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BUNGO STEEL FURNITURE PVT. LTD.

v.

UNION OF INDIA

September 30, 1966.

B [V. RAMASWAMI, V. BHARGAVA AND RAGHUBAR DAYAL, JJ.]

Arbitration-Award—Party contracting to obtain supply of steel bins—Cancellation of contract after part supply—Arbitrator awarding damages for wrongful termination—Reasons or principles not indicated in Award—If could be set aside on ground of error of law on face of the Award.

C The Union of India entered into two contracts in November 1944 and June 1945 with the appellants, which were subsequently modified in February 1946, for the supply of 4,700 bins at an agreed price inclusive of the cost of steel. The Government undertook to make available the steel required for the manufacture of the bins and accordingly, supplied to the appellants steel valued at Rs. 2,53,521 for which amount credit was to be given to the Government. After 2,172 bins had been manufactured and supplied to the Union, the latter cancelled the contract for the supply of the balance 2,528 bins.

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Each of the contracts between the parties contained an arbitration clause and in accordance with this provision, the dispute arising out of cancellation of the contracts was referred to an arbitrator. The arbitrator found that the contract had been wrongfully cancelled; and that at the time of the cancellation the component parts of the balance 2,528 bins were ready but had not been assembled into finished bins. By way of E compensation for the wrongful termination of the contract by the Government, the Arbitrator awarded damages to the company of the amount representing the value of steel used up in making the component parts for bins which had not been assembled into completed bins. This amounted to Rs. 1,65,825.

The Government made an application to the Calcutta High Court for setting aside the arbitrator's award on the ground that there was a mis- F take of law apparent on the face of the award in the estimation of damages for wrongful termination of the contract. A single Judge of the High Court substantially confirmed the arbitrator's award. The Government took the matter in appeal to a Division Bench of the High Court and the two appeals filed were allowed by that Bench and the award was set aside.

G It was contended on behalf of the appellants that the High Court could not have interfered with the award of the arbitrator as there was no error on the face of the award; that the arbitrator was not bound to give reasons for estimating the damages to which the appellant was entitled and that he had not in fact given any such reasons.

HELD : Allowing the appeal (*per* Bhargava and Raghubar Dayal, JJ.). The arbitrator in fixing the amount of compensation had not pro- H ceeded to follow any principles. the validity of which could be tested on the basis of laws applicable to breaches of contract. He awarded the compensation to the extent that he considered right in his discretion without indicating his reasons. Such a decision by an Arbitrator could not be held to be erroneous on the face of the record. [642 A-B]

The consideration that led the arbitrator to consider that the value of the steel was equal to, and not more or less than, the amount which he considered it right to award as compensation, was not indicated by him in his award. This was, therefore, clearly a case where the arbitrator came to the conclusion that a certain amount, should be paid by the Government as compensation for wrongful termination of the contract, and in his discretion he laid down that the amount should be equal to the value of the steel as it existed after it had been converted into component parts. [641 F-G]

It is now a well settled principle that if an arbitrator, in deciding a dispute before him, does not record his reasons and does not indicate the principles of law on which he has proceeded, the award is not on that account vitiated. It is only when the arbitrator proceeds to give his reasons or to lay down principles on which he has arrived at his decisions that the court is competent to examine whether he has proceeded contrary to law and is entitled to interfere if such error in law is apparent on the face of the award itself. [640 H]

(*Per* Ramaswami J., *dissenting*)—In the present case the arbitrator had estimated the measure of damages as equivalent to the value of steel used up in making the component parts. That was the legal proposition upon which he had based his award and the question was whether that legal proposition was correct. The arbitrator had found that the appellant had produced no evidence with regard to the manufacturing cost of the component parts of the 2,528 unfinished bins; he had therefore failed to prove the resultant damage on account of the breach of contract. But if in spite of this finding the arbitrator decided to award damages to the appellant, the highest amount which he could award would be Rs. 1,03,066, which is the difference between the contract price and the value of the steel used up in manufacturing their component parts. The estimate of damages at this figure is based on the assumption that the appellant had manufactured completely 2,528 bins according to the terms of the contract. The arbitrator had ignored the provisions of s. 73 of the Indian Contract Act and had awarded damages to the appellant on a wrong legal basis. The award was therefore vitiated by an error of law apparent on the face of it. [639 C, G, H]

