

Union of India (Uoi) Vs. Union Builders

Union of India (Uoi) Vs. Union Builders

SooperKanoon Citation : sooperkanoon.com/861996

Court : Kolkata

Decided On : Sep-23-1977

Reported in : AIR1978Cal402

Judge : Sabyasachi Mukharji, J.

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

Appeal No. : Award Case No. 105 of 1977

Appellant : Union of India (Uoi)

Respondent : Union Builders

Advocate for Def. : Bhaskar Gupta and ;Gautam Guha, Advs.

Advocate for Pet/Ap. : P.K. Sen, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Sabyasachi Mukherji, J.

1. In this application under Section 30 of the [Arbitration Act, 1940](#) the Union of India, the petitioner herein, challenges an award made by the Chief Engineer, South Eastern Railway Garden Reach.

2. It appears that after one reference there was a subsequent reference of the disputes and difference between the parties and the contractor, being the respondent-claimant had made two claims and one was for enhanced rate for supply due to reduction of contractual quantity. One claim was as follows :--

'Our commitment with the Railways was to supply a total quantity of 3 lacs cft., of ballasts for which we quoted the rate as Rs. 50/- % cft. But, due to circumstances beyond our control and highhandedness on the part of the Railway Administration, the contract was terminated and the supply was restricted to only 1,61,556 cft. (including a quantity of 14,000 cft. held back by Railway Administration on the plea of shrinkage) of Ballast.

Therefore, rate of Rs. 50/- % cft. for supply of a small quantity of 1,61,556 cft. in place of contractual quantity of 3 lacs cft. cannot hold good for this partial supply.

So, we claim an increase in rate of 25% on the accepted rate of Rs. 50/- % cft. i.e. an increase of Rs. 12.50 p. % cft. on a total supply of 1,61,556 cft.

Our claim under this head is, therefore, Rs. 20,195.00.'

The other claim was in respect of retention of establishment for delay on the part of Railway Administration to take final measurement. The said claim was framed as under :--

'The Ballasts, after curtailment of the quantity, were stacked and ready for taking measurements in May, 1965 but the same were finally measured by the Railway Administration on 13-9-69 i.e. after a lapse of full four years. The taking of measurements was held back by the Railway on some plea or the other for which we had to retain our establishment of Supervisors and Chowki-dars right through all the four years for a length of about 20 KM for which the Railway should compensate us. So, we claim a sum of Rs. 13,440.00----- Total : Rs. 33,635.00

3. The arbitrator in his impugned award has, after setting out the facts and after stating that he has examined all the documentary evidence and the statements, awarded as follows :--

'I do AWARD and direct that :--

(i) The Union of India, represented by the General Manager, South Eastern Railway, Garden Reach, Calcutta-700043 (RESPONDENT) should pay to M/s. Union Builders, Engineers and Contractors, 50/51, Raneegunj Coal House, 3A, Chowringhee Place, Calcutta-700013, the sum of Rs. 22,060/- (Rupees Twenty-two thousand and sixty) only in full and final settlement of all the claims and outstandings under the abovementioned Contract Agreement.'

It was contended on behalf of the petitioner that in this case the only basis upon which the claim of the Contractor had been preferred was the reduction of rate and the Arbitrator in allowing the claim on that basis had, according to the petitioner, committed an error of law which was apparent on the face of the record. In aid of this proposition reliance was placed on the observations of the Supreme Court in the case of *Alopi Parshad v. Union of India*, : [1960]2SCR793 , where the Supreme Court observed that the award of an Arbitrator might be set aside on the ground of an error on the face thereof only when in the award or in any document incorporated with it, as for instance, a note appended by the Arbitrator, stating the reasons for his decision, there was found some legal proposition which was the basis of the award and which was erroneous. If, however, a specific question was submitted to the Arbitrator and he had answered it, the fact that the answer involved an erroneous decision in point of law, did not make the award bad on the face of it so as to permit of its being set aside. It was further observed that where the contract was for purchasing Ghee required by the Army personnel expressly stipulated for payment to the Agents, of charges at rates specified in the contract under the head, 'establishment and contingencies' the award of the Arbitrator, on a general reference, awarding additional expenses under that head was, on the face of it, erroneous granting that additional expenditure under that head had been incurred on account of the abnormal rise in prices. It was submitted that in this case, therefore, the Arbitrator could not have proceeded on the basis of enhanced rate upon which the claim had been made. In the instant case there is no error of law apparent on the face of the award as such. No proposition of law is stated either in the award or in any note or in any document appended to the award. It is well settled that in order to entitle a Court to set aside an award the mistake of law

