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Court : Gujarat

Decided On : Feb-04-2004

Reported in : (2004)2GLR1270

Judge : K.M. Mehta, J.

Acts : Indian Arbitration Act, 1940 - Sections 14, 20, 30, 31, 31(3), 33 and 39; Arbitration and Conciliation Act, 1966

Appeal No. : Appeal From Order No. 184 of 1991

Appellant : Union of India (Uoi)

Respondent : Great Eastern Shipping Co. Ltd.

Advocate for Def. : Shirish Joshi, Adv. for Respondent No. 1

Advocate for Pet/Ap. : Navin Pahwa, Adv.

Disposition : Appeal dismissed

Judgement :

1. Food Corporation of India - appellant No.2 (hereinafter referred to as 'FCI') and Union of India appellant No.1 - the appellants have filed this appeal under Section 39(vi) of the Indian Arbitration Act, 1940 (hereinafter referred to as 'the Old Act') against the judgment and order dated 20th December, 1990, passed by the learned 2nd Joint Civil Judge (S.D.), Jamnagar, in Civil Misc. Application No.111

of 1989 filed by parties under Sec.14 of the Arbitration Act making award as a rule of the court under sec.14 of the Act while Civil Misc.Application No.172/89 has been filed for challenging the award dated 7.6.89 passed by the Arbitrator under Section 33 of the Act which provides award to be contested by applicant read with sec.30 of the Act which provides grounds for setting aside the award.

2. It may be noted that the learned Judge was pleased to allow Civil Misc.Application No.111/89 making award as a rule of the court whereas the learned Judge was pleased to reject Civil Misc.Application No.172/89 which has been filed for setting aside the award.

3. The facts giving rise to this appeal are as under:

3.1 Food Corporation of India (hereinafter referred to as 'FCI') had entered into an agreement with Great Eastern Shipping Co.Ltd. (hereinafter referred to as 'the Shipping Company') to carry bulk of wheat from USA to India on several conditions set out in the agreement dated 16.2.83.

3.2 It may be noted that clause 51 of the said agreement provides for arbitration which reads as follows:

'Any dispute arising under this Charter shall be referred to Arbitration and settled in accordance with the provisions of Indian Arbitration Act 1940 in India, each party appointing an Arbitrator, and the two Arbitrators, in the event of disagreement appointing an Umpire whose decision shall be final and binding upon both parties hereto. The Arbitrators shall be commercial men.'

3.3 As a difference and dispute arose between the parties regarding carrying of the goods and subsequently claiming damages the parties decided to enter into an arbitration. The FCI by its letter dated 24.2.86 decided to appoint one Mr.R.M.Narechania staying in Bombay as its arbitrator for the dispute raised by the opponent No.1. - the Shipping Company in connection with the goods carried by the ships for Charter party agreement. The FCI in this letter of appointment directed the opponent No.2 to adjudicate the dispute and to publish a speaking award. The copy of the said letter Mark.4/2 was sent to Shipping Company as well

as to Mr.Bhandari, arbitrator appointed by Shipping Company.

3.4 It may be noted that the Shipping Company had also decided to appoint their arbitrator on 10.2.86 but the copy of the letter of FCI addressed to the said arbitrator is not on the record. In view of the same whether Shipping Company had requested its arbitrator that he should give reasons or not is not clear from the facts and circumstances of the case. 3.5 It may be noted that the terms of reference of arbitrator which the arbitrator decided to carry out the work is not on the record of the case.

3.6 The FCI has filed statement of claim on 27.2.86 before the Arbitrator claiming Rs.22,79,514.72p/-. It may be noted that in the said statement, the FCI did not request the Arbitrator that the Arbitrator should give reasons. The respondent replied to the said claim also.

3.7 It may be noted that before the Arbitrator, the learned counsel for FCI renewed his request that Arbitrator should give reasons and invited attention of arbitrator to the letter dated 24.2.86 addressed by FCI to its arbitrator. It may be noted that after referring the said letter, the arbitrator observed as under:

'At the conclusion of the hearing, Mr.H.G.Advani, Counsel for the respondents renewed the request of the respondents contained in their letter No.S/JAGLAADKI/5/83/ROZI/SHP/WZ dtd. 24.2.86 to their arbitrator, Mr.R.H.Narechania that we give a reasoned award. We have considered this request but find no need to give a reasoned award.'

