

A

STEEMAN LTD.

v.

STATE OF HIMACHAL PRADESH

MARCH 6, 1997

B

[DR. A.S. ANAND AND K. VENKATASWAMI, JJ.]

Arbitration Act, 1940: Section 30.

C

Award—Challenge of—Grounds—Arbitrator failed to answer question of law raised before predecessor arbitrator—From the non-speaking award it was not possible to find out whether the arbitrator had applied his mind to a part of claim—Arbitrator had not given reasonable opportunity of meeting the case—Interest awarded was at too low a rate of 6% whereas claim was for 18%—Held : No such question of law framed as an issue by arbitrator—Allegation of Company's properties being forcibly taken possession of by

D

State—No separate claim made in the amended claim—Reasonable opportunity of meeting the case—Giving of—Proved by the detailed minutes of the Arbitrator drawn at the sittings held by him—No good reason to think that the Arbitrator had awarded interest at 6% without taking into account the relevant facts and circumstances of the case—Jurisdiction of the Court to interfere with the award confined to matters enumerated in S.30.

E

The applicant/petitioner was awarded the work of construction of a Bridge. As there was some dispute between the parties regarding the progress of the work and payments for the same, the petitioner submitted disputes/differences for adjudication by an arbitrator. However, the respondents imposed a penalty in addition to rescinding the contract. Against the order rescinding the contract and imposing penalty, the petitioner successfully appealed to the State Government. Consequently, the petitioner was allowed to proceed with the work and the disputes were referred to an arbitrator. The arbitrator entered upon the reference. While the arbitration proceedings were going on, the respondents again rescinded the contract finally.

F

G

The petitioner submitted additional claims before the arbitrator consequent upon the rescinding of the contract finally. The petitioner also raised a question of law before the arbitrator. The arbitrator referred that question for opinion of the High Court under Section 13(b) of the Arbitra-

H

tion Act, 1940. While that was pending a new arbitrator was appointed. A
The High Court while setting aside the removal of the previous arbitrator
did not continue with the new arbitrator. Since, no orders were passed by
the High Court for proceeding further with the arbitration matter, the
petitioner filed a Transfer Petition before this Court. This Court disposed
of the Transfer Petition by appointing an arbitrator. The said arbitrator B
duly entered upon the reference, held as many as 10 sittings/hearings and
drew minutes of every meeting in detail. Based on that an award was
passed and filed in this Court. The petitioner had filed an application
challenging the award.

On behalf of the petitioner it was contended that the arbitrator failed C
to answer the question of law raised before predecessor arbitrator, that
since the arbitrator had made a non-speaking award it was not possible
to find out whether he had applied his mind to a part of the claim; that
the arbitrator had not given a reasonable opportunity of meeting the case;
and that the interest awarded was at too low a rate as the claim was for D
18% and the award was at 6%.

Dismissing the application, this Court

HELD : 1. By consent of both the parties, the arbitrator framed
issues for adjudication and the question of law now being raised was not E
one of the issues. Further the so-called question of law loses its relevance,
after the appointment of the new arbitrator by the Court, as indeed no act
of rescinding the contract took place after this Court appointed the
Arbitrator. Therefore, there is no substance in the first point. [775-B]

2. The Arbitrator as quite justified in not awarding any amount F
under a separate head for the property of the Company forcibly taken
possession of in the light of the amended claims presented before him.
There is thus no substance in the argument that the claim as originally
put forward regarding company property allegedly taken possession of by
the respondent illegally and forcibly, was not separately considered by the G
Arbitrator. In fact, no such separate claim was made by the petitioner in
the amended claim. [777-E-F]

3. The contention that the petitioner was not given a reasonable
opportunity of meeting the case is not acceptable in view of the detailed
minutes of the Arbitrator drawn at the sittings which extended to 10 in H

A number. [777-G]

Suresh Ragho Desai & Anr. v. Smt. Vijaya Vinayak Ghag, [1988] 4 SCC 591 and *Rajpur Development Authority & Ors. v. M/s. Chokhamal Contractors & Ors.*, [1989] 2 SCC 721, referred to.

