Satyendra Kumar Vs. Hind Constructions Ltd.

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Court : Mumbai

Decided On : Aug-14-1951

Reported in : AIR1952Bom227; (1952)54BOMLR37

Judge : Chagla, C.J. and Bhagwati, J.

Acts : Arbitration Act, 1940 - Sections 30

Appeal No. : O.C.J. Appeal No. 106 of 1950

Appellant : Satyendra Kumar

Respondent : Hind Constructions Ltd.

Advocate for Def. : M.L. Maneksha and K.T. Desai, Advs.

Advocate for Pet/Ap. : M.V. Desai and K.K. Sanghavi, Advs.

Judgement :

Chagla, C.J.

[1] This appeal arises out of a petition filed by the appellant to set aside an award. Shah J. dismissed that petition and it is from that order of dismissal that this appeal is preferred. The appellant and the petitioner entered into an agreement with the respondent company, the Hind Constructions. Ltd., by which he agreed to act as a sub-contract or in respect of a contrast which the respondents had taken. That agreement was entered into on 5th January 1948. In respect of the payment

to be made under the agreement there were disputes between the petitioner and the respondent company and the disputes were referred to the arbitration of Dr. Pandya on 3th January 1949. Dr. Pandya waa the general manager and an ex-officio director of the Hind Constructions Ltd. Dr. Pandya directed that an interim payment of Rs. 40,000 should be made to the petitioner of 11th January 1949, and on 13th January 1949, he made his award. By this award he directed a further sum of Rs. 10,000 to be paid to the petitioner The present petition to set aside the award was filed on 23rd April 1949. The award was challenged on various grounds, but only two grounds and substantially one ground his been pressed before this Court. The ground is that the petitioner was not aware at the time he went to the arbitration of Dr. Pandya that he was a director of the Hind Constructions Ltd. and it is also urged that Dr. Pandya was disqualified from acting as an arbitrator by the interest that he had, the interest beings that he was a director of the Hind Constructions, Ltd., and by the fact of the arbitrator having this interest not being disclosed to the petitioner.

[2] The contention of the respondent company was that the petitioner was aware of the fact that Dr. Pandya was a director of the Hind Constructions, Ltd., and the learned Judge below has held on a review of the evidence that the fact of Dr.Pandya being a director was disclosed to the petitioner. Bat another and perhaps a more important point arises in this appeal, and that is whether there was any obligation upon Dr. Pandya to disclose the fact that he was a director of the Hind Constructions, Ltd. It will be perhaps better if we approached the second question first, because if there was no obligation upon Dr. Pandya to disclose that fact, then the decision on the question of fact really becomes unnecessary.

[3] Now, is the submission paper it is stated that Dr. Pandya was the general manager of the Hind Constructions, Ltd. What is not stated in the submission paper is the fact that Dr. Pandya was also a director of the respondent company. Assuming that the petitioner was unaware of this fact, assuming that Dr. Pandya never disclosed to the petitioner the fact of his being a director of the respondent company, the question that arises for our consideration is whether in law that non disclosure should result in the award being set aside.

[4] Now, in order to decide this question, we must try and lay down clear principles which should apply to the conduct of arbitrators. There can be no doubt that an arbitrator must show uberrima fides to the parties whose disputes he is going to arbitrate and who have constituted him their domestic forum. In a sense the position of an arbitrator is different from that of a Judge. If a party goes to a Court, he has got to submit to a decision of the Judge. He has no choice in the appointment of the Judge. But when parties go to a domestic forum and want their matters to be determined by arbitration; they have every choice as to the person whom they should select as their arbitrator, and therefore it is clear that highest faith should be shown by the arbitrator. It also follows that the arbitrator must disclose to the parties all facts which are likely or calculated to bias him in any way in favour of one or the other party. A circumstance or a fact may in fact not bias the decision of the arbitrator. The arbitrator may have too strong a character, too deep a sense of justice to be influenced by any consideration extraneous to or foreign to the evidence which he has got to consider. But the Question is not what is likely in fact to happen, but what is likely to tend or is calculated to tend to a particular result. Therefore, if the Court comes to the conclusion that there are any facts or any circumstances which are likely to affect the decision of the arbitrator which are likely to bias him, it would be incumbent upon the arbitrator to disclose those facts to the parties If he fails to disclose these facts, then his award would be liable to be successfully challenged.