3.8 The arbitrator held that Charterer (FCI) shall forthwith pay to the owners (shipping company) a sum of Rs.19,58,598.79 on receipt of the copy of the award. The Arbitrator did not pass any order for interest. The Arbitrator said that both the parties should bear their own costs of the proceedings. It may be noted that before the trial court the arbitrator presented their award somewhere in June 1989.

3.9 As stated above, the award passed by the arbitrator was filed before the trial court. The FCI filed an application being CMA No.111/89 and prayed for filing of the arbitration award under Sec.14 of the Act which was filed before the trial court

on 7.6.89. The FCI also filed CMA No.172/89 challenging the said arbitration award under sec.33 read with sec.30 of the Arbitration Act praying for setting aside the award before the court on the ground that same is not speaking order and no reasons are assigned in the award. The FCI produced certain documents in support of the same. 4. On the other hand, the Shipping Company submitted that under the provisions of Old Arbitration Act, as there was no stipulation in the terms of reference that arbitrator should give reasons, the arbitrator decided not give reasons. In fact the shipping company did not request their arbitrator that arbitrator should give reasons. Though FCI requested their arbitrator to give reasons but ultimately the said request considered by both the arbitrators jointly and decided not to give any reasons. In view of the same, when the arbitrator did not give reasons awarding the award, it did not suffer from any infirmity. The arbitrators have not committed any misconduct as contemplated under sec.30 of the Act. So the trial court may not set aside the award and may decide to make the award as a rule of the court in view of sec.14 of the Act.

4.1 The learned trial Judge after considering the submissions made by both the parties was pleased to reject the Civil Misc.Application No.172/89 filed by FCI for setting aside the award and was pleased to confirm Civil Misc.Application No.111/89 filed by FCI for making award as a rule of the court.

4.2 Being aggrieved and dissatisfied with the said judgment and order, FCI - appellant No.2 and Union of India has filed this appeal from order before this Court under the provisions of Old Arbitration Act.

SUBMISSIONS OF MR.PAHWA, L.A. for the appellants

5. Mr.Navin Pahwa, learned counsel for the appellants has submitted that in view of certain observations of judgment of Apex Court in the case of Raipur Development Authority vs. Chokhamal Contractors, though the Supreme Court has ruled that arbitrator need not give reasons, however in certain eventualities the arbitrator may give reasons. In support of the same, he has relied upon the judgment of the Apex Court in the case of Raipur Development Authority vs. Chokhamal Contractors reported in AIR 1990 SC 1426, particularly paras 19, 33 and 35 which reads as under:

'para.19 It is now well-settled that an award can neither by remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons.'

'para.33 ... It is not as if that people are without any remedy at all in cases where they find that it is in their interest to require the arbitrator to give reasons for the award. In cases where reasons are required, it is open to the parties to the dispute to introduce a term either in the arbitration agreement or in the deed of submission requiring the arbitrators to give reasons in support of the awards. When the parties to the dispute insist upon reasons being given, the arbitrator is, as already observed earlier, under an obligation to give reasons.'

'para.35 ... As stated elsewhere in the course of this judgment if the parties to the dispute feel that reasons should be given by the arbitrators for the awards it is within their power to insist upon such reasons being given at the time when they enter into arbitration agreement or sign the deed of submission.'

5.1 The Hon'ble Apex Court in a decision reported in the Raipur Development Authority case (supra) has been pleased to observe that the arbitrators are required to give reasons in case request is made in the deed of submission.

5.2 The appellants submits that in the communication dated 24.2.1986 addressed by FCI to the arbitrator Shri R.H.Narechania (page 19), the arbitrators were required to publish a speaking award.A copy of this communication was also marked to the opponent. The Great Eastern Shipping Company Ltd. as also to the other arbitrator. There is nothing on record to show that either the opponent or the other arbitrator raised any objection to such request being made by the appellant FCI. This communication is in the nature of deed of submission in as much as the FCI through this communication submitted itself to the jurisdiction of arbitrators and their proceedings.

5.3 The expression 'Deed of Submission' is nowhere defined. Its meaning is required to be understood in the context in which it is used. In arbitration proceedings, the document through which a party submits itself to the jurisdiction

of the arbitration proceedings, is to be understood as a 'Deed of Submission'.

5.4 The appellants FCI submits that even in the course of hearing of arbitration proceedings, the FCI reiterated its request before the arbitrators. The arbitrators noted the request and also referred to the request made by FCI earlier vide their communication dated 24.2.1986. However, the arbitrators refused to give reasons in the award without assigning any reasons.

