Union Of India (Uoi) vs Bungo Steel Furniture Pvt. Ltd. on 14 September, 1966

Equivalent citations: AIR1967SC1032, 1967(0)BLJR393, [1967]1SCR324

Bench: V. Bhargava, V. Ramaswami

JUDGMENT

Ramaswami, J.

1. These appeals are brought by certificate from the judgment of the Calcutta High Court dated August 1, 1962 in Appeals Nos. 32 and 132 of 1961 by which the High Court allowed the appeals against the Union of India (UOI) (UOI)(hereinafter called the 'appellant') in part and modified the award of the arbitrator and the judgment of Mallick, J.

2. The disputes relate to 3 contracts for the supply of bedsteads by the respondent - Bungo Steel Furniture Pvt. Ltd. - (hereinafter called the 'Company') to the appellant, namely, contract No. A.T. 3116 for the supply of 17202 bedsteads, contract No. A.T. 767 for the supply of 30,000 bedsteads and contract No. A.T. 816 for the supply of 7,000 bedsteads. Each of these contracts contained the usual arbitration clause embodied in clause21 of the general conditions of contract in form No. W.S.B. 133. The disputes arising between the Company and the appellant out of the three contracts were referred to the arbitration of Sir Rupen Mitter. The award of the arbitration is dated September 2, 1959. The arbitrator found that the Company was entitled to be credited with the sum of Rs. 11,64,423/- on account of the price (inclusive of the price of steel) of the bedsteads supplied under the three contracts made up of (a) a sum of Rs. 4,12,848 - for the price of 17,202 bedsteads supplied under contract No. A.T. 3116 at Rs. 24/- per bedstead, (b) Rs. 7,05,000/- for the price of 30,000 bedsteads supplied under contract No. A.T. 767 at Rs. 23/8/- per bedstead and (c) Rs. 46,575/- for the price of 2,025 bedsteads supplied under contract No. A.T. 816. The appellant undertook to supply the requisite steel at basic rates and the price of steel so supplied was payable by the Company on presentation of material release orders called 'M.R.Os'. The arbitrator found that the Company was entitled to a credit for Rs. 3,42,737/- for payment on M.R.Os. for the price of steel and the appellant was entitled to credits for Rs. 29,188/- on account of railway freight and transport charges, for Rs. 9,71,030/- on account of payments made to the Company directly and for Rs. 4,95,060/- on account of price of steel supplied to the Company. The arbitrator also found that the appellant had deducted Rs. 3,57,500/- from bills of the Company on account of the price of steel and upon that finding the arbitrator subtracted the sum of Rs. 3,57,500/- from the price of steel credited to the appellant.

3. The appellant thereafter applied to the Calcutta High Court for setting aside the award on the ground that there was an error of law apparent on the face of the award and the arbitrator had also

exceeded his authority in awarding interest. The application was dismissed by Mallick, J. by his judgment dated July 27, 1960 and a decree was granted to the Company on the basis of the award. The appellant preferred two appeals to the High Court from the judgment of Mallick, J., namely, Appeals Nos. 32 and 132 of 1961. These appeals were heard by the Division Bench consisting of Bachawat and Laik JJ. who allowed the appeal in part and reduced the principal amount adjudged to be payable under the award by Rs. 30,970/- and modified the award accordingly.

4. The first question to be considered in these appeals is whether the arbitrator committed an error of law in holding that the appellant had deducted Rs. 3,57,500/- from the bills of the Company with regard to contracts other than the three contracts of bedsteads which are the subject matter of the present case, and whether the arbitrator could subtract the aforesaid amount of Rs. 3,57,500/- from the price of steel credited to the appellant. On behalf of the appellant it was contended by Mr. Bindra that the deduction of Rs. 3,57,500/- had been made from the bills submitted by the Company for the price of the bedsteads supplied under the three contracts Nos. A.T. 3116, A.T. No. 767 and A.T. 816 and the arbitrator should not have debited the appellant with this amount. It is not possible for us to accept this argument. The award of the arbitrator does not show on its face that the amount of Rs. 3,57,500/- has been deducted from the bills submitted by the Company for the price of the bedsteads under the three contracts. The relevant portion of the award states :

> "I hold that the steel of different categories amounting to 1908 tons and odd of the value of Rs. 4,95,060/- calculated at basic rates had been supplied by the Government to the Company. I further hold that the whole quantity of steel had been used in making the 7000 bedsteads under A.T. 3116, A.T. 767 and 7000 bedsteads under A.T. 816 leaving no surplus. I also hold that the Company paid for the price of steel on the M.R.Os. Rs. 3,42,737/- and that the Government had deducted Rs. 3,57,500/- from bills. I hold that the Company did not supply any steel from its own stock."

