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Union of India Vs. Surinder Kumar

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Court : Delhi

Decided On : Sep-29-1995

Reported in : 61(1996)DLT42; (1996)112PLR36

Judge : M.J. Rao and; A.D. Singh, JJ.

Acts : Arbitration Act, 1940 - Sections 14(2)

Appeal No. : First Appeal No. 57 of 1995 and Civil Miscellaneous Appeal No. 687 of 1995

Appellant : Union of India

Respondent : Surinder Kumar

Advocate for Pet/Ap. : Dalip Singh and; R.L. Pal, Advs

Judgement :

Anil Dev Singh, J.

(1) : Admit. '

(2) This is an appeal against the order of the learned single Judge dated December 19, 1994 whereby the application' of the appellant under Order 9 Rule 13 Civil Procedure Code read with section 151 thereof has been dismissed. The facts necessary for disposal of the appeal are as follows:-

(3) The Union of India, which is the appellant in this appeal, and the respondent entered into an agreement being agreement No. 19/ GCD/88-89 by virtue of which the latter undertook to execute the work of replacement of double security fencing at Hindon Airfield, Hindon. The agreement was signed on behalf of the President of India by the Executive Engineer, Ghaziabad, Central Division, C.P.W.D. Hindon Air force Station, being the Engineer-in-charge. As per clause (2)(e) of the conditions of contrast the Engineer-in-charge was to supervise and be in charge of the work. At this stage it will be convenient to extract the said clause which reads as follows:-

'(E)The Engineer-in-charge means the Divisional Officer who shall Supervise and be in charge of the work and who shall sign the contract on behalf of the President.'

(4) The execution of the work led to certain disputes raised by the respondent. At the instance of the respondent the Chief Engineer (N.D.Z.H) C.P.W.D., New Delhi, on January 15, 1993 referred the disputes under clause 25 of the agreement to Mr. S. S. Juneja, Arbitrator, Ministry of Urban- Development, Govt. of India, for adjudication. The Arbitrator entered upon reference on the same day and issued notices to the respondent and the aforesaid Executive Engineer. Pursuant to the notice, the Executive Engineer appeared before the Arbitrator and participated in the proceedings and so did the respoadent. Ultimately the Arbitrator made and published his award on February 8, 1994 and gave notice of the publication of the same to the Executive Engineer and the respondent. On receipt of the notice, the respondent on February 18, 1994, filed an application directing the Arbitrator to file the award. In this application, Union in this Court, which came to be numbered as Suit No. 444/94, for of India through Secretary, Govt. of India, Ministry of Urban Development. New Delhi was arrayed as the first respondent and the Arbitrator as the second respondent. On February 21, 1994 the Arbitrator filed the award in the Registry of this Court. On February 25, 1994 the Registrar directed issuance of notices of filing of the award to the respondent herein and the appellant. Union of India through Secretary, Govt. of India, Ministry of Urban Development and also directed the listing of the matter on May 5, 1994. Meanwhile on March 9, 1994 an official of the office of the Secretary, Govt. of India, Ministry of Urban Development

Nirman Bhawan New Delhi received the notice of the filing of the award. The notice bears the following endorsement of the official of the addressee :-

'RECEIVED without enclosures' There is another endorsement which reads thus :- 'Full particulars of the case may be intimated sd/- 9-3-94'

(5) Since the office of the Secretary, Ministry of Urban Development, Govt. of India was not able to identify the matter, a letter dated March 16, 1994 was addressed to the Registrar seeking particulars of the matter.

(6) On May 5, 1994, the matter came up before the Registrar and the same was directed to be listed before the Court on May 26, 1994. The order of the Registrar records that the notice to the Union of India had not been received back. It further records that the counsel for the respondent (plaintiff-applicant in the suit) stated that the notice had been served on the Union of India on March 9, 1994.

(7) On May 9, 1994 the respondent filed an application, being I.A. 4455/94 in Suit No. 444/94, for making the award a rule of the Court and advancing the date of the matter, it was, inter alia, sated in the application that the appellants was served on March 9, 1994 with the notice of the filing of the award but no objections were filed within the statutory period. On May 10, 1994 the application came up before the Registrar who fixed the same before the Court on May 13, 1994. It is important to note that notice of this application was not given to the appellant.

