

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.1918 of 2010 (O&M)

Date of decision: **25.02.2016**

M/s H.S. Tuli and Sons Builders (P) Ltd. ... Petitioner

versus

Union of India Respondent

II. Civil Revision No.3284 of 2014 (O&M)

Union of India ... Petitioner

versus

M/s H.S. Tuli and Sons Builders (P) Ltd and another
.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. H.S. Tuli, petitioner, in person.

Mr. Vivek Singla, Senior Panel Counsel for UOI.

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

K.Kannan, J.

I. A saga of 2 scores and 6 years in a capsule

1. The revision brings a challenge to the correctness of the order made in arbitral proceedings initiated under the Arbitration Act of 1940. The petitioner is the contractor of civil works who had been awarded contract for civil construction of married accommodation at Nahan. The contract was awarded on 19.04.1969 and was required to be completed before 02.08.1970. There had

been periodical extensions and after completion of the portion of work, the contractor raised a dispute as regards the payments not fully made for the work done, but when the work was not completed, within the time stipulations and the extensions of time given, the Chief Engineer Northway Zone acting on behalf of the Union, served notice of cancellation on 08.08.1973.

2. The petitioner engaged the Union in volley of demands, questioned the cancellation and reiterated the appointment of Arbitrator for appraisal of his claims already made and for fresh claims through the notice issued on 09.02.1973. Col. Gurdial Singh was appointed as the Arbitrator on 24.12.1973. There have been periodical appointments of Arbitrators in succession, some of them having resigned just soon after commencement of work, some without doing any work, till when the Court of the Sub Judge, 1st Class Chandigarh intervened in an application filed by the contractor under Section 8 of the Arbitration Act by appointing Mr. O.P. Gupta as Arbitrator in the application No.268 to the order dated 05.04.1994. The Arbitrator gave an award on 27.08.1996 allowing for ₹25,46,000/- as the amount payable to the contractor by the Union. This award admitted some of the claims while rejecting some.

3. The award of the Arbitrator as well as his appointment culminated through challenges before the Hon'ble Supreme Court in

SLP Nos.18521, 18522, 18897 and 18898 of 1996. The Supreme Court through its order dated 12.08.1997 disposed of all the SLPs and directed the Chief Justice of this Court to himself hear the case sitting in a Division Bench and that the Bench would not be bound by any previous order passed by any other Bench of the High Court. The Division Bench proceeded to dispose of the civil revision in Civil Revision No.1685 of 1994 on 31.01.2000 and the narration made in this case shall, therefore, be taken as truly reflective of the respective contentions of parties and the manner of how the judicial course has followed. Through this order dated 31.01.2000, the Division Bench was directing the matter to be considered by the Court of competent jurisdiction to consider the award of the Arbitrator. The issues considered were:

- i) Regarding appointment of Sh.O.P.Gupta as sole arbitrator;
- ii) Regarding extension of time granted before the arbitrator to the petitioners and
- iii) Such objections as were permitted to be heard by Division Bench by the orders of the Supreme Court.

The Division Bench held, dismissing the petition of the Union objecting to the appointment of OP Gupta that petitions filed under sections 5 and 11 of the Arbitration Act, 1940 and the objections filed to making the award the rule of court shall be heard and

decided by the trial court. In other words, the Division Bench order was only limited to affirming the order of the trial court in so far as the appointment of Shri OP Gupta as the arbitrator and all the objections to the award, such as biased conduct or otherwise of the arbitrator was directed to be heard and decided by the court of competent jurisdiction. The order did not make any reference to any objection of the Union as regards the arbitrability of any dispute as barred by limitation.

II. The last phase of the journey through courts

4. The Civil Judge, Junior Division, Chandigarh disposed of the case by this judgment dated 12.03.2001 making the award the rule of Court and dismissing the objection against the award. This decision was put in challenge by the Union. This judgment of First Court was brought in appeal to the Additional District Judge by the Union in Civil Miscellaneous Appeal No. 31 of 2001 which set aside the decision of the Court below and allowed the Union to appoint new Arbitrator to decide the claims submitted by the contractor on 05.19.1976. This decision was rendered by the Additional District Judge on 10.04.2009. This decision was sought for review through the petition filed by the petitioner and dismissed on 20.11.2009. The revision petition is against the order passed by the Appellate Court originally as well as the order passed in the review application.

III. The twin points that stood out for consideration

5. The case will be considered only on the averments brought through the judgment of the Division Bench in CR No. 1685 of 1999 and the subsequent orders passed by the Courts below. I have consciously deleted references to several other interventions made by one or the other party, by inviting the Arbitrator or the Court to pass interim orders and the matters that were taken upto the Supreme Court at every stage.

