

Executive Engineer Vs. Sankar Maharana

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Court : Orissa

Decided On : Jan-11-1978

Reported in : AIR1978Ori121

Judge : R.N. Misra, J.

Acts : [Arbitration Act, 1940](#) - Sections 13, 16(1), 29 and 30

Appeal No. : Misc. Appeal No. 76 of 1977

Appellant : Executive Engineer

Respondent : Sankar Maharana

Advocate for Def. : S.S. Basu and ;R.K. Das, Advs.

Advocate for Pet/Ap. : Addl. Govt. Adv.

Disposition : Appeal dismissed

Judgement :

R.N. Misra, J.

1. This is an appeal under Section 39(1)(vi) of the Arbitration Act of 1940 (hereinafter referred to as the 'Act') directed against the judgment of the learned Subordinate Judge of Berhampur refusing to remit an award and making it a rule of the court.

2. Respondent entered into a contract in the prescribed F-2 form with the Executive Engineer (Roads and Buildings) Division, Ganjam, for the laying of the approach road to the high-level bridge over river Bagua between Aska and Boirani. There was dispute between the parties in the matter of payment of the dues for the work done by the contractor and the contractor invoked the arbitration clause in the contract. Ultimately under Section 20 of the Act, an application was made to the court and the court appointed Sri Banabasi Patnaik, Superintending Engineer in the employment of the State Government as Arbitrator. On 14-2-19-76, the award was made and on 17th February, 1976, the same was filed in court. On behalf of the Executive Engineer, objection was raised to the award on several grounds, but by order dated 10th January, 1977, the learned Subordinate Judge refused to set aside the award and remit the same and made it a rule of the court.

3. As would appear from the award itself, the Arbitrator has not given any reasons for his conclusions on different heads. It is conceded on behalf of the appellant that the award is not vulnerable for not indicating reasons for the conclusions. The legal position is settled that the Arbitrator is the final judge of the facts and law and his decision is not open to scrutiny by the court. See, *Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd., Indore*, AIR 1967 SC 1030. It has been reiterated on several occasions that the Arbitrator is a Judge of the choice of the parties and his decision should not be set aside even if there be mistakes on questions of law and fact. See, *Union of India v. A.L. Rallia Ram*, AIR 1963 SC 1685. A Bench of this Court in the case of *State of Orissa v. P. C. Chanda*, AIR 1962 Ori 91, summarized the position thus :--

'..... There is no special form in which the award of an arbitrator should be made. As pointed out in Halsbury, Third Edition, Volume 2, page 42

'unless the agreement of reference prescribes in what form the award is to be made, it may be made in such form as the Arbitrator or Umpire may think fit.' The Arbitrator is also not bound to give reasons for his award, or to state why and how he came to his conclusion. On the contrary the giving of reasons would be an invitation to a party to embark upon further litigation--see *Sreelal v J. F. Madan*, ILR 52 Cal 100 : (AIR 1925 Cal 599). As pointed out in *Union of India v.*

Premchand Satram Das, AIR 1951 Pat 201 even if the award is baldly stated without giving reasons for it, it cannot be assailed even if it be against facts or repugnant to law. Doubtless errors of law on the face of the award may make it vulnerable unless it can be further shown that the parties agreed to refer the question of law also to the arbitrator for his final decision.'

It is well settled that when parties constitute an Arbitrator as the sole and final Judge of any dispute between them, they bind themselves as a rule to accept the award as final and conclusive. The award is liable to be corrected, modified or set aside only under the limited scope of the provisions made under Sections 15 and 30 of the Act. Unless the mistake is evident on the face of the award or in some paper accompanying and forming part of the award, the court has no jurisdiction to touch the award. In the case of Firm Madanlal Roshanlal Mahajan (AIR 1967 SC 1030), the Court laid down that unless the illegality is apparent on the face of the award, the court has no jurisdiction to interfere with the award. Where no reasons have been given, it is indeed difficult to sustain the objection of the appellant that there has been a mistake because nothing is apparent on the face of the award.

4. The only other objection which has been raised by learned Additional Government Advocate is to the award of interest at six per cent for three years two months. It is stated that the matter was referred to arbitration on 11-2-1975 and the award was made on 14-2-1976 wherein there is a direction for payment of interest for a total period of three years two months. It is contended that the Arbitrator has jurisdiction to award interest from the date of the award, but has no authority to grant interest pendente lite or prior to entering upon the reference, A Bench of this Court in the case of State of Orissa v. Govinda, (1971) 37 Cut LT 937 has held:

'It is now well settled by series of Supreme Court decisions that unless there is a specific clause in the Agreement, prohibiting award of interest, the Arbitrator has jurisdiction to award interest from the due date of payment till the date of the award. Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd., Indore (AIR 1967 SC 1030), Union of India v. Bungo Steel Furniture Private Ltd. (AIR 1967 SC 1032) and Ashok Construction Co. v. Union of India (1970 SCD 530). The Award

of the Arbitrator cannot, therefore, be questioned on the ground that he allowed interest from the due date till the date of the decree. There was no term in the Agreement that interest is not to be awarded. The dispute included a specific reference to the award of interest. As such the Arbitrator exercised his jurisdiction legally in awarding interest.'

The same principle has been followed in a later decision of this Court in the case of *State of Orissa v. Govinda*, (1974) 2 Cut WR 917.

In the present case, interest had been specifically claimed, as would appear from the claim petition before the Arbitrator. I see no scope for entertaining the objection of the learned Additional Government Advocate in regard to award of interest.

5. The appeal accordingly fails and is dismissed with costs.

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