

PETITIONER:
THE HINDUSTAN VIDYUT PRODUCTS LTD.

Vs.

RESPONDENT:
STATE OF RAJASTHAN & ORS.

DATE OF JUDGMENT: 24/03/1999

BENCH:
S.R.Babu, S.N.Phukan

JUDGMENT:

RAJENDRA BABU, J. :

The District Judge, Jaipur City, appointed a sole arbitrator to adjudicate upon the disputes that had arisen between the parties to these appeals in relation to a transaction by which the appellant had agreed to supply 3290 k.ms. of PANTHER Conductor to the respondent. The appellant filed a detailed statement of claims and we may summarise the same as follows :- i) Outstanding bills 5,21,143.30

ii) Steel price variation 13,23,661.93

iii) Amount of Bank Guarantee 15,67,278.54

----- 34,12,023.77

LESS

i) Raw Material - 11,38,800.48

ii) Cash advance - 3,29,348.83

- 14,68,149.31

----- Rs. 19,68,149.31

The respondents also made claims which are as follows :-

i) Damages on account of 28,65,555.17 risk purchase

ii) Balance 20% cash advance 3,29,581.00

iii) Interest @ 18% on 1,14,030.50 Rs. 3,29,581.00

iv) Interest charges @ 18% 3,15,134.23 on 11,28,018

v) Recovery on account of 3,93,321.35 excess payment @ 144/- on 2652 km. ----- 40,51,433.08

The respondent further stated that the appellant would be given adjustment on return of the following raw material failing which should be ordered to pay a sum of Rs. 47,27,771.20 :- i) Aluminium steel in the form of 3/8 size Aluminium wire rods 288.957 MT

ii) H.T.G. Steel wire 3.0 mm size 186.400 MT

The arbitrator awarded the claims of the parties in the following terms :- Claim of claimant - petitioner Claim No. Amount awarded

1) 5,21,143.30 3,29,806.89

2) 13,23,661.93 Nil

3) 6,99,816.20 Nil

4) 10,00,000.00 (damages) Nil

Claim of Respondent Amount claimed Amount awarded

1) 3,29,581.00 3,29,348.83

2) 1,14,030.00 Nil

3) 3,93,321.35 Nil

Damages for the purchase of 478 km from market - 33,93,800-40

Being the contract price of 478 km. - 19,39,932-60

----- Balance payable by Company
14,53,932.60 -----
Finally, the arbitrator gave the following amount :-

Company Respondent

3,29,806.89 3,29,348.83

14,53,932.60 ----- 17,82,781.43

(-) 3,29,806.89 ----- Net payable by Company 14,53,474.54 ----- It was further directed that since the Government has already recovered Rs. 15,67,278.54, therefore, after adjusting Rs. 14,53,474.54 the Company is entitled to receive Rs. 1,13,804/- plus interest @ 16%. A letter was sent by the advocate for the respondent on the date when the award was made known to the parties pointing out that certain amount of adjusting the cost of raw material had not been awarded in favour of the respondent and it is stated therein that this apparent error should be corrected in the award. The arbitrator acknowledged the objection having been raised and a letter being sent to him but he expressed his helplessness to consider the same as after pronouncement of the award he had become functus officio. The respondent filed an application in Suit No. 122 of 1979 before the District Judge, Jaipur city, under Sections 15 and 16 of the Arbitration Act, 1940 for correcting the award. The learned Judge rejected the claim made by the respondent and made the award the rule of the court. Against that order an appeal was filed in the High Court and the High Court allowed the appeal and

modified the award directing the appellant to pay a further sum of Rs. 11,38,800.48 to the company as the cost of raw material which is stated to have been admitted by the company in the statement of claim. Hence this appeal by special leave.