B 4. There is no good reason to think that the Arbitrator has awarded interest at 6% as against 18% claimed without taking into account the relevant facts and circumstances of the case. Further the jurisdiction of the Court to interfere with the award is confined to matters enumerated in Section 30 of the Arbitration Act, 1940 and the point regarding interest would not fall within the ambit of Section 30 of the Act. [779-A-B]

C CIVIL APPELLATE JURISDICTION : Interlocutory Application.
No. 1.

IN

D Transfer Petition (C) No. 233 of 1980.

WITH

Special Leave Petition (C) No. 15978 of 1986.

E From the Judgment and Order dated 3.7.86 of the Himachal Pradesh High Court in C.R. No. 5 of 1973.

M.L. Verma and S.K. Gambhir for the Applicant/Petitioner.

B. Dutta, L.R. Nath and J.S. Attri for the Respondents.

F The Judgment of the Court was delivered by

VENKATASWAMI, J. On a close and careful scrutiny of the facts we find that the dispute in these matters lies in a very narrow compass, but longwinding arguments were addressed by referring to matters which have
G no real relevance to the actual disputes in these matters.

Brief facts leading to the filing of these two matters are the following:

The work of construction of Sitla Bridge over river Ravi at Champa was awarded after negotiation to the applicant/petitioner (M/s Steeman
H Ltd.) on 31.12.1969. We are not giving details as they are not necessary. As

there was some dispute between the parties regarding the progress of the work and payments for the same. The petitioner Company submitted disputes/differences for adjudication by an arbitrator as per clause 29 of the agreement. While so, the Executive Engineer, Champa Division imposed penalty of Rs. 63,000 in addition to rescinding the contract on 5.7.1971. Against the order rescinding the contract and imposing penalty, the petitioner Company successfully appealed to the Government of Himachal Pradesh. Consequently, the Company was allowed to proceed with the work and the disputes were referred to an arbitrator. A B

As Arbitrator originally appointed was not acceptable to the petitioner company one, Mr. R.K. Sarkar was appointed as arbitrator by mutual consent of parties. The said arbitrator entered upon the reference. C

While the arbitration proceedings were going on, the respondents again rescinded the contract finally on 7.6.1972.

On 7.10.1972, the petitioner Company submitted additional claims before the arbitrator consequent upon the rescinding of the contract finally. The petitioner Company also raised a question of law before the arbitrator, namely, 'whether the respondent was competent to rescind the contract on the ground of slow progress when the matter in dispute was subjudice before the arbitrator during the pendency of the case'. The arbitrator referred that question for opinion of the Himachal Pradesh High Court under Section 13(b) of the Indian Arbitration Act. While that was pending, it appears that in the place of Mr. R.K. Sarkar one Mr. O.B. Sablok was appointed as arbitrator. The petitioner challenged the substitution of the arbitrator before the High Court. The High Court while setting aside the removal of Mr. R.K. Sarkar and the appointment of Mr. O.B. Sablok as arbitrator, did not continue Mr. R.K. Sarkar as arbitrator. Since, no orders were passed by the High Court for proceeding further with the arbitration matter, the petitioner Company moved this Court by filing Transfer Petition No. 233 of 1980 for transfer of the cases to some other High Court. This Court disposed of the Transfer Petition on 12.3.1984 by appointing one Mr. G.N. Ramaswamiah, Chief Engineer (IPH) H.P. PWD. with the mutual consent of the parties with a direction to the said arbitrator to enter upon the reference and directing both the parties to appear before him on 3.9.1984. D E F G

The said arbitrator duly entered upon the office, held as many as 10 sittings/hearings and drew minutes of every meeting in detail. Based on that H

A an award has been passed on 14.6.1985.

The High Court (before which the question of law above mentioned, was referred to by Mr. R.K. Sarkar, the previous Arbitrator) disposed of the matter on 3.7.1986 stating that since the successor Arbitrator had made the award, there was no need to answer the question. On that view, the High Court dismissed the reference matter. Aggrieved by that the above special leave petition has been filed.

