

Union of India Vs. S. Sarkar

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Court : Kolkata

Decided On : Jun-17-1998

Reported in : (1998)2CALLT411(HC),1998(2)CHN524

Judge : Satyabrata Sinha and;Ronojit Kumar Mitra, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 30 and 33;

Appeal No. : Civil Appellate Jurisdiction F.M.A. No. 1230 of 1997 with C.O.T. No. 2186 of 1997

Appellant : Union of India

Respondent : S. Sarkar

Advocate for Def. : Mr. Samar Banerjee and ;Mr. Malay Das, Advs.

Advocate for Pet/Ap. : Mr. Tapas Hazra, Adv.

Judgement :

S.B. Sinha, J.

1.This appeal is directed against a Judgment and order dated 30th January, 1996 passed by Shri H. Singh, the learned Assistant District Judge, Alipore in Miscellaneous Case No.8 of 1994, whereby and whereunder the said learned court dismissed an objection filed by the appellant under section 30 of the

[Arbitration Act, 1940](#) and passed a decree in terms of the Award. A cross objection to the said decree has been filed on behalf of the respondents on the ground that the learned trial judge ought to have granted future interest. The fact of the matter lies in a very narrow compass.

2. The parties entered into an agreement for construction of hostel and technical building at Singharsi. Dispute and difference have arisen between the parties and in terms of the Arbitration Clause contained in the said contract, the same were referred to the Arbitrator. The Arbitrator made an Award on 31st March, 1993. The appellant herein filed an objection under section 30 read with section 33 of the Arbitration Act for setting aside the said Award, whereas the respondent herein filed an application on 7.8.93 for pronouncing a judgment in terms thereof. Before the learned trial Judge, the appellant took a number of objections which are as follows :-

'(a) that the Arbitrator misconducted himself in respect of claim Nos. 1 and 2 while awarding the amount

(b) that the Arbitrator ordered duplicate payments while setting the claim under item Nos. 3 and 6 in the award:

(c) that the Arbitrator while setting the claim No. 7 allowed duplicate payment jeopardising national interest;

(d) that the arbitrator committed Judicial misconduct in awarding the interest from the date of award till the date of realisation of the amount;

(e) that the sole Arbitrator committed Judicial misconduct by publishing the award without considering the letter dated 31.3.93 sent by the Union of India;

(f) that the arbitrator by allowing negligible amount in favour of Union of India did not give due weightage to the counter claim filed by the Union of India.'

3. The learned trial Judge upon taking into consideration the rival contentions of the parties formulated two questions for his determination which are in the following terms :

1. Are there any grounds to set aside the award submitted by the sole arbitrator as claimed by the Union of India?

3. Should a decree be passed in terms of the award received by the court?

Upon consideration of the materials on records, the learned trial Judge held that the Award dated 31st March, 1993 being a non-speaking one, grounds set forth in the objection filed by the appellant cannot be gone into and as such dismissed the said objection.

4. It is now a well-settled principle of law that when parties choose their own adjudicator by taking recourse to the arbitration agreement entered into by them, such award shall be final and binding on the parties subject of course to any objection in terms of sections 30 and 33 of the Arbitration Act. From bare perusal of the grounds taken in the appellants' objection under sections 30 and 33 of the Arbitration Act, it does not appear that any real objection has been taken as regards inherent lack of Jurisdiction on the part of the arbitrator or that arbitrator had misconducted himself and the proceedings. Jurisdiction of a court hearing an objection under sections 30 and 33 of the Arbitration Act is absolutely a limited one. It cannot go into the merit of the matter nor can it consider the contentions raised before the arbitrator inasmuch as an arbitrator is the final arbiter both on question of fact as well as on the question of law connected therewith. Even in respect of the question of law referred to by the parties before the Arbitrator, opinion expressed by the Arbitrator cannot be interfered with unless his award contains an error manifest on the face of the record. Even if two opinions are possible the court shall not ordinarily interfere with an award of the Arbitrator. This principle of law is now wellsettled and in fact has not been disputed before us by the learned counsel for the appellant. The aforementioned principle of law emerged from the decisions of the apex court reported in AIR 1987 SC 890. 1992(4) SCC 247 and : [1991]2SCR924 .

