

State of Orissa Vs. P.C. Chanda

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Court : Orissa

Decided On : May-10-1961

Reported in : AIR1962Ori91

Judge : R.L. Narasimham, C.J. and ;J.K. Misra, J.

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

Appeal No. : First Appeal No. 123 of 1957

Appellant : State of Orissa

Respondent : P.C. Chanda

Advocate for Def. : Sidharta Ray, ;D. Bhuyan and ;R.K. Patnaik, Advs.

Advocate for Pet/Ap. : Adv. General and ;R.K. Kar, Adv.

Disposition : Appeal dismissed

Judgement :

Narasimham, C.J.

1. This is an appeal by the State of Orissa against the judgment of the Subordinate Judge of [Puri refusing to set aside an award] dated 27th April 1956 and passing a judgment and decree in terms of that award in favour of the respondent

2. The respondent was a contractor who agreed to construct four bridges on the Lewis Road in Bhubaneswar for a lump sum contract of Rs. 7,58,000/-. The terms of the contract were put in writing (See Ex. A). The length of the 4 bridges, as shown in the contract, is as follows : (i) Bridge over Gangua-520 ft.; (ii) Bridge at 2m-2140 ft-40 ft: (iii) Bridge at 2M-2715 ft-100 ft; and (iv) Bridge at 2M-4992 ft-100 ft Clause 7 of the Conditions of Contract authorises the Executive Engineer to make additions, omissions or variations to the works and further stipulates that for such additions omissions Or variations extra sums may be added or deducted from the amount of the contract 'at rates in accordance with the sanctioned schedule of rates in force at the time when a particular item or work was commenced'.

Clause 19 is the usual arbitration clause to the effect that if there is a dispute between the con-tractor and the Executive Engineer it may be referred to an Arbitrator to be chosen by the parties to the contract. Soon after the commencement of the work the contractor was informed by the Engineer that bridges 2 and 3 mentioned above need Work the constructed and that these should be omitted from the contract. In a subsequent letter, Ext. B dated the 20th April 1949 the contractor was informed that on account of the omission of the aforesaid two bridges deduction would be made from the total amount payable to the contractor at the rate of Rs. 1200/- per running foot

The exact length of the two bridges omitted was shown in that letter as; 2nd bridge-49 ft. and 3rd bridge 106 it-total 149 ft Apparently this deduction at Rs. 1200/- per running foot was made on the basis of clause 7 of the Conditions of Contract which allowed deduction to be made in respect of 'omissions' at the scheduled rates in force.

The contractor, however did not accept this interpretation of the word 'omission' in clause 7. According to him the 'omissions' referred to therein related to minor omissions in respect of particular items connected with the construction of the 4 bridges and could not include the omission of the two out of the 4 bridges. Hence, after the completion of the work there was a dispute between. the parties and as they did not agree on an arbitration an application was made to the Subordinate

Judge, Puri for the appointment of an Arbitrator under Section 8(2) of the Arbitration Act.

The learned Subordinate Judge, by his order dated 11th March 1954, in M. C. no. 176 of 1953 appointed one Mr. T. if. Dixon, Superintending. Engineer, Construction Circle, Central P. W. D. as the Arbitrator by his order dated 11th March 11954 (Ext. 1) and sent him a letter of appointment.

3. The learned Arbitrator after hearing the parties passed his award on 27th April 1956 which is reproduced below: (After reproducing the award in full, the judgment proceeded):

The Contractor applied under Section 14 of the Arbitration Act for passing a decree in terms of aforesaid award. The Government of Orissa did not file an independent application for setting aside the Award but in their written statement to the contractor's petition under Section 14 they raised several objections to the Award and ultimately prayed for setting it aside. The learned lower Court passed a composite order on 12th July, 1957, rejecting the objections of the State Government and passing a decree in terms of the award.

If this be construed as an order under Section 17 of the Arbitration Act, the Government's right to challenge the judgment and decree of the lower Court would be very much restricted, and unless it can be shown that the decree was in excess of or otherwise not in accordance with the Award, Government will have no right of appeal. On the other band, if the order of the learned Subordinate Judge be taken to be a composite judgment including therein an order refusing to set aside the awarded that portion of the order would be appealable under Section 39(1)(vi) of the Arbitration Act.

Perhaps, the starting point for limitation may be different in the two cases, because though the judgment of the lower court was delivered on 12th July, 1957 the decree was signed only on the 20th July 1957. But this question is somewhat academic here because it is not challenged by the other side that the appeal was filed beyond time.

4. The main objections to the award urged by the learned Advocate General appearing for the State of Orissa are these:

(1) There was no competent reference by the Subordinate Judge to the Arbitrator and consequently the entire proceeding before the Arbitrator was void ab initio.

(2) The Arbitrator was guilty of judicial misconduct inasmuch as (a) he did not decide all the matters in dispute referred to him, (b) he did not fully and accurately set out the main contentions raised by the State Government while resisting the claim of the contractor and (c) he did not permit oral evidence to be taken.

In my opinion neither of these contentions is tenable.

