

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 4012 of 2015

Date of decision : November 2nd, 2015

M/s Raja Ram and Sons

..... Petitioner

Versus

Union of India

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vikas Bahl, Senior Advocate with
Mr. Arjun Kundra, Advocate
for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General of
India with
Mr. Dheeraj Jain, Advocate
for the respondent-Union of India.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J.

This is a classic case which falls within the preview of the phrase 'justice delayed is justice denied'. The case has a chequered history.

On 18.12.1975 Union of India invited the tender for laying of the sewage scheme in Central Cantonment, Ambala. The appellant was successful in obtaining the tender and completed the work on 15.7.1981. Some dispute arose between the parties, therefore, in view of the terms and conditions of the agreement, the matter was referred to the Arbitrator namely KrishanKumar, Chief

Engineer. The arbitrator announced the award on 27.11.2002 whereby the appellant was held entitled to a sum of ₹42,19,367/-. The application for making the aforementioned award rule of court was filed. Union of India filed objections against the same. Since the parties were at variance the trial court framed the following issues:-

- “1. Whether the arbitrator has exceeding act without having jurisdiction?OPD
2. Whether the award in question is liable to be made rule of the Court?OPA”

The aforementioned objections were dismissed by the trial court vide order dated 27.11.2009 (Annexure P-5). The aforementioned order was assailed by filing appeal at the instance of Union of India. The said appeal vide order dated 24.9.2014 has been allowed and the award of the arbitrator has been set aside and the matter was remitted back to the arbitrator. The appellate court, also directed the arbitrator to pass a fresh award within a period of three months, in case the said Arbitrator is not available then the authority concerned shall appoint a fresh arbitrator within one month in terms of the arbitration clause contained in the agreement with a direction to pass a fresh award. The parties were directed to appear before the arbitrator on 17.10.2014.

Mr. Vikas Bahl, learned Senior counsel assisted by Mr. Arjun Kundra, Advocate submits, that though, the claim before the arbitrator was more, but the arbitrator while entertaining the claim viz-a-viz amount of final bill/bank guarantee, extra work carried out beyond 10% deviation limit, extra excavation carried out for working

space around circular manhole, extra excavaton carried out in running sand and water logged area redoing of job maintenance period, watch and ward pump houses for completion date to July 15, 1982, partly accepted the claim of interest and breach of contract suspension of work increase in scope of work and declined various other claims. Against every claim the arbitrator assigned reasons. In order to demonstrate the aforementioned fact, he drew attention of the court to the award, which, according to the appellant assigned sufficient reasons while adjudicating claims for the purpose of adjudication of /is between the parties. It would be apt to reproduce the reasons:-

CLAIMS OF M/S RAJA RAM & SONS

15. Chief Engineer Chandigarh Zone representing UOI shall pay to M/s Raja Ram & Sons the amount set out as AWARD against various claims.

<u>S.No.</u>	<u>Brief descri - ption of claim</u>	<u>Amount of claim</u>	<u>Revised amount</u>	<u>Findings</u>	<u>Amount Awarded</u>	<u>Brief Reasons</u>
1.	Amount of final bill/ bank guarantee	₹ 4,12,600.00	₹ 1,33,902.00	Partly sustained	₹ 15,675.00	Final bill paid by UOI BGB Released. Most of TE's recovery amount refunded, coal,overiss-ued calculation by CWE/GE (UOI) assessed by me.
2.	Extra work Carried out	₹ 6,00,000/-	₹ 13,60,000/-	Partly sustained	₹ 5,85,000/-	DO limit laid

beyond 10%
deviation
limit

down
has been
breached by
UOI.

Extra work beyond
DO based
on limit
Got executed.

Extra rates beyond
DO limit payable

(negotiated)
based
On then market
rates plus
profit. Cancellation of
amendment
unilaterally Issued by
UOI. considered
Invalid. Claim on
higher side, hence
assessed by me.

i) He further submits that in the entire thrust of the objections, filed by respondents, it was focused on the misconduct and not on other points. However, no such objection viz-a-viz non-assigning of reasons by the arbitrator had been taken.

ii) Union of India made payment of awarded amount, the execution application thus, on 29.9.2014 was withdrawn.

iii) Respondent did not press for framing of issue.

As per the provisions of Arbitration Act, 1940 the award can be set aside only on these three grounds, and pleas that arbitrator did not assign reasons as allegedly found by the appellate court is not contemplated.

In support of his contentions he has relied upon the judgments in **Build India Construction System Vs. Union of India 2002 (5) SCC 433, M/s Asian Techs Ltd. Vs. Union of India and others 2010(8) RCR (Civil) 106** and **Uttam Singh Duggal and Sons**

Vs. Union of India and others 2002 AIR (Delhi) 471 to contend that if the arbitration clause in the agreement does not require the arbitrator to record reasons in support of its award, the award cannot be held invalid for want of reasons. He further submits that as per general conditions of the contract/terms and conditions it did not envisage that in case of dispute the arbitrator shall assign reasons. Similar controversy arose before the Hon'ble Supreme Court in **Build India Construction System's case (supra)** wherein similar clause, which was subsequently amended on 4.9.1986 by the Government of India, Ministry of Defence, New Delhi arose, and the Supreme Court after noticing the facts in paragraph 11 of the judgment held that in case, no plea/ objection qua non-assigning of the reasons by the arbitrator has been taken or had been taken for the first time at the appellate stage the authority raising such objections is precluded from taking the objections. In essence, the Court below ought not to have entertained such an objection/plea. He further submits that as per 1940 Act it is a well settled law that in case of non-suited awards there was a very little scope of interference and heavily relied upon the ratio decidendi culled out in **M/s Asian Techs Ltd.'s case (supra)** and thus prays that the impugned order is not sustainable and is liable to be set aside.