5. Mr. Hazra, learned counsel appearing on behalf of the appellant, limited his submission on two questions. The learned counsel submitted that the learned Arbitrator could not have given one award in respect of both claims No. 1 and 2. It was secondly contended that the measurement book maintained by the appellant

was an important part of the records and the same being vital document it is compulsory on the part of the Arbitrator to refer to the same. Mr. Banerjee, learned counsel appearing on behalf of the claimant-respondent on the other hand, supported the award under appeal.

6. The question as to whether in respect of more than one claim a lump sum award can be given is no longer *res integra*. It is now well settled principle of law that the Arbitrator has the requisite Jurisdiction to grant lump sum award and it is not necessary for him to award specific sum in respect of each of the claim made by the claimant. So far as the first contention of Mr. Hazra is concerned it has no force. So far as the second contention raised before us is concerned, we may record that the award being a non-speaking one. It is not possible for this court to consider as to whether the Arbitrator in fact has taken into consideration the measurement book or not. It is neither in doubt nor in dispute that the Arbitrator is entitled to pass an unreasoned award. Where the parties agreed to refer the dispute and difference to a private adjudicator, assignment of reason in support of his decision is not a pre-requisite neither on principle nor in law. It is now well known that even in such case 'principles of duty to assign reasons' have no application inasmuch as the said principle raises two basic pillar namely, (1) nobody shall be condemned unheard and (2) nobody shall be Judged by his own case. The third pillar of natural justice meaning thereby assigning of reason is Judgment of law although it is now considered to be integral part of the said principle. It is not the case that the parties deliberately withheld measurement book. Even in such case, party to an arbitration agreement can file an application before the Arbitrator for directing the other party to produce the same. No such case has been made out in the instant case. If the measurement book had been filed, a presumption will be raised that the Arbitrator had taken into consideration all the materials produced before him by the parties and arrived at a decision. In a case where the award is non-speaking one, the court cannot probe into the mind of the Arbitrator nor there exists in any such procedure so as to ascertain as to whether in fact the Arbitrator has taken into consideration measurement book or any other vital document or not. Only when record in no uncertain term clearly show that the document is vital and the Arbitrator had not taken into consideration, the same would amount to mis-conduct it is also not the case of the appellant that

the Award was a perverse one.

7. For the reasons aforementioned, we agree with the findings of the learned Arbitrator. The objection raised by the appellant had no merit. So far as the cross-objection filed by the respondent is concerned, we agree with Mr. Banerjee, learned counsel that from the date of passing Award, the Arbitrator should have granted future interest. We, therefore, in modification of the award passed by the Arbitrator, direct that the awarded amount shall carry interest at the rate of 6% per annum from the date of passing of decree till realisation. It appears that at the time of admission of this appeal, by an order dated 10.6.97, a Division Bench of this court gave the following directions :

'(i) the appellants-petitioners shall deposit the awarded amount of Rs. 6,11,000/- (Rupees Six Lacs Eleven Thousand only) within two months from date with the Registrar, Appellate Side of this Court;

(ii) On such deposit having been made, the entire amount would be invested in some high-earning interest deposit scheme of a Nationalised Bank renewable year to year by the Registrar, appellate side; and

(iii) there will be no order of stay of the decretal costs.'

8. It is stated that the appellant pursuant to the said order, has deposited the said amount. As admittedly the appellant has not been able to withdraw the said amount, interest in terms of the award as modified by us shall continue to run.

9. The appeal is dismissed accordingly. The cross-objection and the application filed by the parties are thus disposed of. The Registrar, Appellate Side is hereby directed to pay the said amount in favour of the respondent forthwith.

Xerox certified copy of this Judgment, if applied for urgently, shall be given on priority basis.

R.K. Mitra, J.

10. I agree

11. Appeal dismissed

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