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The Superintending Engineer Vs. Gayatri Engineers Company, Engineers and Contractors

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Court : Andhra Pradesh

Decided On : Apr-11-1990

Reported in : 1991(1)ALT658

Judge : Amareswari and ;P.L.N. Sarma, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 14(1), 17, 21 and 49; Andhra Pradesh Arbitration (Amendment) Act, 1990; Code of Civil Procedure (CPC) - Sections 115

Appeal No. : Appeal Against Order No. 417 of 1984 and C.R.P. No. 1152 of 1984

Appellant : The Superintending Engineer

Respondent : Gayatri Engineers Company, Engineers and Contractors

Advocate for Def. : P. Ramachandra Reddy, Adv. for ;T. Bheemsen, Adv.

Advocate for Pet/Ap. : The Govt. Pleader for F and P

Disposition : Petition dismissed

Judgement :

Amareswari, J.

1. The proceedings arise under the Arbitration Act.

2. The Arbitrators passed the award on 4-2-1983 upholding the claims of the Contractor. The award was filed into Court of the Vth Additional Judge, City Civil Court, Hyderabad. O.S.No. 232 of 1983 was filed under Section 14 read with Section 17 of the Arbitration Act to pass a judgment and decree. The department filed O.P.No. 65 of 1983 for setting aside the award. Both were clubbed and disposed of by a common judgment. The V Additional Judge, City Civil Court, Hyderabad decreed the suit and made the award a rule of the Court after dismissing the O.P. filed by the department to set aside the award.

3. Aggrieved thereby the department, the Superintending Engineer, Nagarjuna Sagar Left Canals Circle, Miryalaguda, Nalgonda District had filed C.M.A.No. 417 of 1984 against the judgment in O.P.No. 65 of 1983 and C.R.P.No. 1152 of 1984 against the decree in O.S.No. 232 of 1983.

4. The only submission made by the learned Advocate General on behalf of the appellant is that the award does not contain any reasons. As it is a non-speaking award, it may be remitted to the Arbitrators after setting aside the decree for passing a fresh award giving reasons.

5. Whether an award which does not contain reasons is invalid and is liable to be set aside or remitted was considered by the Supreme Court in a number of cases. It is not necessary to refer to all of them. We shall make a reference to the latest on this point.

6. In Raipur Development Authority v. Chokhamal Contractors, (1989) 2 SC Cases, Page 721 a Five Judge Bench of the Supreme Court held that an Award which does not contain reasons is not invalid and the same cannot be remitted or set aside by the Court on the sole ground of the award being unreasoned in the absence of any stipulation to the contrary in the arbitration agreement and rules of natural justice cannot be invoked to compel arbitrator to give reasons. However, the Court held where parties stipulate requiring the arbitrator to furnish reasons, arbitrator would be bound to give the reasons. Reliance was placed on the earlier decisions in Firm Madanlal Roshanlal Mahojan v. Hukumchand Mills Ltd, : [1967]1SCR105 . and Rohtas Industries Ltd. v. Rohtas Industries Staff Union, : (1976)ILLJ274SC . The submission that giving reasons in the award is in

consonance with the Rules of natural justice was rejected saying that there are only two principles of natural justice (1) that a Judge or an Arbitrator, who is entrusted with the duty to decide a dispute should be disinterested and unbiased and (2) that the parties to the dispute should be given a notice and opportunity to be heard by the authority. Giving reasons in support of a decision was not considered to be a rule of natural justice either under the law of arbitration or under administrative law. Although in decisions pertaining to Administrative Law, Supreme Court in some cases has observed that the giving of reasons in an administrative decision is a rule of natural justice by an extension of the prevailing rule, it would be in the interest of the world of commerce that the said rule is confined to the area, of Administrative Law. What applies generally to settlement of disputes by authorities governed by public law need not be extended to all cases arising under private law such as those arising under the law of arbitration which is intended for settlement of private disputes.

7. In a later case reported in *State of A.P. v. R.V. Rayanim*, 1990 (1) SC Cases Page 433 the Supreme Court held that in the case of non-speaking awards, the Court cannot speculate in respect of mental process of the Arbitrator. The contention that the award was bad in law as it does not contain reasons was rejected following the earlier decision in *Raipur Development Authority v. Chokhamal Contractors* (1 supra).

