

State of Kerala Vs. Mathai

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SooperKanoon Citation : sooperkanoon.com/731830

Court : Kerala

Decided On : Dec-17-2002

Reported in : 2003(3)ARBLR29(Kerala); 2003(2)KLT835

Judge : K.A. Abdul Gafoor and; Pius C. Kuriakose, JJ.

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

Appeal No. : M.F.A. No. 648 of 1996

Appellant : State of Kerala

Respondent : Mathai

Advocate for Def. : T.P. Varghese, Adv.

Advocate for Pet/Ap. : Roy Chacko, Government Pleader

Disposition : Appeal partly allowed

Judgement :

K.A. Abdul Gafoor, J.

1. The State has filed this appeal when its application under Section 30 of the [Arbitration Act, 1940](#) has been dismissed. The main objection raised was with respect to claim A and I. In the judgment only claim A is generally dealt with. The claim I is not seen dealt with in detail.

2. Claim A was in respect of enhancement of the rates for the extra items of work agreed as per the supplementary agreement. There was an arbitration earlier for the work carried upto 30.6.1986. The arbitration in question here is for the work carried out after 30.6.1986. The Arbitrator found that the rates agreed upon in the supplementary agreement are the original rates, viz. the rates for the original contract. The arbitrator had gone beyond the agreement and found that there was no 'fruitful negotiations' between the parties to agree so: Therefore, the mutually agreed rates cannot be reckoned. The arbitrator found that 'the claimant was compelled to enter into supplementary agreement as directed by the department'. It was this finding of the arbitrator which was impugned on the contention that it was beyond the scope of the agreement. Once the agreement has been entered into between the parties, the arbitrator was not called upon to adjudicate as to the circumstances under which the parties have come to the agreement. That is a matter for an appropriate court to consider. The arbitrator cannot decide that one party to the agreement was compelled by the other to sign the agreement stipulating a particular rate. Once the agreement disclosed a definite rate whatever be the reasons to agree to that rate, the arbitrator cannot grant anything more than the rates so agreed. The Supreme Court in the decision reported in Rajasthan State Mines & Minerals Ltd. v. Eastern Engineering Enterprises (AIR 1999 SC 3627) had enumerated various grounds under which the court has to consider the legality or otherwise of the award. Under item 'h', the apex court found as follows:

'The award made by the Arbitrator disregarding the terms of the reference or the arbitration agreement or the terms of the contract would be a jurisdictional error which requires ultimately to be decided by the Court. He cannot award an amount which is ruled out or prohibited by the terms of the agreement. Because of the specific bar stipulated by the parties in the agreement, that claim could not be raised. Even if it is raised and referred to arbitration because of wider arbitration clause such claim amount cannot be awarded as agreement is binding between the parties and the arbitrator has to adjudicate as per the agreement'.

In item 'i' also the Apex Court found as follows:

'The arbitrator could not act arbitrarily, irrationally, capriciously or independently of the contract. A deliberate departure or conscious disregard of the contract not only manifest the disregard of his authority or misconduct on his part but it may tantamount to mala fide action'.

3. When thus the arbitrator has departed from the contract between the parties in order to award any amount necessarily it shall be taken as a jurisdictional error and a misconduct in that regard. In the case of claim A, the arbitrator granted enhanced rates for the extra items of work in spite of the specific clause in the supplementary agreement that the contractor had agreed to carry out the additional work at the rates agreed as per the original agreement. So, the arbitrator did have no jurisdiction to award extra rates. The court below ought to have accepted the contention of the State and set aside the finding of the arbitrator under Clause A.

4. At the same time, with regard to claim I, we find that the State cannot avoid the finding of the arbitrator. As is seen from the award itself an amount of Rs. 2,37,564/- was awarded to the contractor on account of the electricity charges withheld from him for a period covering February, 1987 to July, 1987 and even subsequent to that, whereas the work has been completed on 30.12.1986. In such circumstances, the State was liable to seek disconnection of the electric supply. State did not do so. If the State had to pay the electricity charges even beyond the date of completion of the work, necessarily, the contractor cannot be mulcted with the liability to pay the current charges. When the amount has been illegally withheld from the contractor, by the State or its department, necessarily, the contractor is entitled to interest as well, as directed by the arbitrator. Therefore, there is no reason to interfere with the finding under claim I, though the court below has not specifically dealt with the same.

The appeal is allowed in part.