After referring to the decisions of this Court in Hindustan Construction Company Limited v. State of J & K, 1992(4) SCC 217; State of Bihar v. Hanuman Mal Jain, 1997 (11) SCC 40; M.C.D. v. Jagannath Ashok Kumar, 1987 (4) SCC 497 and Naraindar Lilaram Adnani v. Narsingdas Naraindas Adnani & Ors., 1995 Supp. (1) SCC 312, it is submitted that the finding of the High Court that the arbitrator has failed by over-sight to consider the claim of the respondent for a sum of Rs. 11,38,800.48 is not permissible at all and that the award needed modification is not correct and the scope for interference in such matter is very much limited. The learned counsel for the respondents urged that the High Court had correctly given effect to what was obvious from the pleadings and no dispute regarding the same had arisen for adjudication. The arbitrator set out the claims of both the parties and made an award without setting out reasons for making such an award. One of the claims made by the appellant has been referred to by us earlier in the course of this order which excludes one of the amounts, i.e., Rs. 11,38,800.48 thus making a claim after deducting this amount for a sum of Rs. 9,68,149.31 and the respondents had claimed return of left over quantities of aluminium products as its equivalent in money is a sum of Rs. 47,27,771.20. The arbitrator considered this aspect of matter as follows :- On merits I hold an consideration of the entire evidence including accounts relating to bills sent by the company to the Government that the company refused to supply the remaining 478 kms. of conducts in December 1973 and this refusal had no justification. Thus the company committed breach of contract in December 1973. I compute damages for this breach in December 1973 at Rs. 33,93,800. The Government in its statement of claim and the learned counsel for both the parties during arguments stated that Rs. 19,39,867.40 should be deducted as contract price of 478 kms. of conductor from Rs. 33,93,800 to arrive at the amount of damages payable by the company. Thus the company is liable to pay Rs. 14,53,932.60 as damage to the Government.

As a result of the above mentioned decisions the company is entitled to receive Rs. 3,29,806.89 while it has to pay Rs. 3,29,348.83 plus Rs. 14,53,932.60 to the Government.

Thus the Government is entitled to recover Rs. 14,53,474.54 from the company.

However, the Government on 15.11.75 had recovered Rs. 15,67,278.54 from the company by encashing bank guarantee under orders of the Supreme Court. Therefore, now the Government has to refund Rs. 1,13,804/- to the company. The Supreme Court in its order had also directed that if the Government has to refund any sum from the amount recovered under its order, then the Government will refund the same with interest at the rate that the company paid to its Bankers. The Dena Bank, New Delhi, has certified that it has been charging interest at the rate of 16% per annum from the company since April 1975. The correctness of this rate has not been challenged on behalf of the Government.

Therefore, the Government is liable to pay interest @ 16% per annum from 15.11.75 on Rs. 1,13,804.00 till its payment.

No other point was argued before us.

Accordingly I hold after final adjustment that the company is entitled to recover as refund from the Government Rs. 1,13,804.00 with interest @ 16% per annum from 15.11.75 till realisation.

The Government claims return of certain amount of aluminium and steel wire quantities specified in its statement of claims. Its claim is that the Government imported aluminium and purchase steel wire through the company exclusively for manufacture of 3130 kms. of Panthar conductor. The company failed to supply 478 kms. of Panthar conductor and the said material to that extent is with the company. Accordingly, the company is liable to return the left over quantities or to pay its equivalent amounting to Rs. 47,27,771.20. I fail to see any force in this claim and I reject it.

When the claim either for return of the raw material or for its price had been rejected, we fail to see as to how the respondent becomes entitled for adjustment of the amount regarding raw material supplied and it cannot be termed as an inadvertent error of a clerical or arithmetical nature which can be corrected under Section 15 of the Arbitration Act. The High Court has exceeded its jurisdiction in interfering with the award particularly when the award was a non-speaking award and the claims made by the parties have been borne in mind by the arbitrator in passing the award and the arbitrator had not omitted any claim made by any of the parties. Therefore, we think the High Court was not justified in interfering with the award which was made the rule of the court by the District Judge, Jaipur city.

We allow this appeal, set aside the order made by the High Court allowing the claim of Rs. 11,38,800.48 on account of raw material supplied by the respondent. If any amount has been paid by the appellant or deposited in the court pursuant to an interim order made by this Court the same shall be refunded and the security furnished thereto shall stand discharged.