

Union of India and Others Vs. P. Jeevanandam

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Court : Andhra Pradesh

Decided On : Jun-22-2000

Reported in : 2000(4)ALD496; 2000(4)ALT318

Judge : R. Ramanujam, J.

Acts : [Arbitration Act, 1940](#) - Sections 31(8); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151; Arbitration and Conciliation Act, 1996 - Sections 2 and 116(6)

Appeal No. : Application No. 610 of 2000 in AA No. 17 of 1999

Appellant : Union of India and Others

Respondent : P. Jeevanandam

Advocate for Def. : Mr. B. Prasada Rao, Adv.

Advocate for Pet/Ap. : Mr. Gouri Shankar Sanghi, SC for Railways

Judgement :

ORDER

1. This application is filed under Section 151 of the Code of Civil Procedure seeking fixation of the total remuneration to be paid to the sole Arbitrator appointed in Arbitration Application No.19 of 1999.

2. The applicants herein are the respondents in AA No. 17 of 1999, which was filed by the present respondent-Sri P. Jeevanandam. The said Arbitration

Application was filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the New Act').

3. Justice Sri A. Gopal Reddy, who was the then designate of the Chief Justice under the Scheme framed by him, in exercise of his powers under sub-section (10) of Section 11 of the New Act, allowed the said Arbitration Application and appointed Justice A. Gangadhar Rao, a retired Judge of this Court, as the sole Arbitrator. While making the said appointment, the learned Judge fixed the remuneration of the Arbitrator, initially, at Rs, 30,000/-.

4. Justice Sri A. Gangadhara Rao accepted the appointment and commenced functioning as an Arbitrator. The learned Arbitrator, during the meeting that was held on 13-2-2000 fixed his remuneration, after consulting both the parties, at Rs.2.00 lakhs, which is to be shared by both sides equally. This was also recorded in the proceedings of that meeting - a copy of which was made available to both sides. It is appropriate here to extract the relevant portion from Paragraph 4 of the said proceedings:

'4. It is agreed by both the parties that a total fees of Rs.2,00,000/- (Rupees two lakhs) be paid to the Arbitrator for the entire case and it will be shared equally by both the parties'.

Aggrieved by the aforesaid action of the learned Arbitrator, the applicant-Railways filed the present application.

5. Sri Gouri Shankar Sanghi, learned Counsel for the applicant-Railways contends that: (a) while appointing the Arbitrator this Court has not fixed his total fees but fixed his fees, initially, at Rs.30,000/- and that has resulted in the Arbitrator fixing his total fees at Rs. 2.00 lakhs, (b) the fee fixed by the Arbitrator is highly excessive and will ultimately burden the public exchequer, and (c) therefore, this Court has now to fix the total fees/remuneration payable to the Arbitrator.

6. I am not impressed by the aforesaid contentions of the learned Counsel for the applicant-Railways for the reasons explained hereinafter.

7. Unlike the [Arbitration Act, 1940](#) (for short 'the Old Act'), the New Act does not confer any power on the Court - as defined under Section 2(e) of the New Act - to appoint an Arbitrator where the parties do not agree on such appointment. Instead, power is conferred under sub-sections (4), (5) and (6) of Section 11 of the New Act on the Chief Justice of a High Court (in the cases of Domestic Arbitrations) and upon the Chief Justice of India under subsection (9) (in the cases of International Commercial Arbitrations) or on the person or institution designated by them respectively. The Chief Justice of a High Court and the Chief Justice of India are also empowered under sub-section (10) of Section 11 of the New Act to make a Scheme for appointment of Arbitrator/Arbitrators. In exercise of the said power, the Chief Justice of this Court framed a Scheme known as 'The Scheme for Appointment of Arbitrators, 1996' (for short 'the Scheme'). It is under this Scheme, the present Arbitrator was appointed by Sri Justice A. Gopal Reddy. It is pertinent to note here that neither the Chief Justice of this High Court nor the Judge of this Court sitting on the original side and who is the designate under the Scheme, has jurisdiction to decide the questions forming the subject matter of the arbitration, if the same had been subject matter of the suit. Hence, they are not comprehended by the definition of 'Court' under sub-section (e) of Section 2 of the New Act, which reads thus:

'Section 2(e). 'Court' means the Principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction. Having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit, but does not include any Civil Court of a grade inferior to such Principal Civil Court, or any Court of Small Causes.'

8. From the above it is clear that while making appointment of an Arbitrator under sub-sections (4), (5) and (6) of Section 11 of the New Act, the Chief Justice of the High Court or his designate is not acting as a Court. It is for this reason Courts have now held that appointment of an Arbitrator under the Scheme framed either by the Chief Justice of a High Court or his nominee is not a judicial order, but is a mere administrative order. See the decision of a Division Bench of this Court in *Satyam Constructions Ltd. v. Registrar (J)*, High Court of A.P., : 1999(6)ALD223

and the decisions of the Apex Court in Ador Samia Private Limited v. Peekay Holdings Limited, 1999 (7) Supreme 309 and Sundaram Finance Limited v. N.E.P.C. India Limited, : [1999]1SCR89 .