When we asked the learned Senior Counsel appearing for the petitioner whether anything survives in the special leave petition not only in view of the issues raised before the Arbitrator for adjudication but also having regard to the arbitrator appointed by this Court passing the award, the learned counsel frankly submitted that the special leave petition has become infructuous. Accordingly, we dismiss the same as having become infructuous.

D Award has been filed in this Court. Petitioner has filed objections to the award.

Challenging the award as such, the learned counsel raised four points.

E The first point raised is that the arbitrator should have answered the question of law raised before the predecessor arbitrator and the failure to do so vitiates the award.

Secondly, the arbitrator has made a non-speaking award and, therefore it is not possible to find out whether he has applied his mind to that part of the claim amounting to rupees two lakhs eighteen thousand which represented the goods seized after rescinding the contract.

Thirdly, the arbitrator has not given reasonable opportunity of meeting the case of the respondents and also in establishing the petitioner's case. In support of this contention he placed reliance on *Suresh Ragho Desai and Another v. Smt. Vijaya Vinayak Ghag*, [1988] 4 SCC 591 and *Rajpur Development Authority & Others v. M/s. Chokhamal Contractors & Others*, [1989] 2 SCC 721.

And the last point is that the interest awarded was at too low a rate as the claim was for 18% and the award was at 6%.

So far as the first point is concerned, we do not think that the said question arises out of the present arbitration proceedings inasmuch as this Court appointed the present arbitrator to go into the disputes between the parties and the parties were directed to place before the arbitrator their respective disputes. As a matter of fact by consent of both the parties. The arbitrator framed issues for adjudication and it does not appear from the issues that the question of law now being raised was one of the issues. Further the so-called question of law loses its relevance, after the appointment of the new arbitrator by this Court, as indeed no act of rescinding the contract took place after this court appointed the Arbitrator. Therefore, there is no substance in the first point.

Regarding the second point, the facts are like this. The petitioner company's demand in the original claim under clauses I & II read as follows :-

		(in round figure of 1000 rupees)	
I. The work done by the company upto 16.9.1972 when it was forcibly dispossessed, approximately	12,00,000.00	
Less value received from H.P. PWD, in the shape of cash or material	(-)	3,00,000.00	
	9,00,000	
Plus for property of the company illegally & forcibly taken over on 16.9.72 by the Department	(+)	4,18,000.00	
Less value of material handed over to company	(-)	2,00,000.00	
		<hr/> 11,18,000.00 <hr/>	
Total amount on account of work down and property forcibly taken over plus interest @18% p.a. from			

A 16-9-72 to 15-9-84, i.e. for 12 years (+) 24,15,000.00

The total sum to which the
company is entitled as on 15-9-84
under this head 32,33,000.00

B II. Damages on account of criminal
breach of trust, fabricating false
evidence, mischief, forgery, cheating,
with intent to cause unjust loss and
injury to the petitioner. The company
claims a sum equal to the money
C it was illegally deprived of 11,18,000.00

The above claims were modified before the present Arbitrator which
read as follows :-

D *Claims preferred by the Petitioner :-*

I (a) Claim on works done by the
Company upto 16.9.72 Rs. 11,18,000.00

(b) Interest on the amount under
E I(a) @ 18% per annum for a period
of 12 years. Rs. 24,15,000.00

II. Claims made by the company
under for reasons whatsoever as
per clause of the agreement Rs. 11,18,000.00"

F [Other clauses omitted as not relevant]

The Arbitrator has passed the award on the basis of the amended
claim as follows :-

G	S. No.	Claims preferred by the petitioner	Amount claimed (Rs.)	Awarded amount
	I. (a)	H Claim on works done by the company upto 16.9.72	11,18,000.00	I award Rupees Forty two thousand Nine hundred Forty Nine and Sixty Three paise only. (Rs. 42,949.63)