5.5 A careful perusal of the para 7 of the award will disclose following facts:

(a) Both the arbitrators confirmed that the request made by FCI dtd. 24.2.1986 was made to both the arbitrators. The arbitrators noted in above referred para 7 that the FCI has renewed its request 'that we give a reasoned Award'. This implies that both the arbitrators understood clearly that the request made by appellant-FCI vide communication dated 24.2.1986 was to both the arbitrators. Therefore, the arbitrators while giving the award have used the expression 'renewed the request'.

(b) The arbitrators state that they have considered the request of FCI which is renewed and they find no need to give a reasoned award. In other words, the factum of request being made to both the arbitrators both at the initial stage and as renewed in the course of hearing is not disputed.

(c) Despite the above situation, the arbitrators do not give a reasoned award.

5.6 The appellant FCI submits that from the above circumstances, it is clear that though it was very categorically requested to give reasons, the arbitrators have refused to give any reasons while giving the impugned award. As submitted hereinabove, the Hon'ble Apex Court in terms has held that if in the deed of submission request is made to give a reasoned award, the arbitrators are bound to give reasons in the award.

5.7 The learned advocate for the appellants has relied upon various documents in this behalf which I have referred. He submitted that the arbitrator should give reasons in its award and in support of the same he has relied on the judgment of the Apex Court in the case of Union of India vs. M.L. Capoor and others reported in AIR 1974 SC 87 and also the Constitution Bench judgment of the Apex Court in

the case of S.N.Mukherjee v. Union of India reported in AIR 1990 SC 1984.

5.8 Mr.Pahwa, learned advocate has stated that when the New Arbitration Act i.e.Arbitration and Conciliation Act, 1966, interpreted. One of the statement of objects and reasons was that the legislature decided that arbitrator should give reasons for its award and in view of the said object and reasons now the New Act, sec.31 provides form and contents of arbitral award. sec.31(3) provides as under:

'The arbitral award shall state the reasons upon which it is based, unless -

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.'

5.9 He submitted that in view of the aforesaid section of the Arbitration Act and in view of the judgment of the Apex Court in the case of T.N. Electricity Board vs. Bridge Tunnel Constructions and others reported in (1997) 4 SCC 121 after referring to the judgment of the Apex Court in Raipur's case (supra) and also sec. 31(3) of the Arbitration Act, in para 33 & 34 the Hon'ble Supreme Court observed as under:

'para.33 Parliament has expressed the legislative judgment that the award shall state reasons upon which it is based unless the parties have agreed otherwise or the award is covered on agreed terms under Section 30 of the new Act.'

'para.34 Thus, the law on the award, as governed by the new Act, is the other way about the pre-existing law; it mandates that the award should state the reasons upon which it is based. In other words, unless (a) the parties have agreed that no reasons are to be given or (b) the award is an arbitral award on agreed terms under Section 30 of the new Act, the award should state the reasons in support of determination of the liability/non-liability. Thereby, legislature has not accepted the ratio of the Constitution Bench in the Chokhamal Contractors case that the award, being in the private law field, need not be a speaking award even where the award relates to the contract of private parties or between person and the Government or public sector undertakings. The principles is the same, namely the award is governed by Section 31(3).'

5.10 Learned counsel for the appellants further submitted that it is no doubt true that as regards judicial and quasi-judicial there are judgments of the Supreme Court where the Supreme Court decided to give reasons in respect of the conclusion and it is a great principle of administrative law. As regards arbitration proceedings, it is no doubt true that the Supreme Court has opined that arbitrator need not give reasons. He submitted that sec.31 of the Arbitration Act throw much light on this aspect, only on two eventualities the arbitrator did not give reasons, and though this case is governed, now the old law the principle of new act should be read it in this case. He further submitted that though arbitrator is a private proceedings but when the arbitrator is in relation to a very large amount involved and also entered into a public corporation, it looses aspect that dispute is a private dispute and then public interest at large surfaces and so it is imperative that the arbitrator give reasons to that so same can be challenged before the appropriate proceedings. In view of the same, learned advocate submitted that the arbitrator must give reasons and this Court may hold that arbitrator must give reasons and non-speaking award given by the arbitrator is bad in law.

