

CASE NO.:
Appeal (civil) 3287 of 2002

PETITIONER:
WCEOSRTPNB.EN&GAALNOSTTHAETRE WAREHOUSING

Vs.

RESPONDENT:
SUSHIL KUMAR KAYAN & ORS.

DATE OF JUDGMENT: 03/05/2002

BENCH:
V.N. Khare & Ashok Bhan

JUDGMENT:

Bhan, J.

Leave granted.

The West Bengal State Warehousing Corporation (hereinafter referred to as 'the Corporation') and The Superintendent, Oil Installation Warehouse have filed this appeal by special leave against the judgment and order passed by the Calcutta High Court in favour of Sushil Kumar Kayan (hereinafter referred to as 'the respondent').

In the year 1985 the respondent imported 338 coils weighing 1995.180 Metric Tons of Seconds/Defective Zink Aluminium Sheets in coils from European Economic Community and declared the value of the goods at Rs.2,440.76 per metric ton. The Customs Authorities assessed the value of the goods at Rs.3995/- per metric ton. The goods were kept in the godown of the Corporation. Respondent filed a writ petition before the High Court saying that there was no basis for assessing the value of goods at such an enhanced rate. A learned Single Judge issued an interim direction for the goods to be released to the respondent upon furnishing a bank guarantee for 50% of the disputed custom duty and the personal bond for the balance of the disputed duty. It appears that in the meantime, the Special Investigation Branch of the Customs House issued instructions to the Corporation not to deliver the goods to the respondent.

Another writ petition was filed in the High Court which was dismissed by a learned Single Judge. The respondent filed an appeal against the order of the learned Single Judge. During the pendency of the appeal a theft took place in the warehouse Corporation and 18 coils weighing 107.152 Metric Tons, belonging to the respondent, were stolen. According to the respondent, the value of the stolen 18 coils was Rs.25 lacs. On the other hand, the Corporation claimed Rs.23 lacs as warehousing charges in respect of the entire goods including the goods which were stolen from the godown of the Corporation. The High Court passed an interim order in respect of the removal of the goods by the respondent from the warehouse of the Corporation. The respondent was directed to

furnish security to the extent of Rs.10 lacs towards the claim of the Corporation. The respondent furnished the security of Rs.10 lacs in the form of fixed deposit before the Registrar, Original Side, Calcutta. Later the High Court further directed the respondent to deposit Indira Vikas Patra for a sum of Rs.8 lacs by way of security in respect of the claim of the Corporation after taking note of the fact that Rs.10 lacs have already been deposited. In that connection the following direction was issued by the High Court:

"We, therefore, direct that Indira Vikash Patra of Rs.8 lacs now lying with the Registrar, Original side, shall be retained by him. In other words, the fixed deposit receipt of Rs.10 lacs and Indira Vikash Patra of Rs.8 lacs shall be retained by the Registrar, Original side, till 30th November, 1992. If within the time specified above, the West Bengal State Warehousing Corporation institutes any proceeding in respect of their claim against the appellant, the said security shall continue to the Credit Court of such suit until further orders of the Court where such proceedings may be initiated by the said Corporation. If, however, no such proceedings are initiated, in that event, the said fixed deposit receipt and Indira Vikash Patra of Rs.8 lacs shall be returned to the appellant by the Registrar, Original side. Inasmuch as the entire claim of the West Bengal State Warehousing Corporation is secured, they can have no further lien over and in respect of subject goods. Their lien, if any, will stand shifted to the aforesaid security."

The present appeal was filed against the aforesaid directions of the High Court.

On 26th November, 1993, this Court in an interim order came to the conclusion that the appellant Corporation being a public institution was entitled to the charges in respect of the goods kept by the respondent in their godown. Accordingly by way of an interim arrangement the Corporation was permitted to withdraw the amount deposited by the respondent. Rs.10 lacs deposited by the respondent with the Registrar of the High Court on Original side were ordered to be withdrawn. Out of Rs.8 lacs deposited in the form of Indira Vikash Patra, Corporation was permitted to withdraw Rs.5 lacs by making necessary endorsements on the Indira Vikash Patra and the balance of Rs.3 lacs was ordered to be kept in the deposit in the form of Indira Vikash Patra. That left the court with regard to the claim involving the liability of the Corporation of the value of 18 coils which were stolen and the extent to which the Corporation would be liable to set off the amounts due from the Corporation to the respondent in respect of 18 coils stolen and the balance of charges that would be payable by the respondent to the Corporation. Mindful of the fact that adjudication in the civil court would take a considerable time it was decided to refer the dispute to an arbitrator who would decide the same within a period of two months. The parties were directed to come forward with the necessary proposals and issues to be referred to the arbitrator.

Finally, on 17-6-1995 an agreement arrived at

between the counsel for the parties the matter was referred for arbitration and Mr. Justice M.R. Mallick, former Judge of the Calcutta High Court was appointed as the arbitrator to decide the dispute. The disputes enumerated in the Reference were as under:

"(i)The claim of the petitioner-West Bengal State Warehousing Corporation against the respondent towards warehousing charges;

(ii)The claim of the respondent for damages in respect of the 18 coils which were stolen while in custody of the petitioner W.B.State Warehousing Corporation;

(iii)Any incidental question connected with the aforesaid disputes."