9. A close reading of the aforesaid Section 11 of the New Act and the Scheme made by the Chief Justice of this Court makes it clear that no power is given thereunder to the Chief Justice or his designate to fix the fee/remuneration payable to the Arbitrator appointed by him. On the other hand, Explanation to Section 31(8) of the New Act clearly empowers the Arbitrator to fix his fee. That sub-section reads thus:--

'Section 31(8). Unless otherwise agreed by the parties:--

(a) the costs of an arbitration shall be fixed by the Arbitral Tribunal,

(b) the Arbitral Tribunal shall specify,--

(i) the party entitled to costs;

(ii) the party who shall pay the costs;

(iii) the amount of costs or method of determining that amount; and

(iv) the manner in which the costs shall be paid.

Explanation :--For the purpose of clause (a) 'costs' means reasonable costs relating to. -

(i) the fee and expenses of the arbitrators and witnesses;

(ii) legal fees and expenses;

(iii) any administration fees of the institution supervising the arbitration; and

(iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award'.

There is no other provision in the New Act empowering either the 'Court' or the Chief Justice or his designate to fix the remuneration of the Arbitrator.

10. The learned Counsel for the applicant-Railways fairly concedes that there is no express provision under the New Act empowering the 'Court' or the 'Chief Justice or his designate' to fix the fee of the Arbitrator. However, he submits that such a power is implied from clause (b) of sub-section (8) of Section 11 of the New Act. Relying on the words 'other considerations' occurring in the aforesaid clause (b) Sri Sanghi contends that the power to fix the Arbitrator's fee is implied in those words.

11. In my considered opinion the aforesaid contention is wholly misconceived and untenable. Sub-section (8) of Section 11 of the New Act reads thus:

'Section 11(8). The Chief Justice or the person or institution designated by him in appointing an arbitrator, shall have due regard to,--

(a) any qualifications required of the arbitrator by the agreement of the parties; and

(b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator'.

12. A close reading of the said sub-Section (8) makes it clear that it does not, in any manner, empower the Chief Justice or his designate to fix the remuneration of the Arbitrator, but only specifies the factors to which they should have due regard for securing the appointment of a qualified, independent and impartial Arbitrator. The intention of the Legislature in enacting the aforesaid sub-section appears to be that the Chief Justice or his designate shall strive to select an independent and impartial person for appointment as an Arbitrator. Therefore, the general words 'Other considerations' employed in the aforesaid clause (b) shall have to be understood, in that context, as the factors, besides qualifications, that are to be kept in mind by the Chief Justice or his designate for securing the appointment of an independent and impartial person as the Arbitrator. Independent persons may not like to act as Arbitrators, if they are not empowered to fix their own remuneration/ fees. It is precisely for this reason the Legislature empowered only

the Arbitrator, under sub-section (8) of Section 31 of the New Act, to fix his fees. If the words 'other considerations' are to be construed as giving power to the Chief Justice or his designate under the Scheme to fix the fees of the Arbitrator (as suggested by the applicants' Counsel), then the very intention of the Legislature will be defeated. It is one of the cardinal principles of statutory interpretation that an interpretation, which has the effect of destroying the plain intention of the Legislature, has to be avoided, if possible. See the decisions of the Supreme Court in *C.I.T. v. S. Teja Singh*, : [1959]35ITR408(SC) and *M. Pentiah v. Veeramallappa Muddala*, : [1961]2SCR295 .

13. Counsel for the applicant-Railways, however, submits that since the then designate of the Chief Justice under the Scheme has fixed the initial fee of the Arbitrator, I can now fix the total fee of the Arbitrator as the present designate of the Chief Justice under the Scheme.

14. I am not impressed by this contention either. As already noted, the Chief Justice or his designate has no power under the Act to fix the fee of an Arbitrator. Simply because the then designate has fixed the fee of the Arbitrator, while making the appointment, initially, at Rs.30,000/-, I cannot assume jurisdiction, which is not conferred upon me either by the New Act or the Scheme, and fix the Arbitrator's total fee.

15. Counsel for the applicant-Railways then advanced a spirited argument contending that I can fix the remuneration of the Arbitrator in exercise of my powers under Section 151 of the Code of Civil Procedure. I do not find any merit in this submission. As already noted, the Chief Justice or his designate under the Scheme is not a 'Court' and is not exercising any judicial power while making the appointment of an Arbitrator. Since I am merely acting as the designate of the Chief Justice under the Scheme. I cannot exercise the powers conferred upon a Court under Section 151 CPC.

16. There is yet another reason why interference of this Court is not called for in this case. As already noted, the learned Arbitrator has clearly stated that both the parties agreed to pay the total fee of Rs.2.00 lakh. It is, therefore, clear that he fixed the fee with the consent of both the parties. Counsel for the applicant-

Railways, however, submits that the Railways have given no such consent. There is nothing on record to support the said statement. They did not write any letter to the learned Arbitrator after receiving a copy of his Minutes dated 13-2-2000 stating that they have never agreed to the fee fixed by him. In the affidavit filed in support of the present application also nothing is stated to that effect. In the absence of the same, it is difficult to believe the present statement of the applicants' Counsel, Having thus agreed before the Arbitrator, it is not open for the applicants now to turn round and question the fees fixed by the learned Arbitrator.

17. For the aforementioned reasons, I cannot interfere with the Arbitrator's power to fix his own fee.

18. Counsel for the applicant-Railways, however, submits that the parties may be given liberty to represent before the Arbitrator for reduction of the fees. It is always open to the parties to request the Arbitrator to reduce his fees and it is for the Arbitrator to consider such a request,

19. For the aforementioned reasons, this application fails and is accordingly dismissed. No costs.