

Bapi Engineering and Co. Vs. State of West Bengal

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SooperKanoon Citation : sooperkanoon.com/856324

Court : Kolkata

Decided On : Jun-17-1982

Reported in : AIR1983Cal212

Judge : Ramendra Mohan Datta and ;C.K. Banerji, JJ.

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

Appeal No. : A.F.O.O. No. 12 of 1979

Appellant : Bapi Engineering and Co.

Respondent : State of West Bengal

Advocate for Def. : Prabir Mazumdar and ;Partha Sarathi Bose, Adv.

Advocate for Pet/Ap. : Hirak Mitter and ;Shanta Ramchand, Adv.

Disposition : Appeal dismissed

Judgement :

Ramendra Mohan Datta, J.

1. This appeal arises from the judgment and order of Sabyasachi Mukharji, J. dated April 3, 1978. His Lordship dismissed the petitioner-appellant's application for setting aside the award on the ground of legal misconduct.

2. The learned Judge considered the following points and was of the view that in respect of the claim for interest, the award did not show that the claim for interest was not taken into account by the arbitrator in his award. The arbitrator in his award had directed that the State of West Bengal represented by the Executive Engineer, Hooghly (Agri-Irrigation) Division was to pay to the claimant, M/s. Bapi Engineering & Co. in total against all the items of claim a sum of Rs. 33,000/- forthwith. According to the learned Judge, there was no proposition in the award that the arbitrator had included within the award the claim for interest. In any event, the arbitrator was not bound, to allow interest. The learned Judge was of the opinion that in the facts of the particular case such interest was not pressed.

3. The second point that was urged before the Court below on behalf of the appellant-petitioner was that certain documents had been called for from the Union of India, but the same were not produced and that being the position, an adverse inference should have been drawn for non-production thereof. Such documents, so called for, were in respect of awards in other matters to show inter alia, that in other cases Government acted on the basis of a particular circular relating to some rise in rates. Such documents were not filed before the arbitrators. If in these circumstances the arbitrator thought fit not to rely on or insist on the production of those documents and if that was the position, the arbitrator could not be held to be guilty of any legal misconduct

4. The learned Judge was of the view that non-production of or non-reliance on the said documents could not be obligatory on the arbitrator to draw adverse inference. Accordingly, after considering the said points the learned Judge dismissed the said application.

5. Before us Mr. Hiralal Mitter appearing on behalf of the appellant has urged that the arbitrator should have specifically dealt with and answered separately the respective claims in respect whereof different sums were to be awarded in favour of the claimant. The nature of the claim was such that they were to be specifically considered and answered and different sums should have been awarded instead of a lump sum amount of Rs. 33,000/- as has been purported to be done. This is a case, according to Mr. Mitter, which by its very nature could not be decided just by

arriving at a particular lump sum figure. Various items are there and the arbitrator was bound to arrive at his decision after taking into consideration each and every item of such claim.

6. In our opinion, this argument cannot stand. The arbitrator is not bound to make any such separate or distinct finding in respect of each such claim unless he was specifically asked by the order of reference or by the agreement of the parties to proceed in such manner and to answer them specifically.

7. The Supreme Court has laid down the law on the point in the case of Sm. Santa Sila Devi v. Dhirendra Nath Sen, reported in : [1964]3SCR410 the Supreme Court observed as follows:

'Besides it is obvious that unless the reference to arbitration specifically so requires, the arbitrator is not bound to deal with each claim or matter separately, but can deliver a consolidated award. The legal position is clear that unless so specifically required, an award need not formally express the decision of the arbitrator on each matter of difference.'

8. Various case laws were considered and discussed. I had an opportunity to consider such a point and deliver my judgment in the case of Union of India v. National Builders reported in : AIR1975 Cal332 There also similar question arose. After reviewing the case law as decided by the Supreme Court and the other Courts it was held that the arbitrator did not exceed his jurisdiction in making the awards and on that basis the application for setting aside the awards was dismissed by me. It is not necessary to deal with the various cases cited on the point and it appears to us that in view of the pronouncement of the Supreme Court the law is now settled and accordingly we 'hold that there is hardly any merit in this appeal and we dismiss the appeal with costs.

C.K. Banerji, J.

9. I agree.