[5] These principles have been enunciated in different decisions which have been relied upon by Mr. M.V. Desai who has appeared for the petitioner. He has in the first instance relied on the well-known decision reported in Dimes v. Proprietor of the Grand Junction Canal (1852) 3 H. L C. 759, where a decision of the Lord Chancellor was successfully attacked on the ground that he was adjudicating in respect of a company in which he was a share-holder and he had failed to disclose the fact that he held the shares in the company. That was a question as to a Judge having an interest in the cause, and ss waa pointed out by Lord Campbell that although no one could suppose that the Lord Chancellor could be, in the remotest degree, influenced by the interest that he had in that concern, it was of the last importance that the maxim that no man is to be a Judge in his own cause should bo held sacred, and he further pointed out that that was not to be confined to a

cause in which he was a party but applied to a cause in which be had an interest. Therefore, it was in the interest of highest judicial propriety that the House of Lords even where the Lord Chancellor was concerned get aside his judgment because inadvertently he had failed to disclose an interest which he had in the cause which he wag trying.

[6] An interesting argument has been advanced before us by Mr. Desai as to what is the nature of the interest which a Judge is bound to disclose, which, ii not disclosed, would result in the judgment of the Judge being set aside. It is unnecessary to launch upon that inquiry in this case, because, as I have just pointed out, the case of an arbitrator stands on a higher footing and whatever the nature of the interest may be which a Judge is bound to disclose, as far as an arbitrator is concerned, he must disclose all facts, all circumstances which are likely to influence his judgment or bias his mind. There are two judgments of the Calcutta High Court on which reliance was being placed. One is Mahomed Wahiduddin v. Hakiman 29 Cal. 278. That was a case where the arbitrator was an am muktear of one of the parties, and the other party revoked the arbitration, and after the revocation the arbitrator proceeded to make the award, and the Calcutta High Court held that the fact that the arbitrator had acted for along period of time as an am-muktear even without remuneration was sufficient to entitle the other party to revoke the reference. Bat there was another fact to which the High Court attached greater importance, and that was that the arbitrator was indebted to one of the parties and the judgment of the High Court points out that the fact of this indebtedness if it had not been disclosed to the other party would be a good reason for invalidating the award on account of judicial misconduct. Therefore, a distinction seems to have been drawn in this case between what would be sufficient to justify the revocation of a reference and tho invalidation of the award on account of judicial misconduct. The High Court had no doubt that failure to disclose indebtedness to one of the parties on the part of the arbitrator was clearly judicial misconduct which would result in the award being act aside. With regard to the first, the learned Judges expressed no opinion as according to them that was sufficient to entitle the party to revoke the reference. Then there is another judgment, an earlier judgment to which reference has also been made, and that is reported in Kali Prosanna v. Rajani Kant 25 Cal. 141. In that case, the arbitrator

was retained pleader of the plaintiff and no disclosure of this fact was made before the arbitrator was appointed to the other party, and Maclean C J in delivering the judgment of the Court points out (p 144) :

"In cases of arbitration where a person is appointed by two parties to exercise judicial duties there should be uberrima fides on the part of all the parties concerned in relation to his selection and appointments, and every disclosure, which might in the least affect the minds of those who are proposing to submit their dispute to the arbitrament of any particular individual, as regards his selection and fitness for the past, ought to be made, so that each party may have every opportunity of considering whether the reference to arbitration to that particular individual should or should not be made.'

[The rest of the judgment is not material to the report], The result, therefore, will be that the appeal fails and is dismissed with costs.

Bhagwati, J.

[7] I agree and have nothing more to add.

[8] Appeal dismissed.