Champsey Bhara and Co. v. *Jivraj Balloo Spinning and Weaving Co. Ltd.* 50 I.A. 324 and *James Clark (Brush Materials) Ltd.* v. *Carters (Merchants) Ltd.* [1944] 1 K.B. 566, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 754 and 755 of 1964.

Appeals from the judgment and order dated August 1, 1962 of the Calcutta High Court in Appeals Nos. 13 and 131 of 1961 respectively.

A. K. Sen, Uma Mehta, P. K. Chatterjee and P. K. Bose, for the appellant (in both the appeals).

N. S. Bindra and R. N. Sachthey, for the respondent (in both he appeals).

The Judgment of BHARGAVA and RAGHUBAR DAYAL J.J was delivered by BHARGAVA J. RAMASWAMI J. delivered a dissenting Opinion.

A **Ramaswamy, J.** These appeals are brought by certificate from the judgment of the Calcutta High Court dated August 1, 1962 by which an award of the arbitrator, Sir R. C. Mitter dated September 2, 1959 was set aside.

The disputes arise out of two contracts being A. T. 1000 dated
B November 30, 1944 and A. T. 1048 dated June 25, 1945 between the Government of India (hereinafter called the "Government") and the Bungo Steel Furniture Pvt. Ltd. (hereinafter called the "appellant"). Both the contracts contained the usual arbitration clause embodied in cl. 21 of the general conditions of contract in form no. W.S.B. 133 for reference of any question or dispute arising in connection with the contract or arising under the condi-
C tion thereof. The claims and the counterclaims of the parties under the two contracts were referred to the arbitration of Sir R. C. Mitter. The award of the arbitrator is dated September 2, 1959. The arbitrator found that the contract no. A. T. 1000 was for the supply of 4700 bins at Rs. 107/2/6 per bin inclusive of the price of steel. In respect of the supply of bins under this con-
D tract the Government agreed to pay an extra Rs. 4/12/6 per bin for extra partition. The contract no. A. T. 1048 was for the supply of 2000 steel bins at Rs. 132/8/- per bin inclusive of the price of steel. The arbitrator found that on February 20, 1946 the parties agreed to a modification of the contracts and the agreed modification was that the supply under contract no A. T. 1000 would
E be reduced to 1805 bins and the supply under contract no. A. T. 1048 would be reduced to 367 bins, so that the total supply under the two contracts would be, 4700 bins. The arbitrator further found that only 1805 bins had been manufactured under contract no. 1000 and 367 bins had been manufactured under contract no. 1048 and that in all 2172 bins were manufactured by the appellant and were accepted by the Government and the appellant was en-
F titled to the price of 2172 bins so supplied inclusive of the price of steel amounting to Rs. 2,42,044/-. The arbitrator held that the Government wrongfully cancelled the contract with respect to the balance 2528 bins and that at the time of this cancellation the component parts of the balance 2528 bins had not been assembled into finished bins. The arbitrator found that the appellant was
G entitled to a credit for the sum of Rs. 10,385/- on account of the cost of supply of the extra partitions for 2172 bins. This finding of the arbitrator was held to be erroneous by Mallick, J. who reduced the amount awarded to the appellant by a sum of Rs. 10,385/-. The finding of Mallick, J. was not challenged by the appellant before the Division Bench of the High Court. The arbitrator also found
H that the appellant was entitled to credit for the sum of Rs. 27,969/- on account of payment made by the appellant towards the cost of steel on M.R.O. and that the Government was entitled to a cross credit for a sum of Rs. 7,851/- on account of payment made

by it to the appellant directly. These two findings of the arbitrator were not challenged before the Division Bench. A