5.11 He has also relied on Russel on Arbitration, 20th Edition page 291 which reads as under:

'Reasons for the award : In order that an appeal (if it takes place) may be effective, the Court has power to order an arbitrator or umpire to give reasons for his decision in sufficient detail to enable the Court to consider any question of law arising out of the award. Where the arbitrator or umpire gives no reason for making the award, the Court must not make an order unless it is satisfied either that before the award was made, one of the parties gave notice to the arbitrator or umpire that a reasoned award would be required; or that there was some special reason why such notice was not given, or unless all the parties to the arbitration consent to the order being made.'

5.12 He has also relied upon Hon'ble & Respected C.K.Thakkar (now Chief Justice Mumbai High Court) on Administrative Law particularly Chapter on Natural Justice which starts from page 158 particularly where the learned author on page 195 stated that speaking orders or reasoned decisions means ' an order speaking

for itself'. In other words, very order must contain reasons in support of it. Giving of reasons in support of an order is considered to be the third principle of natural justice. Learned author relied on the judgment of the Supreme Court in the case of M.P.Industries vs. Union of India reported in AIR 1966 SC 671; Siemens Engineering & Mfg. Co. vs. Union of India 1976 SC 1785 and also judgment of Maneka Gandhi vs. Union of India reported in 1978 SC 597.

5.12(A) Learned counsel has also relied upon the book on Administrative Law, Sixth Edition by Dr.S.P.Sathe, on page 206, the learned author has stated like this:

'Administrative decisions should be reasoned so that the authorities reviewing them can find out whether they have been taken on the basis of relevant considerations or suffer from erroneous finding of fact or based on erroneous interpretation of the law. The requirement of a reasoned decision prevents the abuse of administrative discretion and ensures that the decision is impartial, objective and in public interest. The courts insist on the administrative authorities to give reasons for their decisions so that such decisions can be reviewed meaningfully. Reasoned decisions are described as speaking orders.'

5.12(B) The learned author (i.e. Dr.Sathe) has quoted the judgment of this Court in the case of Ratilal Bhogilal vs. State of Gujarat reported in AIR 1966 Guj 244 (page 246, 247 & 248) wherein it has been held by this Court that where the statutory provisions require reasoned decisions to be given by the administrative authorities, such provisions are regarded as mandatory and the decisions made in violation of such provisions are quashed by the superior authorities or the courts. The First Law Commission of the Indian Republic recommended that n the case of administrative decisions, provision should be made that they should be accompanied by reasons. (Re: Law Commission of India, Fourteenth Report, Volume II, p 694, Chapter 31).

5.12(C) Learned counsel for the appellants has relied upon the Book of Administrative Law by I.P.Massey (Fourth Edition) page 175 where the learned Author has observed like this:

'In India, in the absence of any particular statutory requirement, there is no general requirement for the administrative agencies to give reasons for their decisions. However, if the statute under which the agency is functioning requires reasoned decisions, the courts consider it mandatory for the agency to give reasons which should not be merely 'rubber-stamp' reasons but a brief, clear statement providing the link between the material on which certain conclusions are based and the actual conclusion.'

{Re: Gurdial Singh Fijji v. State of Punjab, (1979) 2 SCC 368 : AIR 1979 SC 1622. See also Union of India v. Mohan Lal Capoor, (1973) 2 SCC 836 : AIR 1974 SC 87}

5.12(D) The learned author (i.e. Mr.I.P.Massey) thereafter discussed the said question in relation to implied constitutional perspective, implied statutory perspective on page 180 the learned Author has observed like this:

'Thus in order to maintain and uphold the Rule of Law it is necessary that in all administrative and quasi-judicial actions the requirement of a 'reasoned decision' must be implied unless expressly excluded.'

{Re: M.P.Singh : Duty to give Reasons for Quasi-Judicial and Administrative Decisions, (1979) 21 JILI 45.}

5.13 He has further relied upon an Article written by Soli J. Sorabjee in the Book 'Democracy Human Rights and The Rule of Law' Essay in honour of of Nani Palkhivala on page 93. On page 94 the Rational for Reasoned Decision Making, the learned Author has observed as under:

'Several justifications have been urged for the need to give reasons for administrative decisions. In the first place, a duty to give reasons entails a duty to rationalise the decision. Reasons therefore help to structure the exercise of discretion, and the necessity of explaining why a decision is reached requires one to address one's mind to the relevant factors which ought to be taken into account. Secondly, furnishing reasons satisfies an important desire on the part of the affected individuals to know why a decision was reached. Basic fairness requires

that those in authority over others should tell then why they are subject to some liability or have been refused some benefit. (De Smith, Woolf and Jowell, op cit, note 4, p 459). Thirdly, rational criticism of a decision may only be made when the reasons for it are known. This subjects the administration to public scrutiny and it also provides an important basis for appeal or review. Furthermore, if reasons are assigned, they can provide guidance to others on the administrator's likely future decisions, and so deter applications which would be unsuccessful. It may also `protect the body from unjustified challenges, because those adversely affected are more likely to accept a decision if they know why it has been taken'. Above all, giving of reasons enables the courts and tribunals to effectively and meaningfully exercise their appellate or supervisory powers.'