(8) On May 13, 1994 when' the application came up before the learned single Judge, only the respondent's counsel was present. The Court noted that no objections to the award were filed by the Union of India though statutory period for filing the same had expired. Accordingly the learned single Judge accepted the application of the respondent and made the award a rule of the Court. The appellant coming to know of the order passed on May 13, 1994 moved an application under Order 9 Rule 13 Civil Procedure Code read with section 151 thereof for setting aside the ex-parte order. This application came to be dismissed by learned single Judge on December 19, 1994. By that order it was held that Order 9 Rule 13 Civil Procedure Code was not applicable. Aggrieved by the order of the learned single Judge dated December 19. 1994, the appellant has moved

the present appeal under section 39(vi) of the Arbitration Act, 1940.

(9) The main grievance of the appellant is that was not given proper opportunity to contest the award' as no proper notice of the filing of the award was served on the Secretary of the Govt. of India, Ministry of Urban Development and on the Executive Engineer who had been representing the Union of India before the Arbitrator. Besides the Secretary to the Government of India, Ministry of Urban Development was not given any particulars of the matter nor it was apprised of the Division to which the case pertained. He pointed out that the notice only indicated the name of the Arbitrator without giving any further

(10) We have considered the submissions of the learned counsel for the parties. It is not disputed on both sides that the Executive Engneer, Ghaziabad Central Division, C.P.W.D. Hindon Air force- Station being the Engineer-in-charge of the work signed the agreement on behalf of the President of India as per clause 2(e) of the conditions of Contract. According to the said clause Engineer-in- charge was made in charge of the work and was empowered to supervise the same. It can not also be disputed that the Executive Engineer represented the Union of India before the Arbitrator. The Arbitrator entered upon reference on January 15, 1993 and issued notice to the Executive Engineer, Ghaziabad Central Division, C.P.W.D. A perusal of the record of the Arbitrator shows that the respondent-claimant was sending copie's of the papers filed by him before the Arbitrator to the Executive Engineer, thus recognizing the fact that the Executive Engineer was representing the Union of India in the arbitration proceedings. For the purpose of illustration letter of the respondent dated February 16, 1993 addressed to the Arbitrator, a copy whereof was sent to -Executive Engineer is reproduced below :-

'DATED16 Feb. 1993. Before Sh. S. S. Juneja, Arbitrator, Ministry of Urban Development, 6th Floor, Middle Wing, Janpath Bhawan. Jahpath, New Delhi-110001. In the matter of Arbitration- between : 1. M/s. Surinder Kumar & Bros., Claimant 2. Union of India. .....vs..... .Respondent. Name of work : Replacement of double security fencing at Hindan Airfield, Hindan. Arbitration case No. ARB/SSJ/664. As per the direction issued by the Ld. Arbitrator the claimant, hereby submits the statement of facts in brief Along with Exh. C-1 to C-40. The

claimant request the Ld. Arbitrator to direct the Respondent to allow us inspection of all relevant records pertaining to the work, such as M.Bs. M.A.S., paid voucher etc. to enable us to file certain details, 853 The claimant reserve their right to add alter or modify the statement of facts. sd/- Surinder Kumar, Claimant. Cc : Executive Engineer, Gcd Along with the S.F. & Exh. C-l to C-40.'

(11) Even the Executive Engineer was filing documents on behalf of the Union of India before the Arbitrator. This position is acknowledged by the respondent in his letter dated October 22, 1993 to the Arbitrator (page 60 of the Arbitrator's file ARB/SSJ/664). The opening part of this letter is relevant and is extracted below :-

'IN response to the documents submitted by the Executive Engineer, Ghaziabad, Central Division (respondents) vide letter No. 55(101)/GCD IIII-E dated 18-10-1993, the following further submission is made'.

(12) Copy of this letter was also sent to the Executive Engineer, Chaziabad, Central Division C.P.W.D.