8. In the case on hand, it is not in dispute that the agreement does not provide for giving reasons. In fact, no such submission was made. Following the above rulings of the Supreme Court, we reject the contention that the award is bad in law as it is a non-speaking one.

9. In this context, we must refer to Act No. 1 of 1990 passed by the Legislature of Andhra Pradesh making certain amendments to the Arbitration Act of 1940. This Act received the assent of the President on 13-2-1990 and came into force on 13-2-1990. Under this Act a proviso was added to Sub-section (1) of Section 14 to the following effect :-

'Provided that the arbitrators or umpire shall give reasons for any award made under this section and no award shall be valid unless reasons therefor are given

as aforesaid.'

10. Section 17 was also amended by adding a proviso as under :-

'Provided that where an award pending in the court at the commencement of the Arbitration (Andhra Pradesh Amendment) Act, 1990 or an award filed in the Court, thereafter does not contain reasons therefor as required by the proviso to Sub-section (1) of Section 14 the Court shall not proceed to pronounce the judgment according to the award, but shall remit the award to the arbitrators or the umpire for giving reasons therefor as required by the said proviso and thereupon the arbitrators or umpire shall, within thirty days from the date of remittance of the award to them by the court give reasons for the award and file the same in the Court.'

Two other provisos are also added which are not relevant for our purpose.

11. The amending Act now makes it obligatory for giving reasons by the Arbitrators. Similarly the proviso added to Section 17 says that where an award has been passed without giving reasons, as required by the proviso to Sub-section (1) of Section 14, the Court shall remit the award for arbitrators for giving reasons. These provisions came into force on 19-2-1990. They are prospective in operation. Admittedly the proviso to Section 14 can in no case apply to an award passed prior to 19-2-1990 as the stage of giving reasons by the Arbitrator does not arise where the award had already been passed. However, Section 17 says that where an award is pending in the Court at the commencement of the Arbitration Act or an award filed thereafter does not contain reasons, the Court shall not proceed to pronounce the judgment according to the award, but shall remit the award for arbitrators for giving reasons. This is an amendment to Section 17 which reads as under :-

'17, Judgment in terms of award :-

Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such

application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award.'

In our view, the proviso added to Section 17 by amending Act 1 of 1990 applies only to cases where the awards are pending and not made a rule or decree of the Court. Section 14 contemplates that after passing of the award by the Arbitrators, the same shall be filed into Court and after giving notice to the parties, the Court shall pronounce its opinion. Section 17 provides that where the Court does not see any cause to remit or set aside the award shall proceed to pronounce the judgment according to the award and upon the judgment so pronounced a decree shall follow. It further provides that no appeal shall lie from such a decree except on two grounds:-

(1) that the decree is in excess of the award, or

(2) if it is not in accordance with the award.

12. Thus the scheme as envisaged by Sections 14 and 17 consists of 5 steps after the passing of the award :-

(1) It shall be filed into Court either at the instance of the party or the arbitrators themselves.

(2) Notice to the parties to file their representation.

(3) After considering the material, the Court shall pronounce its opinion which forms part of the award.

(4) To pronounce a judgment if no case is made out for remitting or setting aside the award, and

(5) To pass a decree upon the judgment so pronounced.

13. Now the expression used in the proviso added by the amending Act is 'an award pending in the Court.' Obviously, this can refer only to cases where awards

are filed and pending in the Court of the first instance and not to cases where decrees are already passed. In fact, no appeal is provided against the decree except on a limited ground namely, that the decree is in excess of the award or not in accordance with the award.

14. The expression 'Court' as defined under Section 2(c) means a Civil Court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit, but does not, except for the purpose of arbitration proceedings under Section 21, include a Small Cause Court. The expression 'Court' used in Section 21 may include an Appellate Court as Section 21 deals with arbitration in suits. But the same has no application to proceedings under Sections 14 and 17. On the language of the proviso introduced by the amending Act, we have no hesitation in holding that the proviso is prospective and does not apply to cases where the award is made a rule of the Court and a decree was passed. In fact, there is no appeal against the decree in the present case. As the appeal is limited to only two questions, it is only a C.R.P. that is filed against the decree. The appeal is against the order refusing to set aside the award. It is a settled proposition of law that no Act can be held to be retrospective unless it is expressly stated so or it follows by necessary implication. It cannot be the intention of the Legislature to reopen all matters even where decrees have been passed. If that were so, it would have been specifically mentioned, that awards pending and decrees passed. The Legislature was aware that some matters are pending in appeal and they would have expressly mentioned if they intended the provision to apply to appeals also.