5.13(A) The learned Author on page 105 has observed as under:

'The general trend is in favour of the `right to reasons' in administrative determinations. It is increasingly realised that it is conducive to good governance that reasons be given and that omission to do so can result in injustice. this is a salutary development. Secrecy is the main bulwark of inefficient and corrupt administration. Disclosure of reasons makes a wholesome dent in the veil of secrecy. Transparency is the hallmark of honest and efficient administration. Sunlight is a good disinfectant. The effort should be to spread the sunlight in all spheres of administration.'

5.13(B) Learned counsel for the appellants has stated that what is meant by meaning of reasons and what is its utility in this behalf. For that purpose he has relied upon a Book on Law of Arbitration & Conciliation, Edited By Mr.K.K.Venugopal, Third Edition 1999, on page 624 the learned Author has observed like this:

5.13B/1 'The literal meaning of 'reason' is a ground or motive for a belief or a course of action, a statement in justification or explanation of belief or action. It is in this sense that the award must state reasons for the amount awarded.

5.13B/2 The rationale of the requirement of reasons is that reasons assure that the arbitrator has not acted capriciously. Reasons reveal the grounds on which the

arbitrator reached the conclusion which adversely affects the interests of a party. The contractual stipulation of reasons means, as held in Poyser and Mills' Arbitration In Re, (1963) 2 QB 467, 'proper, adequate reasons'. Such reasons shall not only be intelligible but shall be a reason connected with the case which the court can see is proper. Contradictory reasons are equal to lack of reasons. (Inter-Arab Investment Guarantee Corpn. (Kuwait) v. Banque Arab et Internationale d' Investissements SA (France), (1998) 22 Yearbook Commercial Arbitration (France No.28) p.644.

5.13B/3 The literal meaning of 'reason' is a ground or motive for a belief or a course of action. It is in this sense that the award must state reasons for the amount awarded. The rationale of the requirement of reason is that reasons assure that the arbitrator has not acted capriciously. Reasons reveal the grounds on which the arbitrator reached his conclusion.The contractual stipulation of reasons means as held in Poyser and Mills' Arbitration Re (see. (1963) 2 QB 467; where reasons were required to be stated and the arbitrators give only their conclusions without explaining how they arrived at their conclusions, the award was set aside, Subhash Agarwal Agencies v. Bhilwara Synthetics Ltd. (1990) 2 Arb LR 118 Delhi.

5.13B/4 'Reasons are the links between the materials on which certain conclusions are based and the actual conclusions.'

5.14 The learned advocate submits that the appellant also begs to invite the attention of this Court to a decision of the Hon'ble Apex Court in the case of Food Corporation of India v. Jagdish Chandra Saha reported in AIR 1994 SC 219. The said decision had almost similar facts. The Hon'ble Court after considering all the earlier decision including the decision of Raipur Development Authority (supra) reported in AIR 1990 SC 1426 was pleased to remand the mater to the subordinate judge and directed him to dispose of the objections by FCI in accordance with law. This Court may be pleased to consider this judgment and give appropriate directions to the subordinate court.

SUBMISSIONS OF MR.JOSHI, L.A. for the respondents:

6. Learned advocate Mr.Joshi for the respondents has made following submissions:

(1) The dispute between the parties was referred to an arbitration as per the Charter Party Agreement. Each party appointed its own Arbitrator.

(2) The Charter Party Agreement does not provide for the Arbitrators to record any reasons while giving the award.

(3) Though at the commencement of the proceedings, a request was made by appellant in writing to the respondent No.2, a copy being marked to the respondent No.3, such request was not accepted. Despite that, the appellant participated in the arbitration proceedings. At that stage, the appellant did not even move the Court seeking a specific direction over the Arbitrators to record reasons while passing the award.

