

Ispat Engineering And Foundry Works, ... vs Steel Authority Of India Ltd. B.S. City, ... on 25 July, 2001

Equivalent citations: AIR 2001 SUPREME COURT 2516, 2001 (6) SCC 347, 2001 AIR SCW 2723, 2001 AIR - JHAR. H. C. R. 222, 2001 (7) SRJ 305, (2001) 6 JT 1 (SC), 2001 (2) ARBI LR 650, 2001 CORLA(BL SUPP) 129 SC, 2001 (4) COM LJ 181 SC, 2001 (4) SCALE 534, 2001 (4) LRI 331, 2001 (2) ALL CJ 1537, 2001 (6) JT 1, (2001) 2 ARBILR 650, (2001) 3 MAD LJ 145, (2002) 2 MAD LW 7, (2001) 4 SCJ 313, (2001) 5 SUPREME 326, (2001) 4 RECCIVR 288, (2001) 4 ICC 26, (2001) 4 SCALE 534, (2001) WLC(SC)CVL 615, (2001) 5 ANDH LT 9, (2001) 3 ALL WC 2385, (2001) 3 BLJ 634, (2001) 4 CIVLJ 103

Author: Umesh C. Banerjee

Bench: Umesh C. Banerjee

CASE NO.:

Appeal (civil) 4503 of 2001

PETITIONER:

ISPAT ENGINEERING AND FOUNDRY WORKS, B.S. CITY, BOKARO

RESPONDENT:

STEEL AUTHORITY OF INDIA LTD. B.S. CITY, BOKARO

DATE OF JUDGMENT: 25/07/2001

BENCH:

G.B. PATTANAIK & UMESH C. BANERJEE

JUDGMENT:

JUDGMENT 2001 (3) SCR 1190 The Judgment of the Court was delivered by BANERJEE, J. Leave granted.

The appeal pertains to the issue of interference of Court under Section 30 and 33 of the repealed Arbitration Act, 1940. Undisputably, in the contextual facts, the award in question is a non-speaking award of a former Judge of the High Court at Patna who acted as an Umpire on appointment by the Court. The award was made a rule of court by a judgment dated.29.4.1995 rejecting the petition under Sections 30 and 33 of the Act of 1940. The High Court in appeal however set aside the award recording therein that the award is Otherwise invalid in terms of clause (a) of Section 30 of the Act of 1940 and hence the petition for special leave to appeal to this Court.

Section 30 of the Act of 1940 was rather restrictive in its operation and the use of the expression "shall" in the main body of the Section made it mandatory to the Court that the award of an Arbitrator shall not be set aside excepting for the reasons as mentioned therein namely :

- (a) Arbitrator or Umpire has misconducted himself;
- (b) The award has been made or passed after the supersession of the Arbitration or the proceedings becoming invalid;
- (c) Award has been improperly procured or otherwise invalid.

These three specific provisions thus can only be taken recourse to in the matter of setting aside of award and the law is so well settled on this score, that we also do not feel it expedient to dilate on the issue excepting recording that since the parties chose their own arbitrators to adjudicate the disputes between them, the parties cannot object to such an adjudication or decision either upon the law or on the facts except however as envisaged in terms of Section 30 of the Act of 1940, since repealed and as noticed above.

Needless to record that there exists a long catena of cases through which the law seems to be rather well settled that the re-appraisal of evidence by the Court is not permissible. This Court in one of its latest decisions (*Arosan Enterprises Ltd. v. Union of India and Anr.*, [1999] 9 SCC 449 upon consideration of decision in *Champsey Bhara & Co. v. Jivraj Balloo Spg, & Wvg Co Ltd.*, AIR (1923) PC 66, 1923 AC 480); *Union of India V. Bungo Steel furniture (P)Ltd*, AIR (1967) SC 1032, [1967] 1 SCR 324; *N. Chellappan v. Secy, Kerala SEB and Anr.*, [1975] 1 SCC 289; *Ms. Sudarsan Trading Co: v. Government of Kerala and Anr.*, [1989] 2 SCC 38 and *State of Rajasthan v. Puri Cdnstruction Co. Ltd. and Anr.* [1994] 6 SCC 485 as also in *Olympus Superstructures (P) Ltd v. Meena Vijay Kkeian & Ors.*, [1999] 5 SCC 651 has stated that re-appraisal of evidence by the Court is not permissible and as a matter of fact, exercise of power to re-appraise the evidence is unknown to a proceeding under Section 30 of the Arbitration Act. This Court in *Arosan Enterprises (supra)* categorically stated that in the event of there being no reason in the award, question of interference of the Court would not arise at all. In the event however, there are reasons, interference would still be not available unless of vourse, there exist a total perversity in the award or the judgment is based on a wrong proposition of law; This Court went on to record that in the event however, two views are possible on question of law, the court would not be justified in interfering with the award of the Arbitrator if the view taken recourse to is a possible view. The observations of Lord Dunedin in *Champsey Bhard (supra)* stands accepted and adopted by this Court in *Bungo Steel Furniture (supra)* to the effect that the Court had no jurisdiction to investigate into the merits of the case or to examine the documentary and oral evidence in the record for the purposes of finding out whether or nor the Arbitrator has committed an error of law. The Court as a matter of fact, cannot substitute its own evaluation and come to the conclusion that the Arbitrator had acted contrary to the bargain between the parties.