5. As regards the first objection, this Court is very much handicapped by the omission on the part of the State Government to prove, before the lower court, the actual order passed by the learned subordinate Judge on the 11th March 1954. Though that order is referred to in Ext. 1 its contents are not known. Hence it is difficult to say whether any specific points were referred to the arbitrator for adjudication, or else whether the 'dispute' between the parties was referred in a general way, without specifying what the exact dispute was about. If the Government wanted to attack the validity of the reference on this ground they ought to have proved the order. As pointed out in *Smith v. Hartley*, (1851) 138 ER 317 (319) :

'By the rules of pleading it is not necessary to set out in the declaration the terms of the reference. It is enough to state that there were matters in difference between the parties and that the reference was of and concerning these matters. It will be presumed that the arbitrators acted within the scope of their authority and it lies on the defendant to plead it: if they have exceeded their authority'.

6. Moreover the copies of the statements of their respective cases, put forward by the parties before the Arbitrator were produced before this Court by the learned Advocate General and were scrutinised by the Court as the respondent's counsel did not object to such scrutiny. From the said statement the nature of the dispute is obvious. The contractor claimed a balance of Rs. 1,67,741-11-5 as being the due

to him from the State Government though he was willing to make a deduction of the amount accruable as profit in respect of bridges 2 and 3 which were abandoned. The State P. W. D. however wanted to make a total deduction out of the original lump sum contract for the aforesaid two bridges at the rate of Us. 1200/- per running foot.

Certain other items in the contractor's statements were also challenged by the State P. W. D. Thus the essence of the dispute between the parties was as to what was the balance payable to the contractor for the total work completed by him. The various items on the basis of which the total balance was struck by the contractor, and objections were raised by the State P. W. D. could not obviously make these items themselves separate disputes. They have a material bearing in ascertaining the net figure which was to be arrived at. Hence, on the peculiar facts of this case, even a general reference of the dispute between the parties, by the subordinate Judge to the Arbitrator, would be a valid reference.

7. Coming to the second point the following principles of law are well settled and were not challenged by the learned Advocate General. There is no special form in which the award of an arbitrator should be made. As pointed out in Hals-bury, 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 badly 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.

8. The award has been set out in full and in my opinion it does not suffer from any infirmity whatsoever. Though the contentions of the P. W. D. in respect of every item in the claim of the contractor were not fully and exhaustively set out, the award mentions the essential points in controversy between the parties which centres round the interpretation of the word 'omission' in Clause 7 of the Conditions of Contract, and the right of the State Government to make deduction for the two bridges that were omitted from construction work, at the rate of Rs. 1200/- per running foot.

It is true that the award does not give reasons as to what was the decision of the arbitrator in respect of the controversy. He merely says that he fixed the total sum payable by the Government to the Contractor 'at Rs. 1,08,415-5-0. The details of the calculations on the basis of which this figure was arrived at were not given but as the essence of the dispute related to the net amount payable to the contractor and that has been accurately and finally decided by the Arbitrator his omission to give the details of the calculations or to give his findings as regards the rival contentions of the parties in respect of the interpretation of clause 7 of the Conditions of Contract will not invalidate the award.

9. The learned Advocate General contended that the award must determine all the differences between the parties which had been submitted for arbitration and that no point should be left out. He relied on *Gaja Sinhva Rao v. Sujat Ali*, AIR 1952 Hyd 46. There is no doubt about the correctness of this proposition but the question arises as to what is the matter in difference between the parties.

The real dispute is about the net sum payable to the contractor and other matters such as interpretation of clause 7 of the Conditions of Contract and the rival contentions of the parties as regards other items in the claim of the contractor, are not independent disputes which require separate adjudication by the Arbitrator, but they are all ancillary to the main dispute about the sum payable. Once that sum has been ascertained, the other matters merely become reasons for arriving at the sum.

I may, in this connection refer to *Whitworth v. Hulse*, (1866) 1 Ex 251 where it was held that unless the arbitration agreement requires that a separate decision must

be given in respect of such matter separately referred to it is not necessary for the arbitrator to deal with each matter of difference separately. To a similar effect is a recent decision of the Calcutta High Court reported in Pannalal v. Sm. Padmabati, AIR 1960 Cal 693 (696) where it was held that the arbitrator was not bound to make a separate and distinct finding on each issue in controversy between the parties.

10. The Advocate General's grievance about the omission on the part of the arbitrator to take oral evidence is also equally untenable. (After discussing the evidence the judgment proceeded):

From the statement as given in the award and also from the evidence of the plaintiff's witnesses I must hold that the Arbitrator had followed the rules of natural justice in conducting the proceedings and that the State of Orissa was not in any way prevented from leading all available evidence bearing on the subject.

11. Before concluding this appeal I may refer to an interesting question of law raised by Mr. Sidhratha Roy for the respondent. He urged that even if the written statement be taken as an independent application for setting aside the award, Government should have filed an affidavit in support of the same and then led 'other evidence', if considered necessary by the Court, as provided in Section 33 of the Arbitration Act Mr. Roy drew our attention to the fact that the written statement filed on behalf of the State by the then Chief Engineer Mr. C. M. Bennet, was not supported by an affidavit. Mr. Roy's contention, therefore, is that the written statement is liable to be thrown out on this ground alone. It is however unnecessary to decide this question here, because even on merits I find absolutely no reason for setting aside the award.

12. For the aforesaid reasons, the judgment and decree of the learned Subordinate Judge are affirmed, and this appeal is dismissed with costs.

Misra, J.

13. I agree.