(4) If there is a clause in the contract to resolve the dispute through Arbitrators, the parties are bound by such contract and, in case one of the parties not agreeing for going to arbitration. Section 20 of the Old Act can be resorted to, in which case, the Court can give a specific direction to the party not agreeing for arbitration. The learned counsel submitted that the arbitration proceedings are only proceedings where the parties have to agree while going for arbitration, during arbitration and at the conclusion of arbitration for methodology and modality of deciding their matter.

(5) In the present case, the respondent No.1 has never agreed or given consent directly or indirectly, nor even given any impression to the appellant that the respondent No.1 is agreeable for asking for recording reasons from the Arbitrators.

(6) The ground that, because Food Corporation of India - public sector undertaking is a 'State', the Arbitrators had to give reasons, has no logic or substance. The Food Corporation of India is a commercial establishment and is earning out of the contact of the present nature. The Food Corporation of India has not entered into the contract in question with the respondent No.1 as a 'State' for doing the State' function, but it is a clear case of contract where the Food Corporation of India was

to earn out of the dealing in question. The State cannot ask for any privilege treatment in the proceedings before the Arbitrator and thereafter before the Court of law.

(7) The aforesaid ground which has been raised before the trial court has been duly replied to by the present respondent No.1. The learned Judge has rightly not considered the same.

(8) In reply to the application filed by the appellant before the learned judge, the respondent No.1 has not only filed written reply and rejoinder, but has also given written submissions. That may also be considered because in that written reply and submission, it has been specifically contended that no ground raised against the award is maintainable and justiciable under Section 30 of the Arbitration Act, 1940.

(9) Any ground vaguely or otherwise raised against the award can now not be allowed to be examined de-nova by remanding the matter back after about 13 years of matter remaining pending before State Government for final decision.

6.1 The Hon'ble Supreme Court in the judgment of Raipur Development Authority vs.M/s.Chokhamal Contractors reported in AIR 1990 SC 1426 has specifically observed in paragraph 33 that, 'parties have to agree for recording reasons and such request can be made at the commencement or even while making submissions.' 6.2 What is important is that there cannot be any unilateral request for recording reasons.

6.3 In the aforesaid decision it has also laid down by the Hon'ble Supreme Court that since award is being given in private law field, it need not be a speaking award. The Government or Government Corporation entering into a contract in private law field cannot turn around and say that because it is Government, the Arbitrator should ignore the provisions of law, and unilaterally ask for the reasons on that ground.

6.4 Learned counsel has relied upon the judgment of Raipur's (case) which was relied by the learned advocate for the appellant FCI, and stated that in view of the

Constitution Bench judgment particularly where the Constitution Bench held that arbitrator should not give reasons. The non giving reasons by the arbitrator is perfectly legal and in consonance with the law laid down by the Supreme Court. He, therefore, submitted that this Court may not interfere with the award passed by the arbitrator. He has relied on the judgment of the Apex Court in the case of Food Corporation of India and another vs. Great Eastern Shipping Co. Ltd. reported in AIR 1988 SC 1198 para 4 on page 1199.

'In both the appeals similar claims have been made. It appears, however, that there is a specific finding made by the learned single Judge that the agreement was signed at Bombay which was affirmed by the Division Bench. We find no material to impeach this finding. It was next contended as it has been contended before the Division Bench that there was a mandate given to the arbitrators to state reasons for the award but it was not complied with. It is true that the appellants had written a letter to their arbitrator stating that he should record reasons for the award. Copies of this letter were also sent to the arbitrator appointed by the respondents. There was, therefore, no mandate given by both parties to the arbitration agreement to both arbitrators to state reasons. The arbitrators could not act on the mandate of one of the parties. This contention of the appellants cannot be accepted.

6.4(A) In that judgment ultimately the arbitrator did not give reasons and the arbitrator awarded a lump sum amount. The Apex Court observed that the reasons are not far to seek. It is really an accounting of the rival claims of the parties. Ultimately in para 5 the Court held that there is no legal misconduct as such in not giving reasons and ultimately the Apex Court held that the High Court was right in dismissing the objections.

6.5 The learned counsel has relied upon the judgment of the Apex Court in the case of Bharat Coking Coal Ltd. v. Annapurna Construction reported in (2003) 8 SCC 154 has been referred to in paragraph 36 and it is recorded as under:

(a) 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.

