

George Vs. K.S.E.B.

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Court : Kerala

Decided On : Jul-01-2005

Reported in : 2005(3)KLT714

Judge : J.B. Koshy and; K.R. Udayabhanu, JJ.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 14, 15, 16 and 30

Appeal No. : M.F.A. No. 110 of 1999

Appellant : George

Respondent : K.S.E.B.

Advocate for Def. : N.D. Premachandran, Adv.

Advocate for Pet/Ap. : P.K. Balakrishnan Nair, Adv.

Judgement :

J.B. Koshy, J.

1. Appellant-contractor challenges the order of the civil court in modifying an arbitral award. The appellant and the second respondent executed agreement No. 17/81-82 dated 30.9.1981 for the contract work of casting 2000 Nos. of 8mm long RCC poles using departmental steel moulds. The work has to be completed on 9.12.1981. The Board has not supplied the moulds as agreed in the agreement

and cement and steel rods were supplied only after a delay of 32 months. In these circumstances, the contractor was compelled to purchase his own moulds and supplemental agreement was also executed for casting 2000 Nos. of poles. Final bill was received under protest and the matter was referred for arbitration. Existence of arbitration clause is not disputed. The Arbitrator awarded Rs. 33,298/- towards damages of general increase at the rate of 25%; Rs. 91,907/- towards rates for using own moulds and Rs. 3,333/- towards ground rent totalling to Rs. 1,28,538/- with 12% interest from 12.3.1987 till payment. The Contractor filed AOP 11/89 for making the award as the rule of the court and the Board filed AOP 4/89 challenging the award.

2. The contention that the arbitrator went beyond the terms of the contract was not accepted by the court, but at the same time, recalculated the amount awarded by the tribunal on two issues. Because of the breach of contract by the Board and undue delay 25% general increase was granted. 25% increase was worked out by the arbitrator as Rs. 33298/-. The Sub Court ordered that the arbitral tribunal should have deducted cost of 25% on the departmental materials when damages were calculated due to delay caused by the Board. In fact, Rs. 33,298/- was calculated by the Arbitrator only after deducting labour cost on the value of departmental materials. So that part was already taken care of by the Arbitral Tribunal. Second claim is regarding the value of materials. As per the contract, moulds have to be supplied by the Board. Even, the Board Engineer has submitted before the Arbitrator that the contractor was allowed to use moulds as the Board was not able to supply the moulds. The contractor has made arrangements for his own moulds and actual expenses incurred by the Contractor was granted by the tribunal. According to the Court, as the Contractor made the moulds, the Contractor was relieved from the obligation to pay rent to the Electricity Board for the moulds and hence that part shall be deducted from the cost of construction of mould. But the construction cost is calculated without taking into account the rent payable. Hence there is no inherent defect in the award.

3. Both the parties agreed for arbitration. Board appointed the Chief Engineer (Distribution-North) as sole arbitrator. In the absence of the finding that the Arbitrator committed misconduct or has travelled beyond the jurisdiction or any of

the specific grounds mentioned in the Arbitration Act, court cannot sit in appeal and interfere in the finding. Under law, the arbitrator is made the final Judge of the disputes between the parties. It cannot be challenged on the ground that the arbitrator has reached a wrong conclusion or failed to appreciate a point unless it is shown that the award is perverse or erroneous on the face of the record. The correctness of the award cannot be looked into by re-examining or reassessing the materials as if the proceedings under Section 14, 16 or 30 as court proceedings as an appeal proceedings (See The Upper Ganges Valley Electricity Supply Co. v. U.P. Electricity Board : [1973]3SCR107 . The grounds on which an award can be set aside are limited by Statute. Court can either set aside the award for the grounds under Section 30, sustain the award or made it as rule of court under Section 14 or it can remit the award under Section 16 or act on the principles of severality. But court has no power to modify the amount or substitute its own decision in lieu of the arbitrator's decision, especially for the limited reasons mentioned under Section 15. Section 15 reads as follows:

'15. Power of Court to modify award:- The Court may by order modify or correct an award-

(a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or

(c) where the award contains a clerical mistake or an error arising from an accidental slip or omission'

Modification of the contents of the award of the arbitrator by court is confined to this Section and power of the court is limited. Where there are defects in the award as shown in Section 16, the court can remit the award, if it is a case where it determines a matter not referred for arbitration and such matter cannot be separated. The court can modify the award when there is clerical error or error caused due to accidental slip or omission. Mistakes of arithmetical calculations

arising out of slips can be corrected. Court can modify the award only on the contingencies mentioned in Section 15, but not on evaluating the evidence on merits. In this case contingencies mentioned in Section 15 are absent. No grounds are made out for interfering with the award under Section 30. Arbitrator has decided the matter after considering all relevant matters, pleadings and evidence in the case. In the circumstances, interference of the court in the award is unwarranted. Therefore, we are of the view that the Court should have fully accepted the award and allowed the appellant to realise the award amount with rate of interest as awarded by the Arbitral Tribunal till the date of decree. The order of the court below is modified accordingly. Award without any modification is made as rule of the court. From the date of decree interest has to be paid at the rate of 6% per annum till the date of realisation.

The appeal is partly allowed with proportionate costs.

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