The arbitrator found that the Government was under an obligation to supply steel for the manufacture of the bins and that it did supply such steel to the appellant. The arbitrator disbelieved the appellant's case that it had rejected the steel sheets supplied by the Government and had used the steel sheets from their own stocks and that the steel sheets supplied by the Government became rusted and were still lying in their factory grounds as powdered rust. The arbitrator found : (a) that the price of the total quantity of steel supplied by the Government to the appellant at basic rates was Rs. 2,53,521/-, (b) that the price of the steel used for making 2172 finished bins amounted to Rs. 87,696/- and the Government was entitled to credit for this sum of money, and (c) that no surplus steel was left after manufacture of 2172 finished bins and the component parts of the unfinished bins. It followed from this finding that the price of steel used up in making the component parts of the unfinished bins amounted to Rs. 1,65,825/-. B C D

The arbitrator found that the appellant was entitled to compensation for the wrongful cancellation of the balance 2528 bins. His findings in the award read as follows :—

> "I further hold that the cancellation by Government for the balance was wrongful. There is however no evidence relating to the manufacturing cost of the aforesaid remaining component parts. By way of compensation for the wrongful termination of the contract by Government as aforesaid I give the company the amount representing the value of the steel used up in making the said component parts which had not been assembled into completed bins. I therefore do not allow the Government credit for the value of the steel used up in manufacturing those component parts." E F

The Government made an application to the Calcutta High Court for setting aside the award of Sir R. C. Mitter on the ground that the arbitrator had failed to apply his mind and there was a mistake of law apparent on the face of the award in the estimation of damages for wrongful termination of the contract. Mallick, J. made a minor modification in the award with regard to a sum of Rs. 10,385/- and on July 27, 1960 the learned Judge pronounced his judgment in terms of the modified award. The Government took the matter in appeal before the Division Bench of the High Court, appeals nos. 13 and 131 of 1961. These appeals were allowed by Bachawat and Laik, JJ. who set aside the award of the arbitrator in respect of the two contracts. G H

A On behalf of the appellant Mr. A. K. Sen put forward the argument that there was no error on the face of the award and the High Court exceeded its jurisdiction in setting aside the award of the arbitrator. It was contended that the arbitrator is not bound to give reasons for estimating the damages to which the appellant was entitled. It was stated that the estimate of the B arbitrator may be arbitrary but he was not bound to give reasons for the estimate reached by him and that it is not open to the Court to speculate, when no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. In support of this argument Counsel for the appellant relied on the following passage from the judgment of Lord Dunedin in *Champasey* C *Bhara and Company* v. *Jivraj Balloo Spinning and Weaving Company Ltd.*(1):

> "An error in law on the face of the award means, in their Lordships' view, that you can find in the award or a document actually incorporated thereto, as for instance a note appended by the arbitrator stating the reasons for D his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous. It does not mean that if in narrative a reference is made to a contention of one party, that opens the door to seeing first what that contention is, and then going to the contract on which the parties' rights depend to see if that con- E tention is sound."

It is true that the Court in dealing with an application to set aside an award has not to consider whether the view of the arbitrator on the evidence is justified. The arbitrator's adjudication is generally considered binding between the parties, for he is a tribunal selected by the parties and the power of the Court to set aside F the award is restricted to cases set out in s. 30 of the Arbitration Act.

An award may be set aside by the court on the ground of an error of law apparent on the face of the award but an award is not invalid merely because by a process of inference and argu- G ment it may be demonstrated that the arbitrator has committed some mistake in arriving at his conclusion. Mr. A. K. Sen on behalf of the appellant also referred to the decision of Tucker, J. in *James Clark (Brush Materials) Ltd.* v. *Carters (Merchants) Ltd.*(2) wherein it is pointed out that in determining whether the award of an arbitrator should be remitted or set aside on the ground that there is an error of law appearing on the face of it, the court is H not entitled to draw any inference as to the finding by the arbitrator of facts supporting the award, but must take it at its face