Be it noted that the award of a Arbitrator is ordinarily final and conclusive unless a contra intention is disclosed in the agreement itself. This Court in *Ralliaram Union of India v. AL. Railiaram*, [1964] 3 SCR 164 stated that right or wrong the decision of the Arbitrator is binding excepting in the case of

error of law on the face of it or in the event the award itself or in a document actually incorporated in it, there is found some legal proposition which stands out to be the basis of the award and which is erroneous. Ralliararam 's decision expressly records that the civil courts cannot exercise apparent power over the decision of an arbitrator, wrong or right irrespective (excepting however the situation noticed above).

In Jivraj Bhai U.S. and others v.Chintaman Rao Balaji & Ors., [1964] 5 SCR 480 it has also been laid down that it is not open to court to speculate where no reasons are given by the Arbitrator as to what impelled the Arbitrator to arrive at his conclusion and it is not open to the court to attempt to assess the mental process by which the Arbitrator has reached his conclusion where it is not disclosed by the terms of the award. Law thus seems to be well-settled on the score of exercise of jurisdiction of law courts as regards interference with an award of Arbitrator or Umpire as the case may be.

Turning attention on to the factual matrix of the matter in issue, the records depict that by reason of certain disputes, the appellant herein invoked the arbitration clause and appointed an Arbitrator together with a request calling upon the respondent herein to appoint its Arbitrator. The two Arbitrators entered into the reference and disagreed as a result of which the same was referred to the umpire but the umpire gave an ex-parte award to the tune of Rs. 2,76,000. The defendant, respondent herein challenged the award before the Civil Court which was set aside being ex parte and the matter was remitted back to the Umpire who, however, resigned because of his ill health and subsequently, on the request of the parties, the Civil Court by an order dated 7.8.1992 in Misc Case No 5 of 1991 appointed an Umpire in place and stead of the earlier Umpire. The record further depicts that the Umpire on 25.4.1994 did pass the award which inter alia records the following:

"I, therefore, do hereby award and determine that the respondents shall pay to the claimants a sum of Rs. 2,44,000 (Rs, two lakh forty four thousand only)".

Subsequently, the factual score depicts that steps were taken before the Civil Court for the award to be made to be a rule of court and the learned Subordinate Judge, 1st at chas, Bokaro by an order dated 29.4.95 made the award a rule of court in the following terms.

"that the objection petition dated 3.6.94 is hereby rejected and the Award is hereby made a rule of the court on contest with cost. Further it is also ordered that me plaintiff/claimant is also entitled for three categories of interest i.e. for pre-reference period starting from 6.9.85 to 23.9.87, pendente lite interest starting from 24.9.87 to 29.4.95 and future till actual payment is made against the principal sum of Rs 2,44,000 at the rate of prevailing in the Nationalised Bank from time to time."

On appeal however, the High Court set aside the award being an 'otherwise invalid' award in terms of Section 30(e) of the Act of 1940. In paragraph 11 of the judgment impugned before this Court, the High Court stated as below:

"On a thoughtful consideration of the matter, I reach the conclusion that it was not possible for the umpire in the given situation to award any amount at all to the plaintiff. On the other hand, the defendant was undoubtedly entitled to a sum of Rs. 71,400 by way of risk purchase differential, because the plaintiff in spite of repeated extensions had failed to deliver the goods compelling the defendant to purchase the materials at a higher price from elsewhere. Learned counsel for the appellant is, therefore, right in his submission that the impugned award amounts to putting a premium on dishonesty, and rewards the plaintiff who is responsible for repeated breaches of the contract for mala fide reasons. I am, therefore; unable to uphold the award, and is fit to be set aside, being an "otherwise invalid" award in terms of Section 30(a) of the Act."

