

Food Corporation Of India & Anr vs Great Eastern Shipping Co. Ltd on 28 March, 1988

Equivalent citations: 1988 AIR 1198, 1988 SCR (3) 366, AIR 1988 SUPREME COURT 1198, 1988 (3) SCC 291, (1988) 2 JT 143 (SC), (1988) 4 BOM CR 46, 1988 2 JT 143, (1988) PAT LJR 69

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:

FOOD CORPORATION OF INDIA & ANR.

Vs.

RESPONDENT:

GREAT EASTERN SHIPPING CO. LTD.

DATE OF JUDGMENT 28/03/1988

BENCH:

MUKHARJI, SABYASACHI (J)

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MUKHARJI, SABYASACHI (J)

RANGNATHAN, S.

CITATION:

1988 AIR 1198 1988 SCR (3) 366

1988 SCC (3) 291 JT 1988 (2) 143

1988 SCALE (1) 786

ACT:

Arbitration Act, 1940: Sections 2, 14, 30 and 33-
Charter Party agreement-Arbitrators-Men of commerce-Letter
written by one party to its Arbitrator to record reasons for
award-Copy to arbitrator appointed by other party-Whether
amounts to mandate from both parties to both arbitrators-
Arbitrators award lump sum amount-Whether legal misconduct.

HEADNOTE:

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A Charter Party agreement was entered into between the
appellant-Food Corporation of India, and the respondent-
Shipping Company for transportation of bulk cargo from
Australia to India. After the cargo was delivered, the

respondent Company raised disputes regarding certain items and claimed demurrage and overtime charges. As per the agreement, the disputes were referred to joint arbitration by two Arbitrators, one each appointed by each of the parties. The appellant appointed its Arbitrator with a specific condition that he should give reasons for his award, and sent a copy of this letter to the arbitrator appointed by the respondent. The award was made and duly signed by the two Arbitrators at Calcutta and Bombay respectively. The award, which was a non-speaking one and did not contain reasons for the award but directed the appellant Corporation to pay a lump sum amount to the respondent Company, was filed in the High Court of Bombay.

The High Court rejected the objection petition filed by the appellants for setting aside the award.

In the appeals, by special leave, it was contended that the High Court of Bombay had no jurisdiction to entertain the filing of the award since no cause of action arose in Bombay and that the Arbitrators had not complied with the mandate given to them to state the reasons and, therefore, the award was liable to be set aside for reasons of misconduct, irregularity and lack of competence.

Dismissing the appeals, by special leave,

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HELD: There was no mandate given by both the parties to the arbitration agreement to both the arbitrators to state reasons. The arbitrators could not act on the mandate of one of the parties. [368G]

Unreasoned award is bad. Though the recent trend is that there should be a reasoned award, and that would be in consonance with the principles of natural justice, in a case where two men of commerce entered into arbitration in respect of money claim under the Charter Party Agreement and the award has awarded a lump sum amount, the reasons are not far too seek. It is really an accounting of the rival claims of the parties. [368H, 369A-B]

Therefore, on the facts of the case, there is no legal misconduct as such in not giving reasons. [369B-C]

There is a specific finding by the Single Judge of the High Court that the agreement was signed at Bombay which was affirmed by the Division Bench. Hence the High Court had the jurisdiction to entertain the filing of the award. [368E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1500-01 of 1988.

From the Judgment and Order dated 26.10.1987 of the Bombay High Court in Appeal No. 1207 and 1206 of 1987.

Y.P. Rao for the Appellants.

H.N. Salve, Hardeep Singh and Raian Karanjawala for the Respondent.

The Judgement of the Court was delivered by SABYASACHI MUKHARJI, J. Special leave granted and the appeals are disposed of by the judgment herein.

These two appeals are directed against the judgment and order of the Division Bench of the High Court of Bombay confirming the decision of the learned single Judge dismissing the application for setting aside the award. It appears that there was a Charter Party Agreement entered into between the parties in December, 1981 signed by the representative of the President of India and the respondent Shipping Company for transportation of bulk cargo from Australia to India. Thereafter in February, 1982 the agreement was sent to the President's representative at New Delhi for signing the same. The said cargo was delivered at the port of Tuticorin and not at Calcutta. The respondent company raised disputes regarding several items and claimed an amount of Rs.9,06,854.86 as demurrage and Rs.7881.43 against over time charges. As per the said agreement, the disputes were referable to arbitration by joint arbitration of two Arbitrators one each to be appointed by each of the parties. The appellant appointed one Shri J.L. Puri as its arbitrator with a specific condition that he shall give reasons for the award. The respondent company appointed one Shri P.S. Gokhale as its arbitrator. Thereafter the award was made and the same was signed by Shri Gokhale at Bombay on 11th June, 1986 and Shri J.L. Puri at Calcutta on 18th of June, 1986.

The award did not speak. As such there is no reason apparent from the award. The award, however, directed the appellant Corporation to pay lumpsum amount of Rs.6,22,589 to the respondent company. The award was filed in the High Court of Bombay. Notice of such filing was received by the appellant Corporation at Delhi. The appellants filed objection petition before the High Court of Bombay for setting aside the award. It was contended that the High Court of Bombay had no jurisdiction to entertain the filing of the award since no cause of action arose at Bombay. The appellants contended that the award was liable to be set aside for reasons of misconduct, irregularity and lack of competence.

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. It was next contended that the arbitrators should have given reasons. Unreasoned award is bad. It is true that the recent trend is to have reasoned awards. Indeed a matter is pending in this Court on this aspect. The appointed arbitrators were men of commerce and they arrived at a consensual figure. Though the recent trend is that the award should be a reasoned

award and that would be in consonance with the principles of natural justice, in a case of this nature where two men of commerce in respect of money claim under Charter Party Agreement entered into arbitration and the award has awarded a lumpsum amount, it appears to us, that the reasons are not far to seek. It is really an accounting of the rival claims of the parties.

In that view of the matter and in the facts of this case, we find that there is no legal misconduct as such in not giving reasons. In the premises, the High Court was right in dismissing the objections. Both the appeals are disposed of accordingly. There will be no order as to costs.

N.P.V.

Appeals dismissed.