(13) The respondent also sent a copy of his written submissions filed before the Arbitrator, to the Executive Engineer (letter dated 12-10-1993 of the respondent to the Arbitrator at page 62 of the Arbitrator file No. ARB/SSJ/664). In reply to the written submissions of the respondent the appellant filed its written submissions on October 30, 1993. These written submissions bear the signatures of the a for said Executive Engineer. As already noticed, the Arbitrator- made and published his award on February 8, 1994 and filed the same in Court on February 21, 1994. It is note worthy that the notice of making and publication of the award was given by the Arbitrator of the Executive Engineer. Similarly the Arbitrator while filing the award in the Court on February 21, 1994 sent a copy of the letter accompanying the award to the Executive Engineer. Thus, it is apparent that it was the Executive Engineer who had been conducting the arbitration proceedings on behalf of the Union of India and was dealing with the matter. This fact was recognised both by the respondent as also by the Arbitrator as is amply borne out from the record of the Arbitrator. It is also important to note that the Arbitrator in his letter dated February 21, 1994 to the Registrar accompanying the award specifically stated that the parties be informed of the filing of the award. Surely when the Arbitrator

referred to the partis. Executive Engineer and the respondent were in his contemplation. Howeyer, the respondent in its application which was numbered as Civil Suit No. 444/94, made Union of india through, Govt. of India, Ministry of Urban Development, New Delhi as the first respondent and the Arbitrator as the second respondent. The Registry going by the array of parties issued notice of the riling of the award to the Secretary, Govt. of India, Ministry of Urban Development, New Delhi. The notice was received in the office of the addressee on March 9, 1994. No notice admittedly was directed to the aforesaid Executive Engineer who was dealing with the matter. At this stage it will be convenient to extract the notice sent to the Union of India of the filing of the award which reads as under :-

'INTHE High Court Of Delhi In the matter of Suit No. 444 of 1994. Application No. Sh. Surinder Kumar..... Petitioner. Versus U.O.I. & Anr. ..... .Respondents. (1) U.O.I. through its Secretary, Govt. of India, Ministry of Urban Development, Nirman Bhawan, New Delhi. Whereas Sh. S. S. Juneja the Arbitrator has filed the award slated 8-2-1994 delivered by..... the Arbitrator with arbitration proceedings in Court in disputes inter se you respondents and petitioner for being made a rule of the Court. The suit is fixed for hearing on 5-5-94 at 11.OO a.m. You are hereby called upon to file objections, if any, in. accordance with law to the said award within 30 days of the service of this notice. Take notice that failure to do so would entail the consequences enjoyed by law. Dated this 25th day of May, 1994. Sd- Superintendent (0) for REGISTRAR.'

(14) As is apparent from the notice, the same does not give sufficient particulars of the intter. It merely stales that the Arbilration Sh. S. S. Juneja has filed the award dated February 8, 1994.There are no particulars of the case in which the award was rendered. It also does not furnish the particulars of the contract in regard to which the award was delivered by the Arbitrator or the name of the work. Learned counsel for the respondent submitted that the notice complies with the format prescribed by the rules of the High Court and no fault can be found with the same. He also submitted that it was not required on the part of the respondent to have arrayed the concerned Executive Engineer as a party respondent in Suit No. 444/94. His contention was that under section 79 and Order 27 Civil Procedure Code , it is the concerned Secretary to the Government of India who can represent

the Union of India in a suit or proceeding and notice, thereforee, has to go only to him.

(15) We have considered the submission of learned counsel for the respondent but we are of the opinion that there was no proper service of the notice of the filing of the award on the appellant. The object of giving notice under section 14(2) of the Act is to provide an opportunity to a party to submit objections to the award filed by an Arbitrator within a period of 30 days of the receipt of a notice in respect of filing of the award as per Article 119 of the Limitation Act. What is essential is that notice should post him with the knowledge of the award filed by the Arbitrator in a particular matter. Notice should thereforee, specify such details as would enable a party to identity the arbitration case, otherwise the notice will not serve the purpose for which it was given and will not meet the requirements of law. In the instant case the notice does not specify the name of the work, the division or department to which the matter pertained or even the contract number. It is needless to point out that Ministry of Urban Development has a very large area of operation covering several departments of the Government including C.P.W.D. which it self has several divisions spread all over the country. thereforee, unless the notice of filing of the award gives the details of the arbitration matter in which award is given, it cannot be considered as a proper notice in accordance with law. Besides, it was not enough to direct notice of the filing of the award to the Secretary to the Govt. of India Ministry of Urban Development particularly when the notice failed to disclose the material particulars of the matter. In the circumstances, the notice ought to have been sent to the Executive Engineer, who was the Engineer-in-charge of the work, and was the person who had signed the contract on behalf of the Union of India and was dealing with the matter. thereforee, it was necessary that he should also have been arrayed as a party respondent in the matter. Merely arraying Union of India and sending the notice to the Secretary, Ministry of Urban Development would not be effective service as the Secretary to the Govt. of India was not aware of the case nor he was furnished with the particulars thereof. He would also be ignorant of of the proceedings before the Arbitrator which culminated in the award. Moreover in the present case as already noted it would be difficult for the Secretary to the Govt. of India to link up the notice of the filing of the ward to the matter which was subject matter of the