15. In construing the scope of Section 21-A of the Banking Regulation Act, 1946 which mandates that Court shall not reopen the rate of interest in respect of transactions with the Banks, a Division Bench of this Court consisting of one of us (Amareswari, J.) held that the said provision does not apply to suits where decrees have already been passed.

16. In *Workmen of F.T. & R.Co., v. The Management*, 1987 (1) ALT Page 316 a question arose whether Section 11-A of the Industrial Disputes Act, which was introduced by 1971 Amendment Act with effect from 15-12-1971, applies to a

reference made to a Labour Court, prior to the said date? Section 11-A confers a new power upon the Labour Court. It says, where in any industrial dispute referred to it, the Labour Court is satisfied that the order of dismissal or discharge was not justified, it may set aside the same and direct the reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman, including the award of any lesser punishment, as it thinks appropriate in the circumstances of the case. The power so conferred upon the Labour Court was likened to the power of an appellate Court and a power which abridges the rights of the employers hitherto inhering in them. Paragraph 58 of the judgment brings out the reasoning in support of the Court's opinion that Section 11-A has no application to references made before 15-12-1971 and that it applied only to disputes, referred on or after the said date. The paragraph reads thus :-

'We have already expressed our view regarding the interpretation of Section 11-A. We have held that the previous law, according to the decisions of this Court, in cases where a proper domestic enquiry had been held, was that the Tribunal had no jurisdiction to interfere with the finding of misconduct except under certain circumstances. The position further was that the Tribunal had no jurisdiction to interfere with the punishment imposed by an employer both in cases where the misconduct is established in a proper domestic enquiry as also in cases where the Tribunal finds such misconduct proved on the basis of evidence adduced before it. These limitations on the powers of the Tribunals were recognized by this Court mainly on the basis that the power to take disciplinary action and impose punishment was part of the managerial functions. That means that the law, as laid down by this Court over a period of years, had recognized certain managerial rights in an employer. We have pointed out that this position has now been changed by Section 11-A. The section has the effect of altering the law by abridging the rights of the employer in as much as it gives power to the Tribunal for the first time to differ both on a finding of misconduct arrived at by an employer as well as the punishment imposed by him. Hence in order to make the Section applicable even to disputes, which had been referred prior to the coming into force of the section, should be such a clear, express and manifest indication in the section. There is no such express indication. An inference that the section applies to proceedings, which are already pending, can also be gathered by necessary

intendment. In the case on hand, no such inference can be drawn as the indications are to the contrary. We have already referred to the proviso to Section 11-A which states '-in any proceedings under this section'. A proceeding under the section can only be after the section has come into force. Further the section itself was brought into force some time after the Amendment Act was passed. These circumstances as well as the scheme of the section and particularly the wording of the Proviso indicate that Section 11-A does not apply to disputes which had been referred prior to 15-12-1971. The section applies only to disputes which are referred for adjudication .on or after 15-12-1971. To conclude, in our opinion, Section 11-A has no application to disputes referred prior to 15-12-1971. Such disputes have to be dealt with according 1o the decisions of this Court already referred to.....'.

17. In a matter arising under the Arbitration Act in Civil Appeal No. 3578 of 1989 a question arose whether the Notification dated 1-6-1987 providing that all claims above Rs. 50,000/- shall be decided by the Civil Court of competent jurisdiction by way of regular suit applies to, claims which arose out of the contracts entered into earlier. The Supreme Court held that the G.O. is only prospective and not retrospective and that it does not apply to cases in which claims arose out of a contract entered into earlier.

18. The principle enunciated in the aforementioned decisions is very relevant here. Retrospectively cannot be easily assumed or presumed On the decree being passed, rights have accrued to the parties and the said rights cannot be taken away by a subsequent legislation.

19. We therefore, hold that Act 1 of 1990 has no application to this case as the award was made a rule of the Court in 1983. In fact, this position has not been seriously disputed by the respondents.

20. No other point is argued.

21. In the result, the Civil Miscellaneous Appeal and the Civil Revision Petition fail and are dismissed, but in the circumstances without costs.