6. Of the several objections to the award of the arbitrator that were brought under the umbrella expression of whether award passed by OP Gupta was liable be set aside, two stand out and the arguments of the petitioner and the Union were confined to whether the unreasoned award of the arbitrator sustainable and whether the claims made by the contractor were within time. The court of 1st instance held:

i) Arbitrator could not be said to have committed legal misconduct in having given an award without reasons. The court heavily relied on the reasoning given in one of earlier dispositions of the High Court in FAO 77 of 1980;

ii) The issue of whether the claim was within time or not was a question that had to be decided by the Arbitrator himself and once he awarded the claim, it

must amount to an inference that the arbitrator held that the plea of limitation had been rejected.

7. On the same points, the Appellate Court reversed the rulings of the first court and held:

- i) In the light of clause 70 of the contract between the parties, which stated that arbitrator shall give his award on matters referred to him and *shall indicate his findings* along with the same, on each individual dispute (italics mine), it meant that the arbitrator was required to give at least some reasons to justify his conclusions, including his finding on the plea of limitation;
- ii) Question of invoking arbitration in the light of cancellation of contract arose only from date of cancellation, i.e. 08.08.1973. As per clause 70 of the agreement, arbitration could be invoked by giving notice to the other party and that date of notice shall be considered as starting point of limitation to invoke arbitration claims. Since the impugned award was based on subsequent claim petition filed by the contractor on 19.6.1979, it was clearly time barred being filed after the expiry of limitation period reckoned from the cancellation of contract.

iii) Consequently, the claim of the arbitrator had to be adjudicated only on the basis of the claim petition dated 5.8.1976 (that was elaborated subsequently in the claim petition dated 16.12.1979) would required to be considered. Hence the matter remitted for fresh adjudication before an arbitrator afresh, limited to the claim contained in the petition dated 05.08.1976.

A review petition had been filed by contractor but it was also dismissed on 20.11.2009.

IV. Subsequent events and factors responsible for Civil Revision No.3284 of 2014

8. After the District Court passed the impugned judgement which is the subject of revision by the contractor, it would appear that the Union appointed a fresh arbitrator on 06.05.2009. Pending the application for review, a petition for enlargement of time as well as for clarification of the order was filed through an application under Section 28 of the Act read with 151 CPC before the Appellate Court. On objections taken by the contractor that the power could not be exercised by the Appellate Court, the Court dismissed the application filed by the Union. The said order has been brought under challenge in CR 3284 of 2014.

V. No necessity to state reason for the arbitrator, if only findings are required to be indicated

9. The Arbitrator is not required to give reasons for his

award under the Arbitration Act, 1940 unless the contract itself provides that the arbitrator shall give reasons and the arbitral reference makes it imperative. There is abundant case law on the subject and to state a few, **Pradip Port Trust Versus Unique Builders-(2001) 2 SCC 680**, where the Supreme Court was holding that ‘Courts cannot attempt to investigate the mental process by which the arbitrator arrived at conclusion where it is not visible from the award.’ In **Union of India Versus Manager, Jain Associates-(2001) 3 SCC 277** the Supreme Court was explaining that there is no violation of natural justice if reasoning is not given. **State of Rajasthan Versus Nav Gharat construction Co.-(2006) 1 SCC 86** reiterates that it is a settled position that under the Arbitration Act, 1940, unless the contract so required, reasons were not required to be given. Of course, in **Raipur Development Authority Versus Chokhamal Contractors-(1989) 2 SCC 721**, the Supreme Court held that to ‘pronounce a judgment’ would mean reasons to be given but I cannot equate the expression to ‘indicate his findings’. Indicate is to ‘point out’. It is merely a matter of perception, without a component of reasoning. It is an expression to sum up the findings in the context in which the clause appears in the contract. I set aside the finding of the appellate court and hold that the award cannot be faulted on failure to give reasons.

VI. Failure to consider point of limitation is misconduct; it will be illogical to cite the award itself as rejecting the plea of limitation.

10. The issue of limitation itself is not an anathema to the scheme of the Arbitration Act, 1940. On the other hand, Section 37 specifically deals with it and it reads as under:-

“37. Limitations.—(1) All the provisions of the Indian Limitation Act, 1908 (9 of 1908) shall apply to arbitrations as they apply to proceedings in Court.

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, a cause of action shall, for the purpose of limitation, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(3) For the purposes of this section and of the Indian Limitation Act, 1908 (9 of 1908), an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other parties thereto a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the

agreement, requiring that the difference be submitted to the person so named or designated.

(4)...Omitted.

(5). Omitted.”