(b) It is not open to the Court to admit to probe the mental process by which the Arbitrator has reached his conclusion where it is not disclosed by the terms of the award.

xxx xxxx xxx(e) in case of a non-speaking award, the jurisdiction of the court is limited. The award can be set aside if the arbitrator acts beyond his jurisdiction.

(f) To find out whether the arbitrator has travelled beyond his jurisdiction, it would be necessary to consider the agreement between the parties containing the arbitration clause. The arbitrator acting beyond his jurisdiction is a different ground from the error apparent on the face of the award.

6.6 The learned counsel has also relied on the another decision of the Apex Court reported in (2003) 8 SCC 593 in the case of Pure Helium India (P.) Ltd. vs. Oil & Natural Gas Commission. The Supreme Court has referred number of cases and thereafter in para 41 on page 611 the Court has held that the principle of law laid down in the earlier cases leave no manner of doubt that jurisdiction of the court in interfering with a non-speaking award is limited.

6.7 It is respectfully submitted that the Hon'ble Supreme Court in the case of Ashwinkumar K.Patel v. Upendra J.Patel and others reported in AIR 1999 SC 1125 has deprecated the practice of remanding the matter since it would result into hardship.

6.8 Mr.Joshi, learned advocate has relied on the judgment of the Apex Court in the case of M/s. Build India Construction System vs. Union of India reported in AIR 2002 SC 2437. In that case the Supreme Court considered the judgment of Food Corporation of India vs. Jagdish Chandra Saha reported in 1995 (Supp) 4 SCC 521 and decline to remand the matter before the court below. He stated that this is not a case where this Court may remand the matter.

6.9 Learned counsel has further stated that the grounds raised against validity of the award, as stated above, are not justiciable under Section 30 of the Act. Even otherwise, from the record, it seems that concentration of the party was only to the point as to whether the Arbitrators were, though there is no such term in the

contract, still bound to give reasons. Therefore, the Court has given a valid decision after having considered the arguments of the parties. The matter cannot be remanded back to the original court because the grounds raised in the application do not fall within the scope of powers of the Court under sec.30.

6.10 It may be appreciated that the matter has been remaining pending for a long time. The charter party agreement was entered into by the parties on 16.2.1983 and the award was passed on 7.6.1989. The same was produced before the Court in Civil Misc.Appeal No.111 of 1989 and the aforesaid was decided on 20.12.1990. Thereafter, the present appeal has been admitted by this Court.

6.11 Learned counsel has further stated that the Food Corporation of India, who claims to be a 'State', has at the very late stage requested for remand of the matter. He further stated that the present respondent No.1 had withdrawn the amount deposited by the appellant on giving a bank guarantee. The respondent No.1 had to pay huge amount as interest to the bank for giving such bank guarantee for a period of 12 to 13 years.

CONCLUSION

7. I have considered Clause 51 of the agreement which provide for arbitration. I have also considered the letter addressed by FCI dated 24th February, 1986, wherein FCI decided to appoint arbitrator staying in Mumbai as its arbitrator for the dispute raised by the opponent No.1 Shipping Company in connection with the goods carried by the ships for Charter party agreement. The FCI by letter of appointment directed opponent No.2 to adjudicate the dispute and to publish a speaking order. Though the copy of the said letter was marked, to the shipping company as well as other arbitrators, there is nothing on the record to show that both the arbitrators have agreed that they should give reasons in support of the award. There is no separate clause in this connection.

7.1 It may be noted that when FCI filed a statement of claim dated 27.2.86 before the arbitrator, the said claim did not state that arbitrator may give reasons in support of his award. However, it may be noted that when arbitrator decided to give award, at that time the FCI requested and renewed the request to the

arbitrator to give reasons. However, both the arbitrators considered this request but find no need to give reasons in the award.

7.2 In light of this fact, I have considered the judgment of the Apex Court in the case of Raipur Development Authority (supra) where the Apex Court has held that the award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. In this case neither arbitration agreement nor deed of submissions requires the arbitrator to give reasons. It is no doubt true that FCI insisted upon reasons being given by their arbitrator. However, these two arbitrators ultimately did not agree to give reasons. In view of the same, the arbitrators are not under an obligation to give reasons particularly there is no mention about the same in arbitration agreement or deed of submissions.

