

Commander Works Engineers Vs. Sarvashri Sreenivasan Foundaries and Engineering Works

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Court : Karnataka

Decided On : Jan-06-1976

Reported in : AIR1976Kant206; ILR1976KAR686; 1976(1)KarLJ163

Judge : M. Sadanandaswamy and ;D. Noronha, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 30

Appeal No. : Misc. First Appeal No. 511 of 1971

Appellant : Commander Works Engineers

Respondent : Sarvashri Sreenivasan Foundries and Engineering Works

Advocate for Def. : V.K. Govindarajulu, Adv.

Advocate for Pet/Ap. : S.A. Hakeem, Central Govt. Jr. Standing Counsel

Judgement :

1. This is an appeal against the judgment of the II Additional Civil Judge, Belgaum, dated 14th December, 1970 in Arbitration Case No. 4 of 1969 setting aside the award filed under Section 30(a) of the Arbitration Act.

2. The appellant before us is the Commander, Works Engineers, Dickinson Road Bangalore, who was opponent No. 1 in the lower Court. On or about 10-3-1967 the

1st opponent accepted tender of the 2nd opponent, Sarvashri Sreenivasa Foundries and Engineering Works, and entered into a contract with it for the supply of steel furniture consisting of steel chairs, steel tubular tables, steel beds and steel trays for a total amount of Rs. 81,245.00. The major item of the tender consisted of 320 steel tables of the value of Rs. 73,600/-. According to the original contract they had to be manufactured in the factory of the 2nd opponent. But, according to the 2nd opponent, this item was altered by the 1st opponent and the 1st opponent insisted that the 2nd opponent had to supply tables manufactured by Messrs. Khira of Bombay according to the specifications laid down by the 1st opponent. It is the case of the 2nd opponent that Messrs. Khira expressed their inability to supply the said tables according to the specifications laid down by opponent No. 1. Since the 2nd opponent was unable to supply the tables according, to the conditions laid down by the 1st opponent, the first opponent by his order dated 26-8-1967 cancelled the contract with effect from 1-9-1967 and intimated the 2nd opponent that the items of furniture left incomplete would be got supplied by another agency at the risk and costs of the 2nd opponent. Thereafter the first opponent is said to have called for fresh tenders for manufacture and supply of the said items of furniture and purchased them from Messrs. Godrej and Company for a sum of Rupees 98,927-51 Ps. A sum of Rs. 8,993-48 was claimed on account of sales tax exemption in addition and, deducting the agreed sum of Rs. 81,245/-, the first opponent paid Rs. 27,675.99 Ps. plus 10% compensation for delay amounting to Rupees 8,154-50 Ps. The first opponent also sought to forfeit the sum of Rupees 8,497-45 Ps. which was the sum total of the securities and final bills in favour of the second opponent. But, at a later stage, he agreed to give allowance for this sum and made a net claim of Rupees 27,303-04 Ps. from the 2nd opponent. Since the 2nd opponent did not Pay the amount, the Chief Engineer, Southern Zone, Fort St. George, Madras-9 who was seized of the matter, referred the dispute to the Arbitrator Lt. Col. S. J. Samuel, Commander Works Engineer's Office, Project, Mudfort, Secunderabad 3, in terms of the contract agreement on 31-9-1968.

3. Thereafter the arbitrator issued notices to both the opponents on 4-9-1968 calling for their written statements. The notices also called upon the Parties to produce the relevant documents referred to in the statements of their respective

cases. It also indicated that if either of the parties wanted the opposite Party to produce any documents or other evidence at the hearing, it should be indicated in writing so that the arbitrator may direct the Party concerned to make the same available for inspection at the time of hearing or earlier if necessary. Both the parties obtained some adjournments and later filed their respective written statements. Finally, the case was taken up on 22-8-1969 by the arbitrator. Government was represented by the Commander Works Engineer, Bangalore 1. Second opponent was represented by counsel. No oral evidence was recorded by the arbitrator and no issues had been framed in the case. But on hearing both the sides the arbitrator gave the award under which the first opponent was awarded Rs. 18,682-51 Ps. towards extra cost of completion of supplies and Rs. 8,731-53 being 9% of the sum of Rs. 97,017-00 and, after giving deduction to a sum of Rupees 8,497-45 Ps. due to the 2nd opponent, the balance was made payable by the award. The parties had to bear their own costs. The first opponent is said to have requested the arbitrator by his letter dated 4-10-1969 to file the award in the District Court. Accordingly the present award was filed in the lower Court. The 1st opponent accepted the award and prayed for a decree to be passed in its terms. The 2nd opponent filed an application with an affidavit praying for setting aside the award under Sections 30 and 33 of the Arbitration Act.

4. According to the contentions of the 2nd respondent in his affidavit, the arbitrator held only one sitting at Belgaum on 11-8-1969, on which date he heard both the parties and perused the documents adduced in the evidence. But the first opponent was not in possession of the relevant documents and, therefore, the 2nd opponent required the 1st opponent to send for the relevant documents. The second opponent was expecting the second hearing, but on 26-9-1969 the award had been published without giving the 2nd opponent a further chance about the additional documents sought from the first opponent. He therefore contended that the arbitrator has misconducted himself and the proceedings by taking into consideration material documents without affording opportunity to the 2nd opponent of knowing their contents and that the said award has been improperly procured by the 1st opponent. He alleged that the arbitrator was biased and that the award was otherwise invalid and liable to be set aside.