By reason of the above this Special Leave Petition has been filed wherein notices have been issued and the appeal is disposed of upon leave being granted as above, Mr. Upadhyay, learned counsel appearing in support of the Appeal rather strongly contended that the High Court in an appeal from the order of the 1st Subordinate Judge, Bokaro in making the award, the rule of court ought not to have interfered with the same, neither High Court had any authority of jurisdiction to deal with the matter as it has been so done. It is on this score that appellant herein placed strong reliance on the decision of this Court in *Arosan's case* (supra). The respondent on the other hand with however equal vehemence and zest contended upon reliance on the judgment of this Court in *State of Andhra Pradesh and Ors v. R. V. Rayamin & Ors*, [1990] 1 SCC 433 that in the matter of challenging the award there are often two very distinct and separate grounds-one being an error apparent on the face of the award and the other is that the Arbitrator has exceeded his jurisdiction : whereas in the former the court can look into the agreement and upon consideration of the agreement, the award can be set aside and in the latter, the award can be set aside on the ground that the Arbitrator has exceeded his jurisdiction and the evidence starting on the face of the award will be admitted in order to establish whether the jurisdiction had been exceeded or not since the nature of the dispute is something which has to be determined whatever might be said about it in the award by the Arbitrator, The entire submission of the respondent is based upon the judgment in *Rayanim* (supra). Unfortunately, however, the judgment of this Court in *Rayanim* (supra) has been misread and not appreciated. In no uncertain terms *Mukherjee. C.J.* stated that only in a speaking award the court can look into the reasoning of the award and it is not open to the court to probe the mental process of the Arbitrator and speculate, where no reasons are given by the Arbitrator, as to what impelled the arbitrator to arrive at his conclusion (vide paragraph 6 of the judgment at page 437 of the Report).

Next in the line of decisions relied upon by the respondent is a recent one of this Court in the case of *V.G. George v. Indian Rare Earths Ltd. & Anr.*, [1999] 3 SCC 762. Relevance of the decision on the merits of the matter in the instant appeal would be dealt with immediately hereinafter but before so doing it would be convenient to note the observations of this Court in paragraph 6 (at page 764 of the Report) wherein it has been categorically stated that the Court was concerned with clause (a) of Section 30 of the Arbitration Act which empowers the courts to set aside an award on the ground that an arbitrator or umpire has misconducted himself or the proceedings-this observation of the Court itself takes up the relevancy of the decision in the matter since presently we are concerned

with clause (c) of Section 30 of the Arbitration Act to wit: 'otherwise invalid', This is however, apart from what is noticed hereinbelow as detailed submissions have been made relying upon the judgment of this court. The recording of facts by mis Court in paragraphs 11, 12 and 13 stand out singularly singular distinguishing feature between V.G. George and the appeal under consideration before this Court presently. For convenience sake, the above noted paragraphs are set out hereinbelow.

"11 .Coming to the present appeal we find that in the impugned award the arbitrator has stated the case of the parties, the issues framed by him, his findings on each issue and the amount awarded. We may also state here that in the counter-affidavit dated 23.5.1983 Filed by the present appellant before the teamed Sub-Judge it had been clearly stated that the contract is evidenced by three integrated documents namely (i) tender dated 3.5.1979, (ii) work order dated 15.5.1979 and (iii) agreement dated 24.3.1979.

12. Out of the claims under 10 heads the arbitrator awarded amount under Claims 3 and 9 of the appellant. Out of 51 issues framed by the arbitrator. Issues 15 to 18 were in respect of Claim 3 and Issues 31 to 37 were in respect of Claim 9. We quote below Issues 15 to 18 in respect of Claim 3.

"15. Whether six acres alone out of the mining area covered by the tender form were available for mining on account of obstruction of Kudikidappukars, ex-workers of Associated Minerals Co. Ltd. and the local public as alleged by the claimant in para 14 of the State of Claim?