(b)	Interest on the amount under I(a)	24,15,000.00	I award simple interest of six percent for 12 years upto this date amounting to Rupees Thirty Thousand Nine Hundred Twenty Three and seventy three paise only. (Rs. 30,923.73)	A B
II.	Claims made by the company on damages (This is amended claim from the earlier item" for reasons whatsoever as per clause of the agreement), and amount is the same	11,18,000.00	I award Rupees Twenty Three Thousand Two Hundred Twenty Five lying in deposit with Respondent. Further I award Rupees Fifty Thousand on inventory of stores etc. totalling Seventy Three Thousand Two hundred twenty Five only). (23,225 + 50,000 = 73,225.00)."	C D

The Arbitrator was in our opinion quite justified in not awarding any amount under a separate head for the property of the Company forcibly taken possession in the light of the amended claims presented before him. There is thus no substance in the argument that the claim as originally put forward regarding company property allegedly taken possession of by respondent illegally and forcibly, was not separately considered by the Arbitrator. Answer is obvious viz. no such separate claim was made by the petitioner in the amended claim. Hence we have no hesitation to reject the second point also.

So far as the third point is concerned, namely that the petitioner was not given reasonable opportunity to substantiate the case, we do not think that we can accept that contention after perusing the detailed minutes of the Arbitrator drawn at the sittings which extended to 10 in number. As a matter of fact, we find that the Arbitrator had called upon the petitioner Company time and again to furnish documents to support the claims. But, the petitioner has only partly complied with the directions of the Arbitrator. The Arbitrator had given full and reasonable opportunity to both

A parties to put forward their respective claims. At the last sitting dated 5.4.85, the Arbitrator observed as follows :-

B 'As far as oral hearing is concerned, it is closed but in case any clarifications are needed by the court after receipt of final reply from both the parties within the dates stipulated above, the parties may be summoned at short notice to seek such clarifications needed by the court.'

C Pursuant to the above, it appears the Arbitrator sent letters to both parties seeking certain clarifications. Taking advantage of that, learned counsel for the petitioner argued that the Arbitrator has not given reasonable time to the petitioner to clarify the doubts. The learned counsel also invited our attention to a post-script found at the concluding part of the proceedings dated 30.5.85. The post-script reads as follows :-

D 'That during the course of hearing, petitioner requested for an interval to see the documents and give clarifications. Accordingly, the court adjourned for half an hour during the course of the proceedings.'

E According to the learned counsel, the time given Arbitrator was totally inadequate to clarify the doubts and therefore, there was no reasonable opportunity. As pointed out earlier, after going through the minutes of the Arbitrator drawn during the sittings, we do not think that there is any substance in the argument. Further neither of the counsel was in a position to explain as to who made the post-script and when was it entered in the proceedings of the Arbitrator. The decisions cited by the
F learned counsel for the petitioner in support of his argument that want of reasonable opportunity would vitiate the award may not come to his aid as we are satisfied on the facts of the case, from the record including the minutes drawn meticulously, that the Arbitrator had given full and reasonable opportunity to both parties. Accordingly we find no force in this
G point as well.

H As regards the last point concerning the interest, we are informed that there is no clause in the agreement regarding interest. Before the Arbitrator both parties appear to have agreed on the rate of interest at 18%. However, the Arbitrator in the facts and circumstances of the case awarded interest at 6%. The agreement between the parties does not mean

that the Arbitrator was bogged down to that rate irrespective of other facts and circumstances of the case on hand. We have no good reason to think that the Arbitrator has awarded interest at 6% as against 18% claim without taking not account the relevant facts and circumstances of the case. Further the jurisdiction of the Court to interfere with the award is confined to matters enumerated in Section 30 of the Arbitration Act. We do not think that the last point raised before us would fall within the ambit of Section 30 to interfere with the award.

In the result the Interlocutory Application 1/96 in Transfer Petition (Civil) No. 233/80 as well as Special leave petition (Civil) No. 15978/86 stand dismissed. However, there will be no order as to costs.

V.S.S.

Appeal and petition dismissed.