5. The arbitrator has not given any reasons in the award Passed by him, but has stated that he has considered all the evidence adduced by both the parties and arrived at his decision. There is no material to support the contention of the 2nd opponent that any documents were produced by the 1st opponent before the arbitrator subsequent to the date of hearing or that the arbitrator took into consideration any material or documents which were not available before him on the date of hearing. The records produced by the arbitrator show that the arbitrator noted down the arguments of both the parties on the merits in respect of all the contentions raised by either party. The lower Court also does not come to the conclusion that the award is vitiated on account of the fact that the arbitrator took into consideration any document produced by the first opponent subsequent to date of hearing. But the lower Court has observed in the course of its judgment that the minutes maintained by the arbitrator show that though the documents were called for the first opponent did not produce the order form or the bills of Godrej to show whether the goods supplied were identical or not. It was further observed that though one of the parties insisted upon the production of the documents, which if produced before the arbitrator would have definitely affected the quantum of damages, the arbitrator has ignored the same and violated the principles of natural justice and the award is liable to be set aside. The lower Court held that the arbitrator has misconducted himself in not securing the relevant documents and, therefore, set aside the award.

The portion of the minutes maintained by the arbitrator relied on by the lower Court reads as follows:

'In support of this Advocate representing Sreenivasa Foundries brought to the Arbitrator's notice Sections 73 and 74 of the Indian Contract Act. The defendant also wanted to know whether quotations were also called for from M/s. Khira Ltd., and also the originals of the purchased bills of Godrej which was supplied by the other contract at the risk and cost of Sreenivasa Foundries. The plaintiff presented the comparative statement of tenders to show that no quotations/tenders were issued to M/s. Khira Ltd.'

The above extract does not show that the arbitrator directed the 1st opponent to produce any additional documents. There is also no indication in the minutes recorded by the arbitrator to show that he did so direct the first opponent.

6. The question therefore is whether the failure on the part of the 1st opponent to produce the bills in respect of the supplies made by Messrs. Godrej and Company in spite of the fact that the 2nd opponent insisted upon the production of the same by the 1st opponent before the arbitrator is sufficient to vitiate the award under Section 30 of the Arbitration Act. According to the 2nd opponent if those documents had been produced they would have shown that the articles supplied by the other firm were not of the same specifications embodied in the original contract between the second opponent and the 1st opponent; further the liability could not be fixed on the 2nd opponent to the extent to which it has been done by the arbitrator and that the 2nd opponent would not be liable in damages in view of the difference in the two specifications. The 2nd opponent contends that the failure of the first opponent to produce the relevant documents should have led the arbitrator to draw an adverse inference against the first opponent and to disallow the claim of the first opponent. In other words, what the 2nd opponent contends is that he would have been able to succeed on merits if the documents which were required by him had been produced by the first opponent before the arbitrator.

7. The scope of Section 30 of the [Arbitration Act, 1940](#), has been considered in : [1964]5SCR480 , Jivarajbhai v. Chintamanrao, Balaji), wherein it has been observed as follows:

' An award may be set aside by the Court on the ground of error on the face of the award, but an award is not invalid merely because by a process of inference and argument it may be demonstrated that the arbitrator has committed some mistake in arriving at his conclusion. As observed in Champsey Bhara and Co. v. Jivraj Balloo Spinning and Weaving Co. Ltd., (50 Ind App 324) = (AIR 1923 PC 66) at page 331 (of Ind App) = (at page 69 of AIR): '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 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 a narrative a reference is made to a contention of one party, that opens the door to seeing first what the contention is, and then going to the contract on which the parties' rights depend to see if that contention is sound.'

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 the award is restricted to cases set out in Section 30. It is not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. On the assumption that the arbitrator must have arrived at his conclusion by a certain process of reasoning, the Court cannot proceed to determine whether the conclusion is right or wrong. It is not open to the Court to attempt to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of his award.'

In : [1967]1SCR633 , (Bungo Steel Furniture Pvt. Ltd. v. Union of India) the scope of S. 30 has been stated as follows:

'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.'

8. In the present case the arbitrator has not recorded his reasons and has not indicated the Principles of law on which he has proceeded. The only ground on which the 2nd opponent complained is that the documents required by him, as stated above were not produced by the first opponent before the Arbitrator. If the relevant documents in the possession of a party were not produced before the arbitrator, it was open to the arbitrator to take that circumstance into consideration and proceed to give his decision on the material before him. There is nothing on

record to show that the arbitrator did not take that circumstance into consideration while giving his decision. It is contended by Mr. Govindarajulu that an adverse inference ought to have been drawn against opponent No. 1 on account of the non-production of the relevant documents as stated above. But this is a question relating to appreciation of evidence and whether the case of opponent No. 1 has to be accepted or not under the above circumstances is left entirely to the arbitrator.

The lower Court was therefore in error in setting aside the award. The non-production of relevant documents by either party, however important those documents may be for the decision of the dispute by the arbitrator, is not a sufficient ground for setting aside the award under Section 30 of the Arbitration Act.

9. This appeal is accordingly allowed. The judgment and decree of the lower Court are set aside. The application of the arbitrator is allowed and there shall be a decree in terms of the award. The respondent (opponent No. 2) in this appeal shall pay the costs of the appellant in this Court and in the Court below.

10. Appeal allowed.