5. There were conflicting statements of the parties in the affidavits filed by them before Mallick, J. in connection with the application for setting aside the award. The affidavit filed by the appellant dated January 5, 1957 before the arbitrator suggests that at least part of the deductions were made from bills submitted by the Company in other contracts. On behalf of the appellant Mr. Bindra referred to the affidavits and the statements made before the arbitrator, but it is well-settled that the Court has no jurisdiction to investigate into the merits of the case and to examine the documentary and oral evidence on the record for the purpose of finding out whether or not the arbitrator has committed an error of law and that the award of the arbitrator can be set aside on the ground of error of law on the face of the award only when in the award or in a document incorporated with it, as for instance a note appended by the arbitrator stating the reasons for his decision, there is found some legal proposition which is the basis of the award and which is erroneous. In the present case, the affidavits filed by the parties before the arbitrator are not incorporated in the award and it is therefore not permissible for the court to examine these affidavits in order to ascertain whether the arbitrator has committed any error of law. In Hodgkinson v. Fernie (3 C.B. (N.S.) 189 at p. 202.) the law on this point has been clearly stated by William, J, as follows :

> "The law has for many years been settled, and remains so at this day, that where a cause or matters in difference are referred to an arbitrator, whether a lawyer or a layman, he is constituted the sole and final judge of all questions both of law and of fact..... The only exceptions to that rule, are, cases where the award is the result of corruption or fraud, and one other, which though it is to be regretted, is now. I think, firmly established, viz., where the question of law necessarily arises on the face of the award, or upon some paper accompanying and forming part of the award. Though the propriety of this latter may very well be doubted, I think it may be considered as established."

6. The decision of this case was approved by the Judicial Committee in Champsey Bhara and Company v. Jivraj Balloo Spinning and Weaving Company, Ltd., (50 I.A. 324.) in which the appellants sold cotton to the respondents by a contract which contained a submission to arbitration of disputes as to quality, and a further clause submitting to arbitration all other disputes arising out of the contract. Cotton was delivered, but the respondents objected to its quality, and upon arbitration an allowance was awarded; the respondents thereupon rejected the cotton. The appellants claimed damages for the rejection. The dispute was referred to arbitration and the award recited that the contract was subject to the rules of the Bombay Cotton Trade Association, which were not further referred to; and that the respondents had rejected on the grounds contained in a letter of a certain date. That letter stated merely that as the arbitrators had made an allowance of a certain amount the respondents rejected the cotton. The High Court set aside the award, holding that it was bad on its face, in that under one of the rules of the Association the respondents were entitled to reject without liability. It was held on appeal by the Judicial Committee that the award could not be set aside and though the award recited that the contract was subject to the rules of the Bombay Cotton Trade Association, yet those rules were not so incorporated in the award as to entitle the Court to refer to them for ascertaining whether there was an error of law on the face of the award. Applying the principle to the present case, it is manifest that there is no error of law on the face of the award and the argument of the appellant on this aspect of the case must fail.

7. We next proceed to consider the argument of the appellant that the arbitrator had no authority to award interest from the date of the award dated September 2, 1959 to the date of the decree granted by Mallick, J. i.e., August 2, 1960. In support of this contention Counsel for the appellant relied upon the following observations of Bose, J. in Seth Thawardas Pherumal v. The Union of India (UOI) (UOI) .

> "It was suggested that at least interest from the date of 'suit' could be awarded on the analogy of section 34 of the Civil Procedure Code, 1908. But section 34 does not apply because an arbitrator is not a 'court' within the meaning of the Code nor does the Code apply to arbitrators, and, but for section 34, even a Court would not have the power to give interest after the suit. This was, therefore, also rightly struck out from the award."