(1) 50 I. A. 324, 331. (2) [1944] 1 K.B. 566.

value. In my opinion, the principle laid down by the Judicial Committee in *Champsey Bhara and Company* v. *Jivraj Balloo Spinning and Weaving Company Ltd.*(1) and by Tucker, J. in *James Clark (Brush Materials), Ltd.* v. *Carters (Merchants), Ltd.*(2) has no application in the present case, for the arbitrator in the present case has expressly stated the reasons for the estimate of damages to which the appellant was entitled for the breach of the contract. The claim of the appellant is stated by the arbitrator in the award as follows :

> "The Company claims the price of 2528 bins by way of damages for the wrongful cancellation of the contract."

Section 73 of the Indian Contract Act provides for the measure of compensation for loss or damage caused by breach of the contract. Section 73 states :

> "73. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.
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> Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.
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> Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account."

Section 55 of the Sale of Goods Act deals with suits for breach of the contract where the buyer refuses to pay for the goods according to the terms of the contract. Section 55 states :

> "55. (1) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.
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> (2) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract."

(1) 50 I.A. 324. (2) [1944] 1 K.B. 566.

A This section does not apply to the present case because the bins were not manufactured and the property could not have passed to the Government. But the appellant was entitled to claim damages for the wrongful cancellation of the balance 2528 bins by the Government and for non acceptance of the 2528 bins under s. 56 of the Indian Sale of Goods Act which provides :

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> "56. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance."

In the present case, the arbitrator has estimated the measure of damages as equivalent to the value of the steel used up in making C the component parts. That is the legal proposition upon which the arbitrator has based his award and the question is whether that legal proposition is correct. Now the amount representing the value of the steel used up in making the component parts of the unfinished 2528 bins could not be the true measure of damages for their non-acceptance. The normal rule for computing the damages for non-acceptance of 2528 unfinished bins would be the D difference between the contract price and the market price of such goods at the time when the contract is broken. If there is no available market at the place of delivery, the market price of the nearest place or the price prevailing in the controlling market may be taken into consideration. It was argued for the appellant that this rule may not apply because the bins were not completely E fabricated, but, in that case the measure of damages would be the difference between the contract price on the one hand, and the cost of labour and material required for the manufacture of the component parts of the 2528 unfinished bins on the other. In this case, the arbitrator found that the appellant produced no evidence with regard to the manufacturing cost of the compo- F nent parts of the 2528 unfinished bins. In other words, the appellant failed to prove the resultant damage on account of breach of contract, but if in spite of this finding the arbitrator decided to award damages to the appellant the highest amount which he could award for non-acceptance would be Rs. 1,03,066/- which is the difference between the contract price at Rs. 107/2/6 per bin including the price for extra partition amounting to Rs. 2,68,891/- G and the value of the steel used up in manufacturing their component parts amounting to Rs. 1,65,825/-. The estimate of damages at this figure is based on the assumption that the appellant had manufactured completely 2528 bins according to the terms of the contract. It is therefore manifest that on no conceivable legal basis whatever could the arbitrator pronounce an award for a sum of H Rs. 1,65,825/- which represents the value of the steel used up in making the component parts as the compensation to be awarded to the appellant. In other words, the arbitrator has ignored the provisions of s. 73 of the Indian Contract Act and has awarded

damages to the appellant on a wrong legal basis. The award of the arbitrator therefore is vitiated by an error of law apparent on the face of it. A

For these reasons I hold that the judgment of the Division Bench of the High Court dated August 1, 1962 is right and these appeals must be dismissed with costs. B