The Limitation Act, 1908 has been repealed by Act of 1963. The said Act completely supplants the rule of limitation under `1908 Act, except is so far as expressly saved by Section 30 of the 1963 Act by providing for extension of limitation in specified fashion to suits, etc for matters that provided for a longer period under 1908 Act. The claim before an arbitrator is required to be made within 3 years from the date when the cause of action arose by reference to the residuary article under Article 137 of the Limitation Act. The Supreme Court has actually dealt with the applicability of these provisions in a case of reference under the Arbitration Act 1940 in **Visakaptanam Port Trust Versus Continental Construction Company (2009) 4 SCC 546**. The court ruled that a claim in respect of dispute not agitated by raising counterclaim in arbitration commenced by other party or otherwise for (in that case) almost 10 years from when cause of action accrued barred the claim. In that case, the arbitral reference had been actually pending within limitation brought at the instance of the opposite party but the counterclaim made beyond the period of limitation was found to be barred. *A fortiori*, in this case, the Arbitrator appointed could have heard and decide only the claim

made within a period of 3 years from the date when the cause of action arose. This is so because, the period of limitation for claiming the price of work under the Limitation Act is 3 years:

Description of suit	Period of limitation	Time from which period begins to run
18. For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Three years	When the work is done

The Arbitrator had been appointed first on 24.12.1973 after the cancellation of works on 08.08.1973. The claim made on the Union within a period of limitation was the one made on 5th August 1976.

11. The claim made was for ₹13,99,681/- said to represent the outstanding amount after giving credit to ₹25,86,088 admittedly paid on the value of work said to have been done to the extent of ₹39,85,769. The arbitrator could have considered only this claim. An exaggerated claim made by the contractor in the year 1979 after the works had been cancelled and when right to sue or make a claim before an arbitrator had arisen could not have been entertained by the arbitrator.

12. The application of rule of limitation has been brought out clearly in an arbitration case decided by the Supreme Court in **Voltas Limited Versus Rolta India Limited- AIR 2014 (SC) 1772.**

It was a case where in response to the appellant's claim, respondents served a notice of counter claim on 17.04.2006. Thereafter he enhanced the claim to ₹333 crore on 26.09.2011. The Supreme

Court observed that only the counter claim that was served within a period of 3 years from date when cause of action arose will be permitted for adjudication and the enhanced counter claim beyond the period of limitation could not be entertained. The same principle operates for whoever brings the claim whether he be a claimant or a counter claimant. The enhanced claim which was made in the year 1979 for a cause of action that arose on 08.08.1973 is barred by limitation.

VII. Unreasoned award is a major handicap to assess whether how and what the arbitrator was approving or declining

13. I have examined the claim made before on 5th August 1976. The contention of the petitioner is that the value of the works is ₹39,85,769.61. The petitioner himself has admitted to have received ₹25,86,088.16 and the balance of amount of ₹ 13,99,681.65 alone has been claimed. The tenability of this claim alone could have been adjudicated by the arbitrator. If the award had been reasoned, which unfortunately it is not, it should have been possible to assess if the arbitrator was allowing these claims or which of the works, the arbitrator had approved and which were not approved; and how much of the claims he allowed and how much he was declining. The final award of the arbitrator does not even tabulate the claims under various heads. It merely states the amount claimed without disclosing the head of claim and the amount awarded. Since I have found that the claim made beyond the period of limitation

was barred and restricted the claim to be examined only for amount set out in notice dated 5th August 1976, I affirm the decision of the lower appellate court in remitting the matter for consideration by appointment of a fresh arbitrator.

VIII. Fresh directions to the arbitrator and disposition in both the revision petitions

14. The arbitrator ordered to be appointed by the lower Appellate Court has entered reference but he has not been able to complete the mandate within the period of 4 months, essentially due to recurrent adjournments sought by the petitioner. His request brought at the Appellate Court has been declined on the ground that the request must be directed only before the court of first instance. I do not want to delay the matter any further for such consideration by the first court. Since the intervention sought in these revisions is by invoking the supervisory jurisdiction under Article 227 of the Constitution, I allow for completion of the arbitral reference within a further period of 2 months from the date when arbitrator fixes the first date of hearing after notice to both parties. The reference shall be only to examine the claim made in the notice dated 5th August 1976 and continue with the work already commenced after remand. If any of the parties is absent and there are no justifiable reasons therefor, the arbitrator shall be at liberty to conclude the reference and deliver up an award duly drawn up as per law and submit it to the court of competent of jurisdiction.

15. I am informed that the petitioner has claimed the whole amount which was made a decree of court by the court of first instance. The Union will not press for restitution till the conclusion of proceedings before the arbitrator. Since the award that could be passed could not be for a larger sum than what was already awarded (beyond the period of limitation), in the event of a reduction of the award, which if approved by court or modified, the restitution will be pressed forth for the excess amount paid under the 1st award that was made the rule of court.

16. The civil revision petition filed by the contractor in Civil Revision No.1918 of 2010 is dismissed. The Civil Revision No.3284 of 2014 filed by the Union is allowed extending the period for conclusion of reference in the manner set forth above. Parties to bear their respective costs.

(K.KANNAN)
JUDGE

25.02.2016
sanjeev/kv