16. Whether it was the respondent's duty to see that the entire extent of mining area detailed in the tender form was available for mining and that the mining could be carried out without hindrance and the respondent failed to discharge its duty? OR Whether it was the claimant's responsibility to settle all problems and objections which arose in the course of mining work?

17. Whether the claimant's suffered loss as mentioned in para 14 of the State of Claim?

18, Whether the respondent is liable to make good the loss mentioned in Issue 17 and if so, to what extent?"

13v In respect of the above issues the arbitrator has given his findings which are as follows:

"15. The allegation that six acres of land alone out of the mining area covered by the tender form was available for mining is not correct. In 243 acres of land covered by the tender form put of which 92 acres belonged to the respondent, more than necessary area sufficient to mine and supply the contract quantity of 2,00,000 to 2,20,000 MT of raw sand was actually available for mining, but, on some days in April and except on one day, during the whole month of May 1980, mining of raw

sand even in the available area and supply of raw sand from mere were not possible, on some days partially and on other days wholly, on account of obstruction by kudikidappukars and the local public.

16. Claimant's right under the contract was purely personal, it did not amount to an interest in the 243 acres of land covered by the contract and he could not sue strangers in his own name in respect of that land, it was his responsibility to settle all problems and objections which arose in the course of the mining work between him and his mining workers, but not with strangers like kudikidappukars and the local public who claimed either rights in the land or rights and privileges against the respondent, and it was the respondent's duty to see that the entire extent of mining area detailed in the tender form was available or mining and mining operations could be carried on there quietly and without hindrance, and whenever complaint regarding obstruction was received the respondent tried to discharge that duty by appealing to public authorities for help, but without success.

17-18, Claimant suffered loss to the extent of Rs. 2,81,461,26 and the respondent is liable to make good that loss."

The factual narration of V.G, George 's decision (supra) as above makes it evident and thus distinguishable from the factual element of the present appeal .and we need not dilate thereon in any farther detail suffice it to record that the decision in V.G. George does not have any manner of application both by reason of the observations of this Court in paragraph 6 of the Report as noticed above, as also by reason of distinguishable factual feature, as such the decision does not lend any support to the respondent herein.

Similar is the situation pertaining to a decision of this Court in Associated Engineering Co. v. Government of Andhra Pradesh & Anr.. [1991] 4 SCC 93. The decision is clearly distinguishable since the Umpire made a speaking award with reference to claims and gave reasonings for awarding those claims. The fact situation in Associated Engineering Co. depicts that Arbitrator has not only acted arbitrarily and irrationally but he has, in fact, (Umpire in the decision) abdicated the agreement and went much beyond the scope of the agreement. This travelling outside the bounds of the contract has led this Court to come to a conclusion that the arbitrator has acted without jurisdiction. Incidentally, this Court in paragraph 24 recorded the state of law as below:

"...-.....But if he has remained inside the parameters of the contract arid has construed the provisions of the contract, bis award cannot be interfered with unless he has given reasons for the award disclosing an error apparent on the face of it"

The exposition of law thus in Associated Engineering (supra) is in no way different and as a matter of fact travels alongwith the decision noticed hereinbefore in this judgment and not de hors the same.

The Arbitrator or Umpire as the case may be, has no authority or jurisdiction to abdicate the terms of the contract or what the parties desired under the contract and not beyond the same. As a matter of fact in Associated Engineering (supra) the Umpire has, as regards the claim, directed payment of a sum of Rs, 4.25 (Rupees four and paise twenty-five) per sq. metre of napa slab lining towards escalation in the cost of napa slabs and there was, in fact, no provision in the contract allowing escalation for napa slabs and it is on this score, this Court came down heavily upon the authority of the arbitrator to direct payment of escalation charges when the agreement does not provide for the same. The decision thus in Associated Engineering (supra) also is of no assistance to the respondents herein.

Presently in the contextual facts, there is no evidence on record that the umpire has overstepped his jurisdiction or has travelled beyond the agreement and it is in this perspective that the court ought not to have entertained the objection and set aside the award as passed by the chosen forum of the parties. The High Court thus was in manifest error in entertaining the appeal and setting aside the awards. The order as passed by the High Court cannot be sustained and the law being well settled on the score should not have been misread and misapplied by the High Court.

The appeal is allowed. The order of the 1st Sub-Divisional Judge. Bokaro stands restored. There shall however be no order as to costs.