7.2(A) In the Arbitration Act of 1940, no provisions regarding arbitrator giving reasons for the award was made. It may be noted that the Apex Court in the case of Indian Oil Corporation v. Indian Carbon Ltd. reported in AIR 1988 SC 1340 observed that it is one thing to say that reasons should be stated and another thing to state that a detailed judgment be given in support of an award. Even if it be held that it is obligatory to state the reasons, it is not obligatory to give a detailed judgment. (Re. para 8 on page 1343 which also arose under the provisions of Old Act).However, the Constitution Bench of the Supreme Court in Raipur Development Authority's case (supra) held that arbitrator was not obliged to give reasons for his award except where arbitration agreement or deed of submission requires him to give reasons. This decision of the Constitution Bench of the Supreme Court set at rest the controversy and held that arbitrator need not give reasons in support of his award. In view of the same, the arbitrators are not under an obligation to give reasons particularly there is no mention about same in arbitration agreement or deed of submission. This judgment of Supreme Court applies in this case on all counts. I therefore cannot accept the submission of the learned counsel for the appellants in this behalf.

8. Over and above the aforesaid judgment of the Apex Court and facts and circumstances of the case, learned counsel for the respondent has relied upon judgment of Food Corporation of India vs. Great Eastern Shipping Co. (supra). It may be noted that the parties before this Court were the same parties before the Apex Court and the dispute was also identical. However, only on the identical letter of FCI, the Apex Court observed that there is no mandate given to the arbitrators to state reasons for the award. The arbitrators could not act on the mandate of one of the party, and in view of the same, the Apex Court in identical facts and circumstances of the case rejected the contention of the FCI. In my view, this judgment is also squarely applies to the facts of the case particularly both the parties are same which were before the Apex Court.

8.1 I have also considered the principle of administrative law wherein duty to give reasons is one of the principle of natural justice. In support of the said contention, learned advocate for the appellants has relied upon the commentary on administrative law by C.K.Thakkar, Dr.S.P.Sathe and Mr.I.P.Massey and also article of Soli Sorabjee. Though I see considerable force in the submission of the learned advocate for the appellants, however it will not be possible for me to accept this contention on the ground that in para 35 of Raipur Development Authority's case (supra) on page 1444 the Supreme Court has also considered this aspect where after considering the development of administrative law the Supreme Court has negatived the contention of that as far as law of arbitration is concerned it is different from judicial and quasi-judicial body and the Supreme Court has held that it has to be borne in mind that 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. In view of this observations, I am not able to accept the contention of the learned advocate for the appellants that the principle of natural justice i.e. duty to give reasons to be extended in the realm of arbitration law.

9. It may be noted that the appellants had put up before the arbitrator a claim of Rs.2,71,295.31/- in respect of damage of cargo delivered to the appellant. The appellant had put up before arbitrator a counter claim of Rs.32,78,514.72/-

comprising of various items. The arbitrator by a non-speaking award dated 7.6.89 passed an award of Rs.19,58,598.79 against the appellant. Learned counsel for the appellants stated that in view of this there are clear infirmities in the award of the arbitrator and this Court should set aside the non-speaking award of the arbitrator on the ground that the arbitrator has not applied its mind. It may be noted that, in a non-speaking award, this Court has very limited jurisdiction to set aside the same in view of the judgment of the Apex Court in the case of Pure Helium India (P.) Ltd.(supra) and also Annapurna Construction's case (supra) where the Apex Court has held that, in a non-speaking award the court has very limited jurisdiction in interfering with the said award. The Apex Court has held that 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. In view of the same, I cannot accept the submissions of the learned advocate for the appellants.

10. Alternatively, learned counsel for the appellants submitted that this Court may quash and set aside the award and remand the matter to the trial court or to the arbitrator. It may be noted that, in this case, I am concerned with the legality and validity of the award dated 7.6.89 passed by the arbitrator, the same award was made rule of the court by the trial court on 20.12.90. The said judgment was challenged before this Court by way of appeal on 29th April, 1991, and today in 2004 I am hearing and deciding the said appeal. In view of this peculiar facts and circumstances of the case, and in view of the judgment of the Apex Court in the case of M/s.Build India Construction System (supra) as well as in the case of Ashwin Patel (supra) where the Hon'ble Supreme Court deprecated the practice for remanding the matter since it would result into great hardship to the parties, in my view, this is a case where this Court may not remand the matter in view of this peculiar facts and circumstances of the case and, therefore, I cannot accept the contention of the learned advocate for the appellants that the matter may be remanded in this behalf.

11. In view of this, the appeal is dismissed. The judgment and decree of the trial court is confirmed. The award passed by the arbitrator is also confirmed to that extent. Rule is discharged with no order as to costs.

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