Indian Oil Corporation vs Indian Carbon Ltd on 6 April, 1988

Equivalent citations: 1988 AIR 1340, 1988 SCR (3) 426, AIR 1988 SUPREME COURT 1340, (1988) 2 JT 212 (SC), 1988 2 JT 212, 1988 (3) SCC 36

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:
INDIAN OIL CORPORATION

Vs.

RESPONDENT:
INDIAN CARBON LTD.

DATE OF JUDGMENT06/04/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1988 AIR 1340 1988 SCR (3) 426
1988 SCC (3) 36 JT 1988 (2) 212
1988 SCALE (1)965
CITATOR INFO :
RF 1989 SC 973 (9)

ACT:
Arbitration Act, 1940: Sections 30 and 33-Award of Arbitrator-Reasoned Award-What is-Arbitration clause requiring arbitrator to give reasoned award-Whether arbitrator required to give detailed reasons-Sufficiency of reasons depends on facts of the case-Court not to sit in appeal over award and review reasons.

HEADNOTE:
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In respect of sale of raw petroleum coke by petitioner to respondent there were three agreements, providing for sale, petitioner's right to shift raw petroleum coke at the risk and expense of the respondent in case of failure of Respondent to shift the same as agreed, and the Respondent's

liability to pay interest on the value of stock not uplifted.

There was default in payment and petitioner stopped supplies to respondent, filed a suit and obtained an order of attachment of stocks of raw petroleum coke, to the extent of Rs.6 crores, of the Respondent. The respondent filed an appeal as also an application for stay of the suit under Section 34 of the Arbitration Act. Meanwhile the petitioner terminated the agreement. Thereafter the respondent filed a suit and the Court passed an order for restoration of supplies.

On an appeal by the petitioner, this Court stayed the order of restoration of supplies, and recorded the compromise terms, pursuant to which all proceedings were withdrawn by the parties. The petitioner's claim were referred to an Arbitrator, who passed an interim award, according to which the petitioner was not entitled to any interest nor any shifting charges. The petitioner challenged the said award, when it was filed in High Court. The High Court dismissed the petition and this special leave petition is against the High Court's order.

It was contended before this Court that the Arbitrator has failed to give a reasoned award and so it is bad in law.

Dismissing the special leave petition, this Court,

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HELD: 1. It is obligatory in England now after the Arbitration

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Act, 1979, that the award should give reasons. The purpose of Section 12 of the Act requiring the tribunal to furnish a statement of reasons if requested to do so before it gave its decision is to enable the person whose property or whose interests were affected, to know, if the decision was against him, what the reasons were. [435B-C]

'Law of Arbitration' by Justice R.S. Bachawat. First Edition 1983 pp. 320 and 321, referred to.

2.1 In India, there has been a trend that reasons should be stated in the award. The reasons that are set out must be reasons which will not only be intelligible but also deal with the substantial points that have been raised. When the arbitration clause required the arbitrator to give a reasoned award, the sufficiency of the reasons depend upon the facts of the particular case. He is not bound to give detailed reasons. [435C-D]

2.2 The Court does not sit in appeal over the award and review the reasons. The Court can set aside the award only if it is apparent from the award that there is no evidence to support the conclusions or if the award is based upon any legal proposition which is erroneous.[435D-E]

2.3 The award in question is unassailable. According to the Arbitrator, because of the letter dated 18th October, 1982 of the petitioner addressed to the Respondent stating that if the outstandings and interest are not paid, further

supplies would not be made, has been acted upon by the petitioner, which had not delivered any coke to the respondent, or made any offer to do so, the petitioner was not entitled to the interest in respect of the period from 18th October, 1982 onwards, nor to shifting charges in respect of any shifting on or after 18th October, 1982. On this reasoning, he had given the award. How the Arbitrator has drawn inference is apparent from the reasons. No proposition was stated in the aforesaid reasons, which could be objected to as an error of law. The reasons given by the Arbitrator meet the requirements of a reasoned award. It is apparent that the arbitrator has not acted irrelevantly and unreasonably. [432E-G; 434G-H]

2.4 Arbitration procedure should be quick and that quickness of the decision can always be ensured by insisting that short intelligible indications of the grounds should be available to find out the mind of the arbitrator for his action. This was possible in the instant case where the arbitrator has spoken his mind, and he is clear as to how he acted