must appear on the face of the award. Where an Arbitrator makes a mistake either of law or of fact in determining the 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. An error of law on the face of the award means that one 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 can be said to be erroneous. (See in this connection the observations in *Champsen Bhara & Co. v. Jivraj Balloo Co. Ltd.*, 1923 AC 480; *Union of India v. Bungo Steel Furniture (P) Ltd.*, : [1967]1SCR324 and *N. Challappan v. Secretary, Kerala State Electricity Board*, : [1975]2SCR811). In the 'instant case as such there is no proposition of law enunciated but Counsel on behalf of the petitioner contended that having regard to the award that has been made, the award must have been made on the basis of reduction of rate. As mentioned hereinbefore, there were two claims made by the contractor. One was for enhanced rate of supply and the other was for retention of establishment for delay in making final measurement. Upon these two heads a total sum of Rs. 33,635/- was claimed. The Arbitrator has awarded only Rs. 22,060/- without indicating on what basis he has awarded the said sum. There is no proposition of law as such enunciated. Furthermore, I find that in the general conditions of contract, Clause 42 provided as follows :--

'42. (1) The Engineer on behalf of the Railway shall be entitled by order in writing to enlarge or extend, diminish or reduce the works or make any alterations in their design, character, position, site, quantities, dimensions or in the method of their execution or in the combination and use of materials for the execution thereof and to order any additional works to be done or any works not to be done and, save as provided in Sub-clause (2) of this clause, the Contractor will not be entitled to any compensation for any reductions but will be paid only for the actual amount of work done and for approved materials furnished against specific order,

(2) The enlargements, extensions, diminutions, reductions, alterations or additions referred to in Sub-clause (1) of this clause shall in no degree affect the validity of the contract but shall be performed by the Contractor as provided therein and be subject to the same conditions, stipulations and obligations as if they had been

originally and expressly included and provided for in the specifications and drawings and the amounts to be paid therefor shall be calculated in accordance with the accepted schedule of rates and for extra items of works at the rates determined under Clause 39 of these conditions; provided that if the nature or amount of any variation relative to the nature or amount of the whole of the works or to any part thereof shall be such that in the opinion of the Engineer the rate for any item in the accepted schedule of rates is by reason of such variation rendered unreasonable or inapplicable, the Engineer shall fix such other rate as in the circumstances he shall consider reasonable and proper.'

Therefore, whether there was any variation permissible in view of Clauses 41 and 42 was a dispute embedded in the reference made to the Arbitrator, The Arbitrator was competent to decide that question whether a claim made by the Contractor was permissible under Clause 42 Sub-clause (2), read with Sub-clause (1). Such a dispute was indisputably a dispute within the ambit of the Arbitrator's jurisdiction and he has decided that dispute. He has not stated any proposition of law as such. Therefore, this award cannot be set aside on the ground that there is any error of law apparent on the face of the award.

4. Counsel for the respondent, however, contended that even if there was an error of law this error was not liable to be set aside because a question of law as such had been referred to the Arbitrator. I am, however, from the reference, unable to find that that is the position. A question of law might have incidentally arisen in the reference of the dispute to the Arbitrator, but there was no reference to Arbitrator of any question of law as such. If that is the position, then an erroneous decision of the Arbitrator would be vulnerable to attack in this application. But as I have held that there is no error of law on the face of the award, this point does not support the petitioner.

5. In that view of the matter, the challenge to the award must fail and the application is accordingly dismissed. There will, however, be no order as to costs.

6. The Union will have three months' time to pay the sum awarded by the Arbitrator.