8. This passage supports the argument of the appellant that interest cannot be awarded by the arbitrator after the date of the award but in later cases it has been pointed out by this Court that the

observations of Bose, J. in Seth Thawardas Pherumal v. The Union of India (UOI) (UOI) were not intended to lay down such a broad and unqualified proposition (See CT. A. CT. Nachiappa Chettiar and others v. CT. A. CT. Subramaniam Chettiar and Satinder Singh v. Amrao Singh) . In Seth Thawardas Pherumal v. The Union of India (UOI) (UOI)((1832) 1 Al. & Na. 233.), the material facts were that the arbitrator had awarded interest on unliquidated damages for a period before the reference to arbitration and also for a period subsequent to the reference. The High Court set aside the award regarding interest on the ground that the claim for interest was not referred to arbitration and the arbitrator had no jurisdiction to entertain the claim. In this Court, counsel for the appellant contended that the arbitrator had statutory power under the Interest Act of 1839 to award the interest and, in any event, he had power to award interest during the pendency of the arbitration proceedings under s. 34 of the Code of Civil Procedure, 1908. Bose, J. rejected this contention, but it should be noticed that the judgment of this Court in Seth Thawardas's case () does not deal with the question whether the arbitrator can award interest subsequent to the passing of the award if the claim regarding interest was referred to arbitration. In the present case, all the disputes in the suit, including the question of interest, were referred to the arbitrator for his decision. In our opinion, the arbitrator had jurisdiction, in the present case, to grant interest on the amount of the award from the date of the award till the date of the decree granted by Mallick, J. The reason is that it is an implied term of the reference that the arbitrator will decide the dispute according to existing law and give such relief with regard to interest as a court could give if it decided the dispute. Though, in terms, s. 34 of the Code of Civil Procedure does not apply to arbitration proceedings, the principle of that section will be applied by the arbitrator for awarding interest in cases where a court of law in a suit having jurisdiction of the subject-matter covered by s. 34 could grant a decree for interest. In Edwards v. Great Western Ry. ((1851) 11 C.B. 588.) one of the questions at issue was whether an arbitrator could or could not award interest in a case which was within s. 28 of the Civil Procedure Act, 1833. It was held by the Court of Common Pleas that the arbitrator, under a submission of "all matters in difference", might award the plaintiff interest, notwithstanding the notice of action did not contain a demand of interest; and, further, that, assuming a notice of action to have been necessary, the want or insufficiency of such notice could not be taken advantage of, since the 5 & 6 Vict. C. 97, s. 3, unless pleaded specially. In the course of his judgment Jarvis C.J. observed :

> "A further answer would be, that this is a submission, not only of the action, but of all matters in difference; and the interest would be a matter in difference, whether demanded by the notice of action or not. If the arbitrator could give it, he might give it in that way, notwithstanding the want of claim of interest in the notice."

9. This clearly decides that, although the Civil Procedure Act, 1833, speaks in terms of a jury, and only confers upon a jury a discretionary right to give interest, none the less, if a matter was referred to an arbitrator - a matter with regard to which a jury could have given interest - an arbitrator may equally give interest, and that despite the language used in that Act. The principle of this case was applied by the Court of Appeal in Chandris v. Isbrandtsen - Moller Co. Inc. ([1951] 1 K.B. 240.) and it was held that though in terms s. 3 of the Law Reform (Miscellaneous Provisions) Act, 1934 giving the court power to award interest on any debt or damages did not apply to an arbitrator, it was an implied term of the contract that the arbitrator could award interest in a case where the court could award it. It was pointed out by the Court of Appeal that the power of an arbitrator to award interest

was derived from the submission to him, which impliedly gave him power to decide "all matters in difference" according to the existing law of contract, exercising every right and discretionary remedy given to a court of law; that the Law Reform (Miscellaneous Provisions) Act 1934, which repealed s. 28 of the Civil Procedure Act, 1833, was not concerned with the powers of arbitrators; and that the plaintiff was entitled to the interest awarded by the arbitrator.

10. The legal position is the same in India. In Bhwanidas Ramgobind v. Harasukhdas Balkishandas the Division Bench of the Calcutta High Court consisting of Rankin and Mookerjee, JJ. held that the arbitrators had authority to make a decree for interest after the date of the award and expressly approved the decision of the English cases - Edwards v. Great Western Ry., ((1851) 11 C.B. 588.) Sherry v. Oke ((1835) 3 Dow. 349-1 H. & W. 119.) and Beahan v. Wolfe ((1832) 1 Al. & Na. 233.). The same view has been expressed by this Court in a recent judgment in Firm Madanlal Roshanal Mahajan v. The Hukamchand Mills Ltd., Indore ([1967] S.C.R. 105.). We are accordingly of the opinion that the arbitrator had authority to grant interest from the date of the award to the date of the decree of Mallick, J. and Mr. Bindra is unable to make good his argument on this aspect of the case.

11. For these reasons we affirm the decree of the Calcutta High Court dated August 1, 1962 and dismiss these appeals with costs.

V.P.S.

12. Appeals dismissed.