Arbitration proceedings as the notice does not give any details except that the award was rendered by Mr. S. S. Juneja. Since no particulars of the case were given, the office of the Secretary, Govt of India Ministry of Urban Development made an endorsement on the notice itself to the effect that full particulars of the case were not given and the notice was received without enclosures. Even a letter was written to the Registrar by the office of the Secretary, Ministry of Urban Development, Govt. of India for seeking particulars of the matter. In these circumstances, thereforee, failure to serve a notice of the filing of the award on the Executive Engineer amounts to violation of the principles of natural justice. It is well settled that where the principles of natural justice have been violated in passing an order by the Court, the same can be set aside under the inherent powers. It is also well settled that no person can be prejudiced by the act of the Court thereforee, when the notice of the filing of the award was not given to the Executive Engineer and no proper notice was given to the Secretary to the Government of India, Ministry of Urban Development, the time for filing the objections did not commence and could not have thereforee, expired. In such an event the Court will have inherent jurisdiction to set aside the ex-parte decree.

(16) Before citing the case law on the point, it may be necessary to recount some more facts and conclusions in light thereof. As already noticed after the filing of the award by the Arbitrator, the Registrar on February 25, .1994, while directing notice to the parties, listed the matter on May 5, 1994. On May 5, 1994 the Registrar fixed the matter for May 26, 1994 before the Court. On May 9, 1994 the respondent moved an application for advancing the date of the matter and for making the award a rule of the Court. On May 10, 1994 the Registrar posted the application before the Court for May 13, 1994. On May 13, 1994, in the absence of the petitioner the Court passed a decree in terms of the award on the ground that the objections had. not been filed despite the expiry of the statutory period. The taking up of the matter on that date and passing an order mailing the award a rule of the Court was without notice to the appellant. Thereafter the appellant, on May 26, 1994, filed an application (I.A. 5236/94) for setting aside of the order of the learned Single Judge dated May 13, 1994 under Order 9 Rule 13 and section 151 Civil Procedure Code . Along with that application another application (I.A. 5238 94) under section 30 and 33 of the Arbitration Act was filed by the appellant. In I.A.

5236/94 it was contended that no notice of filing of the award was given to the Executive Engineer and the notice which was directed to the Secretary, Govt. of India did not furnish details of the case. it was prayed that the ex-parte degree passed against the appellant be set aside. The learned single Judge relying on various decisions of this Court holding that an order making an award a rule of the Court when no objections were filed thereto cannot be termed as an ex-parte order and consequently Order 9 Rule 13 Civil Procedure Code will not be attracted, rejected the contention of the appellant.

(17) It may also be pointed out that learned single Judge noted the argument of the learned counsel for the Union of India that there were several divisions under the Ministry of Urban Development and it was not feasible to find out the particular division and project to which the award pertained but did not consider the question as to whether in the circumstances of the case, service of the notice of filing of the award, which did not carry the requisite information, on some official in the office of the Secretary to the Government, Ministry of Urban Development was a proper service. Since we are of the opinion that there was no proper service of the notice of the filing of the award on the Secretary to the Government, Ministry of Urban development, we have to hold that the time for filing the objections did not commence on March 9, 1994 when the service of the notice was effected on some official of the Ministry of Urban Development.

(18) The Patna High Court in Shrichand Prasad vs . Mohan Singh : AIR1964 Pat509 held that where no notice of filing of the award was served on a party, time under Article 158 Limitation Act, 1908 (119 of the new Act) for making an application for setting aside the award did not begin to run and, thereforee, it never expired. Consequently it was held. that decree passed on the ground that objections were not filed within time was without jurisdiction. Applying the same principle to the instant case it clearly follows that time for filing objections to the award did not commence and thereforee, it did not expire as no proper notice of the filing of the award was served on the appellant or the Engineer-in-chief of the work. Again in Ganeshmal Bhawarlal vs . Kesoram Cotton Mills Ltd. : AIR1952 Cal10 it was held that when there was no service of the notice of the filing of the award on the party in the manner prescribed by law limitation for filing objections

to set aside the award in such a case will not start to run. In Soorajmull Nagannal vs . Golden Fibre and Products : AIR1969 Cal381 it was held that the Court in its inherent jurisdiction has power to recall order or decree passed under section 17 of the Arbitration Act if it was passed irregularly. In this regard it was observed as follows :-

'IN my opinion, even in a case where judgment upon award has been passed under Section 17 of the Indian Arbitration Act, if the judgment-debtor can satisfy the Court that such decree should be set aside on grounds appearing sufficient to the Court, the Court has jurisdiction to set aside such a decree in its inherent jurisdiction for ends of justice.'