It was specifically stated in the order that parties shall not be allowed to raise questions which had become final by way of judicial pronouncement.

The conclusion arrived at by the Arbitrator in his award dated 29th October, 1997 on the three issues referred for arbitration were as follows:
ISSUE NO.1

"It has been disclosed by the Corporation at the time of hearing of the argument that the Corporation in terms of the order passed by the Hon'ble Supreme Court in relation to SLP No.14418 of 1992 received Rs.10,00,000.00 (Rupees Ten Lacs only) on 08.01.1996 being the matured value of 200 numbers of Indira Vikash Patra of Rs.2500.00 each(Face Value) amounting to Rs.5,00,000.00(Rupees Five Lacs only). The Corporation has also received by Cheque No.8333993 dated 8.1.1996 on the Reserve Bank of India for Rs.10,00,000.00 (Rs. Ten Lacs only) through Registrar, Original Side, High Court, Calcutta. Therefore, towards the claim of warehousing charges, the Corporation has received Rs.20,00,000.00(Rupees Twenty Lacs only) on 08.01.1996 and is, therefore, entitled to the balance, if any, to which it is to be found entitled. On considering the submissions made by the Learned Advocates for both the parties and also on considering all aspects of the case, I award Rs.25,00,000.00 (Rupees Twntey Five Lacs only) to the Corporation by way of warehousing charges including interest and as Rs.20,00,000.00(Rupees Twenty Lacs only) have already been received by the Corporation by the Order of the Hon'ble Supreme Court, Shri Sushil Kumar Kayan is liable to pay further

sum of Rs.5,00,000.00(Rupees Five Lacs only) towards the warehousing charges together with interest."

ISSUE NO.2

"On considering the oral evidence and also on considering the fact that the goods imported were of damaged condition, I award Shri Sushil Kumar Keyan the damages to the extent of Rs.15,00,000.00(Rupees Fifteen Lacs only). By adjusting Rs.5,00,000.00 (Rupees Five Lacs only) awarded towards the balance warehousing charges including interest, Shri Sushil Kumar Keyan shall get from the Corporation Rs.10,00,000.00(Rupees Ten Lacs only). The above compensation has to be paid within a period of 90(Ninty) days from the date of this Award, failing which the sum of Rs.10,00,000.00(Rupees Ten Lacs only) shall carry interest at the rate of Rs.12.00 per annum till full payment."

ISSUE NO.3

"In the facts of the present case I direct each of the parties to bear the respective costs of this Arbitration themselves. As the Corporation has submitted a claim with the Oriental Insurance Company Limited claiming Rs.5,31,748.40 p. and the claim has not yet been settled, if the claim is settled by the Insurance Company in favour of the Corporation, the said insurance money shall be the property of the Corporation.

Under Issue No.2 the Corporation before the Arbitrator had taken the plea that the damages, if any, are to be restricted to the declared value of the goods in the agreement entered into between the Corporation and the respondent through its clearing Agent. This plea was rejected. Counsel for the appellant relying upon the clauses (f) and (g) of paragraph 44 of the Judgment of this Court in Rajasthan State Mines and Minerals Ltd. vs. Eastern Engineering Enterprises and Anr. [1999 (9) SCC 283] contended that if the Arbitrator travels beyond his jurisdiction or acts in excess of his jurisdiction then the award can be set aside and submitted that since the Arbitrator had acted beyond the terms of agreement arrived at between the parties, the Arbitrator had acted in excess of jurisdiction and, therefore, the award was liable to be set aside.

We do not find any merit in this submission. Clauses (e), (f) and (g) of paragraph 44 have to be read together. What has been held by this Court is that the award made by an Arbitrator can be set aside if the Arbitrator acts beyond jurisdiction, and, to find out whether the Arbitrator has travelled beyond jurisdiction, it would be necessary to consider the agreement between the parties containing the arbitration clause

and if the Arbitrator acts beyond the arbitration clause then it would be deemed that he has acted beyond jurisdiction. In order to determine whether the arbitrator has acted in excess of his jurisdiction what has to be seen is whether claimant can raise a particular claim before the arbitrator. If there is a specific term in the contract or the law which does not permit to the parties to raise a point before the arbitrator and if there is a specific bar in the contract to the raising of the point then the award passed by the arbitrator in respect thereof would be in excess of his jurisdiction. Neither of the conditions mentioned in clauses (f) and (g) referred to above stand satisfied to hold that the arbitrator had acted in excess of his jurisdiction. This Court on the agreement arrived at between the parties referred three points by way of disputes to be resolved between the parties and the arbitrator has limited his adjudication on the points of reference made to him. Counsel for the appellant could not point out as to in what way or manner the Arbitrator had acted in excess of his jurisdiction on the matters referred to him. According to us the Arbitrator has confined his award within the framework of the reference made to him and did not exceed the jurisdiction conferred upon him.

For the reasons stated above we do not find any merit in the objection raised by the counsel for the appellant-Corporation. The award is made rule of the Court. The appeal is disposed of in terms of the award. No costs.

J.
(V.N. Khare)

J.
(Ashok Bhan)

May 03, 2002