-A) was conceded by the Government before the arbitrator as is clear from the proceedings of the arbitrator dated 12.1.1977. It was therefore not open to the Government to object to this portion of the award. Nor was it open to the learned single judge to strike down this claim.

(12) For these reasons we accept the appeal. We make the entire award a rule of the court and pass a decree in terms of the award. We also award interest at six percent per annum on the amount awarded from the date of the decree of the learned single judge till the date of payment. The appellant will be entitled to costs throughout.