Bhargava, J. The facts in these two appeals have been given in the judgment of Ramaswami, J., and hence, they need not be repeated by us. The award was set aside by the High Court, in appeal from the judgment of the learned single Judge passing a decree on its basis, on the ground that the award of the Umpire with regard to the compensation for the wrongful cancellation C of the contract was erroneous in law and the error appeared on the face of the award. In the award, the arbitrator held that under Contract No. A. T. 1000, only 1805 bins had been manufactured and under the second Contract No. A. T. 1048, 367 bins had been manufactured. These bins were accepted and the remaining component parts had not been assembled into more finished bins by D the time when the contract was cancelled. He further held that the cancellation by the Government for the balance was wrongful. There was, however, no evidence relating to the manufacturing cost of the aforesaid remaining component parts. Thereupon, he proceeded to award, by way of compensation for the wrongful termination of the contract by the Government E as aforesaid, to the company the amount representing the value of the steel used up in making the said component parts which had not been assembled into completed bins, and, therefore, he did not allow the Government credit for the value of the steel used up in manufacturing those component parts. He further held that after manufacturing the finished bins and component parts and unfinished bins, no surplus steel was left. F

The High Court, in setting aside the award, was of the view that in this part dealing with compensation payable by the Government to the appellant, the learned Umpire had acted contrary to the principles recognised in law for assessing compensation. In our view, considering the principles which apply to the exercise G of the power of a Court to set aside an award of an arbitrator, this order by the High Court was not justified.

It is now a well-settled principle that if an arbitrator, in deciding a dispute before him, does not record his reasons and does not indicate the principles of law on which he has proceeded, the H award is not on that account vitiated. It is only when the arbitrator proceeds to give his reasons or to lay down principles on which he has arrived at his decisions that the Court is competent to examine

A whether he has proceeded contrary to law and is entitled to interfere if such error in law is apparent on the face of the award itself.

In the present case, the Umpire held that the cancellation of the contract by the Government for the balance of the bins was wrongful. He was, therefore, fully entitled to award compen-
B sation for that breach of contract to the appellant. He, however, found that there was no evidence relating to the manufacturing cost of the aforesaid remaining component parts which, on principles applicable to breaches of contract, would ordinarily have been the amount awarded as compensation. Having no such evidence, the Umpire, it appears, proceeded to use his discretion
C to determine the compensation which he thought should be equitably made payable by the Government to the appellant. He had already arrived at the finding that the steel supplied by the Government, which had not been used up in completed bins, had already been consumed in making component parts. In these circumstances, having decided that compensation should be paid by the Government to the appellant, he fixed the amount of com-
D pensation at the value represented by the steel used up in making those component parts. This award is not to be interpreted as proceeding on any basis that the value of the steel used up in making the component parts was held by him on some principle to be the compensation payable by the Government. What he actually meant was that having mentally decided on the amount
E that was to be awarded as compensation, he came to the view that that amount can equitably be treated as being equal to the value of the steel used up in making the component parts. What the value of that steel in the component parts was at that stage was not computed by him. May be, the steel had become less serviceable and deteriorated in value. What was the consideration
F that led him to consider that the value of the steel was equal to, and not more or less than, the amount which he considered it right to award as compensation, was not indicated by him in his award. This is, therefore, clearly a case where the arbitrator came to the conclusion that a certain amount should be paid by the Government as compensation for wrongful termination of the contract, and in his discretion, he laid down that that amount
G is equal to the value of the steel as it existed after it had been converted into component parts. He did not hold that the Government was not entitled to the return of the unused steel. What he actually held was that the Government being entitled to the value of the unused steel, no separate direction in respect of it need be made, because the value of that steel was equal to the
H amount of compensation which he was awarding to the appellant; and thus, the two liabilities of the appellant to the Government and of the Government to the appellant were set off against each other. In the circumstances, it has to be held that the Umpire,

in fixing the amount of compensation, had not proceeded to follow any principles, the validity of which could be tested on the basis of laws applicable to breaches of contract. He awarded the compensation to the extent that he considered right in his discretion without indicating his reasons. Such a decision by an Umpire or an Arbitrator cannot be held to be erroneous on the face of the record. We, therefore, allow the appeals with costs, set aside the appellant order of the High Court, and restore that of the learned single Judge.

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ORDER

In view of the majority Judgment, the appeals are allowed with costs, the appellate order of the High Court is set aside and that of the learned single Judge, is restored.

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R.K.P.S.