

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

CIMA. no. 60/2004

Date of Decision: 23.04.2010

Union of India Vs. **Barrinder Kumar Sharma**

Coram:

HON'BLE MR. JUSTICE SUNIL HALI, JUDGE.

Appearing Counsel:

For the Petitioner(s): Mrs. Pratibha Mahajan, Advocate.

For the Respondent(s) : Mr. R. K. Gupta, Advocate.

i) Whether to be reported in Press, Journal/Media : Yes/No
ii/ Whether to be reported in Digest/Journal : Yes/No

The claimant was awarded contract for supply and stacking of BT materials (Hard Firewood) between Kilometer 73 to Kilometer 81 on Dhar- Udhampur road by Project Sampark vide Contract bearing No. CDR 13 TF/11/95-96 on 25.05.1995. The contract was for an amount of Rs. 1,22,360 and the work was required to be completed within three phases. After having executed phase I and II of the contract and part of the work of the third phase, no payments were made to the claimant. The payment was withheld on account of recovery, which was sought to be made against the claimant for a different contract bearing No. CDR 13 TF/05/95-96. It was contended that on account of failure on the part of the claimant

to complete the work under this contract, recoveries could be made from the subsequent contract.

Having failed to recover the contract amount, a petition under Section 20 of the Arbitration Act was filed for making reference of the dispute to the Arbitrator before learned Second Additional District Judge, Jammu. Through intervention of the Court the Arbitrator came to be appointed. On entering the reference and after hearing the parties the Arbitrator passed an award, which was subsequently made rule of the Court. Feeling aggrieved, the present appeal has been filed.

The terms of the reference determines the scope of the controversy which is required to be adjudicated upon. The Arbitrator was, in the present case, called upon to enter into a reference and resolve the dispute between the parties in respect of contract No. CDR 13 TF/11/95-96 on 25.05.1995. Withholding of the amount by the appellants by seeking recovery against the claimant from different contract, was not referred to the Arbitrator. The Arbitrator has clearly reflected in his award that he was called upon to adjudicate upon a dispute which was referred to him by the Court. He could not have adjudicated upon an issue which was not referred to him. He has rightly concluded that the claimant is entitled to receive the amount for the work executed by him.

Power of the Court under Section 30/33 of the Arbitration Act to set aside an award is permissible only if the Arbitrator has mis-conducted himself or the proceedings. A legal misconduct has been held to be erroneous application of law constituting the very basis of the award and improper and incorrect findings of fact, which without closer and intrinsic scrutiny, are demonstrable on the face of the materials on record. The Court cannot reappraise the evidence intrinsically with a close scrutiny for finding out that the conclusion drawn from some facts, by the Arbitrator is according to the understanding of the Court, erroneous. The appellants have not been able to demonstrate that the Arbitrator has misconducted himself.

As already stated hereinabove, the only legal misconduct stated to have been committed by the Arbitrator relates to the fact that he has not decided the dispute raised by the appellants in respect of a contract, for which no reference was made to the Arbitrator. The Arbitrator has, in this respect, rightly concluded that no reference of the dispute in respect of contract No. CDR 13 TF/05/95-96 was made to him, as such, he had no jurisdiction to adjudicate upon this issue. The interpretation of the Arbitrator in this behalf cannot be interfered by this Court, even if such an interpretation may not be correct.

The award being reasoned one, needs no interference.

This appeal is thus without merit and is, accordingly, dismissed.

(SUNIL HALI)
Judge

JAMMU:
23.04.2010
Anil Raina, Secy.