(19) Thus where an order making the award a rule of the Court is passed under section 17 of the Arbitration Act, the Court has inherent jurisdiction to set aside or recall the order or the decree emanating there from, if it was passed without complying with the requirements laid down therein including the requirement of proper notice of the filing of the award to the parties. The reason for such a view is that if a decree was passed without proper notice to the parties, the time for filing objections will not begin to run. Once time not having began to run, there is no question of its expiring.

(20) Learned counsel for the respondent relied upon single bench decisions of this court in Nanula & Co. vs. U.O.I. 1976 R L R 94,(4)(M/s. C. Lyall and Company vs. Union of India & others Tlr (1973) I Delhi 905(5) Shri Inder Khanna & Sons vs. Union of India 1991 I A L R 411(6) and M/s. R. S. Sharma & Co. vs. Union of India, I.A. 12627/92 in Suit No. 2788191 (7) decided on January 14, 1993 to contend that a notice of any proceeding to the Central Government would be valid only if it was sent to Secretary to Government or to any officer who may be authorised to act on its behalf or to any pleader as defined in Rule Sb of Order 27. While there cannot be any quarrel with this proposition, the question in the instant case is whether there was a proper service of the notice of filing of the award on Secretary to the Govt. of India, Ministry of Urban Development and whether there was any violation of principles of the natural justice in giving information to the Union of India about the filing of the award by the Arbitrator. As a matter of fact,

we have found that no proper notice was given on the Union of India as the notice did not specify the details of the matter in which the award was filed by the Arbitrator. It has already been pointed out by us that the proceedings before the Arbitrator were conducted by the Executive Engineer, who being in charge of the work, was fully posted with the matter. The Executive Engineer was, however, not arrayed as a respondent by the contractor in Suit No. 444/94. In case the Executive Engineer had been arrayed as a respondent and a notice had been served on him about the filing of the award, there would have been no difficulty as was faced by the Union of India in not being able to identify the arbitration matter. There can be instances where arbitration relates to some project in a remote corner of the country say for example Ladakh, the award is filed in the High Court of Jammu and Kashmir at Srinagar and the Union of India is only made a party respondent by the contractor without arraying the person in charge of the work, in such a case it will be extremely difficult for the Union of India to file objections to the award in time pursuant to the notice of the filing of the award like the one in the present case, which except giving the name of the contractor, the Union of India and the name of the Arbitrator does not specify other details. The concerned Secretary to Govt. of India sitting in Delhi will not have any inkling about the arbitration matter and the statutory period for filing objections to the award would be spent by the Union of India in only gathering requisite information in order to identify the matter.

(21) Having regard to the aforesaid difficulties, we are of the opinion that wherever an Arbitrator renders an award in a matter which concerns the Central Government, a notice should not only be directed to the Secretary of the concerned Ministry but also to the concerned officer who dealt with the matter on behalf of the union of India before the Arbitrator. The notice of the filing of the award must specify the details relating to the project with regard to which the arbitration was conducted. For this purpose, the party filing the application torn directing the Arbitrator to file the award or asking the Court to make the award a rule of the Court should specify the name of project and the officer in-charge of the same in the cause title of the case so that while issuing notice of the filing of the award the Registry could mention the necessary details of the matter. If these formalities are complied with there will be no scope then for urging the violation of

principles of natural justice or for urging that the notice was not in. accord ana; with law.

(22) In view of the foregoing discussion, the appeal succeeds and the order of learned single Judge dated December 19, 1994 is set aside and as a consequence thereof, the order making the award rule of the Court, dated May 13, 1994 is also set aside. The objections filed by the Union of India will be taken on record and the matter will be proceeded with by he learned single judge in accordance with law.

(23) The Registry will take note of the procedure in regard to the service of notice of the filing of the award as indicated above.

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