Mr. Sat Pal Jain, Additional Solicitor General of India submits that the appellant has not approached the Court with clean hands. He submits that as per the averments made in paragraph 18 of the grounds of revision, it is deduced that as if the petitioner was not aware of the impugned order, which is factually

incorrect, inasmuch as, that the appeal was allowed vide order dated 24.9.2014 whereas the execution application was withdrawn on 29.9.2014.

The objecting court while rejecting the objections in so many words observed that the award was non-speaking yet dismissed the objections. It is in these circumstances that the order was assailed by filing an appeal, which has been allowed. When the execution of the award was filed it was stated that the amount of award has been deposited to avoid accumulation of interest and it cannot be said that the respondent did not at any point of time or stage disputed its liability on the ground or acquiesced to the award and therefore, could not challenge by filing an appeal, particularly on the ground that the award was lacking “reasons”. In support of his contentions, he has relied upon the judgment of Hon’ble Supreme Court in **M/s Gora Lal Vs. Union of India 2004 (1) RCR (Civil) 784** to contend that the Hon’ble Supreme Court had an occasion to interpret Section 70 of the arbitration agreement and found that the word “findings” denotes reasons and since the finding of the arbitrator were wanting reasons, therefore, rightly so the appellate court by relying upon the ratio decidendi in **M/s Gora Lal’s case (supra)** set aside the award and as well as order of the objecting court. The arbitrator has been directed to decide the controversy within three months, therefore, no prejudice would be caused to the petitioner and prays for dismissal of the revision petition.

I have heard learned counsel for the parties, appraised the paper book and case law cited at bar.

The appellate court while accepting the appeal of the respondents has relied upon the ratio decidendi culled out in **M/s Gora Lal's case (supra)** but on going through the reasoning assigned in paragraph 7, the said finding was confined to the facts of the case, much less interpretation to clause 70 of the arbitration. In essence, the judgment was per incuriam. It would be apt to reproduce paragraph 7 of the said judgment:-

The point for determination in this case: Whether the Arbitrator ought to have given reasons in support of his findings, along with the sum awarded, on each item of dispute. To decide this point, we have to go by the text and the context of Clause 70 of the arbitration agreement quoted above. Under the said clause, the Arbitrator was required to identify each individual item of dispute and given his findings thereon along with the sum awarded. In this context, one has to read the word "findings" with the expression "on each item of dispute" and if so read it is clear that the word "finding" denotes "reasons". In support of the said conclusion on each item of dispute. The word "findings" has been defined in 'Words and Phrases, Permanent Edition 17, West Publishing Co. to mean "an ascertainment of facts and the result of investigation." Applying the above test to Clause 70, we are of the view that the Arbitrator was required to give reasons in support of his findings on the items of dispute along with the sums awarded. We make it clear that this order is confined to the facts of this case and our interpretation is confined to Clause 70 of the arbitration agreement in this case."

Thus, there is force in the plea of Mr. Vikas Bahl, as from

perusal of objections, the Union of India-respondent has not taken any objection that the award lacked reasons. Be that as it may, the reasoning assigned by the arbitrator as extracted (supra) would leave no manner of doubt that against every claim the arbitrator has given reasons, though, in a short and concise form. It is not necessary for the arbitrator to give detailed and lengthy reasons for awarding compensation, particularly, when the contract did not envisage that the arbitrator was enjoined upon an obligation to assign reasons. The ratio decidendi culled out in **Build India Construction System's case (supra)** is squarely applicable to the facts and circumstances of the case as the terms and conditions of the contract in the present case were similar to that, prior to the amendment in the year 1986, wherein it was specifically stated that the arbitrator is not required to assign reasons. The amendment was caused only on 24.9.1996 wherein it was mentioned that in case, the award exceeds a sum of ₹1 lac then the arbitrator is required to assign reasons. The contract, in the present case, was entered into in the year 1975, therefore, the amendment would not apply, to the facts and circumstances of the present case.

There is another aspect of the matter. Section 30 of the Arbitration Act, 1996 does not envisage setting aside of award for want of reasons. This fact has also been interpreted by the Hon'ble Supreme Court in **Build India Construction System's case (supra)** and as well as **M/s Asian Techs Ltd.'s case (supra)** . Once the respondent has already paid the awarded amount to the petitioner and in case, the impugned order is allowed to sustain it

would amount to putting the clock back, particularly, when the parties having been litigating with each other since long. Though, the word “finding” denotes “reasons” , but 1940 Act, did not envisage setting aside the award for such ground, particularly, when the arbitrator, as noticed above, has assigned reasons. The respondent Union of India in the entire objections, did not take any objection viz-a-viz lacking reasons.

In my view, the respondent is estopped to raise this plea for the first time before the appellate court.

In view of what has been noticed above, the impugned order is not sustainable in the eyes of law and the same is hereby set aside and the order of the trial court dated 27.11.2009 is restored. The award is made rule of the court.

The revision petition is allowed.

(AMIT RAWAL)
JUDGE

November 2nd , 2015
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