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and why he acted in that manner.[434H; 435A]

Champsey Bhara and Company v. Jivraj Balloo Spinning and Weaving Company Ltd., AIR, 1923 P.C. 66; Hindustan Steelworks Construction Ltd. v. Shri C. Rajasekhar Rao, 4 JT 1987 3 S.C. 239; Siemens Engineering and Manufacturing Company of India Ltd. v. Union of India, [1976] Suppl. S.C.R. 489; Rohtas Industries Ltd. and Another v. Rohtas Industries Staff Union and others, [1976] 3 SCR 12 and Dewan Singh v. Champat Singh, [1970] 2 SCR 903, referred to

Bremer Handelsgesellschaft v. Westzucker, [1981] 2 Lloyd's Law Reports 130, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 4557 of 1988.

From the Judgment and Order dated 21.3.88 of the Bombay High Court in Appeal No. 306 of 1988.

F.S. Nariman, B.D. Sharma and R.P. Kapur for the Petitioner.

Soli J. Sorabjee, Harsh Mittre, Harish N. Salve, Jeel Peres, D.N. Mishra and Mrs. A.K. Verma for the Respondents.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. This petition under Article 136 of the Constitution challenges the judgment and order of the Division Bench of the High Court of Bombay dated 21st March, 1988. The petitioner in this case on 23rd June, 1961, had agreed to sell to the predecessor of respondent raw petroleum coke. There was a second agreement on 22nd

April, 1971. The said agreement was arrived at between the parties whereunder it was provided that in case the respondent failed to lift raw petroleum coke as agreed, the petitioner would have right to shift raw petroleum coke at the risk and expense of the respondent. There was a third agreement providing that in case of delay in payment, the respondent would pay interest at 4 per cent over the I.O.C. Bank borrowing rate, on the value of the stock not uplifted. It appears that on 5th August, 1982, the respondent wrote a letter to the petitioner showing inability to pay the arrears of the price against delivery of raw petroleum coke. On 4th October, 1982 there was a stock of about 13,760 M.T.S. Of saleable raw petroleum coke lying at Gauhati Refinery. The petitioner on 18th October, 1982 wrote to the respondent that unless the outstandings as on 1st September, 1982 and interest were paid, the petitioner would not make further supplies. Thereafter the petitioner filed Suit No. 2187 of 1982 for payment and for attachment before judgment. On 21st December, 1982, it appears that there was an order of attachment of stocks of raw petroleum coke to the extent of Rs.6 crores of the respondent. The order was confirmed after notice. Respondent filed Appeal No. 858 of 1983. Thereafter respondent on 20th ostler, 1983 filed an application for stay of the suit under section 34 of the Arbitration Act, 1940 (hereinafter called 'the Act'). The petitioner on 11th July, 1983 terminated the agreement with effect from 31.8.83. The respondent thereafter filed Suit No. 122 of 1983 and applied for an order compelling the petitioner to make supplies. The learned District Judge passed an order on 28th April, 1984 for restoration of supplies. On 7th May, 1984 in petitioner's appeal viz., Civil Appeal No. 2476 of 1984, this Court stayed the above order. On 24th May, 1984 this Court's order setting aside the order of the learned District Judge dated 28th April, 1984 and recorded the compromise terms. Pursuant to the compromise, all proceedings were withdrawn by the parties. On 11th December, 1984 matter relating to the petitioner's claims in respect of interest on stocks held from 1st October, 1982 onwards and expenses of shifting raw petroleum coke from 1st October, 1982 upto 31st August, 1983, were referred to arbitration of Shri A.K. Sarkar, a former Chief Justice of India. On 21st August, 1986 an interim award was passed by the learned arbitrator. Interim award was filed in the High Court of Bombay and the petitioner challenged the said award. The learned single Judge of the High Court dismissed the petition challenging the interim award. The Division Bench of the High Court of Bombay upheld the order of the learned single Judge. Hence this petition under Article 136 of the Constitution.

The main contention urged before us was that it was necessary in the present trend of law for the learned arbitrator to have given a reasoned award. The Arbitration Act, 1979 in England so enjoins. The arbitrator, according to the petitioner has failed to do so. Hence the award was bad and as such the decision of the High Court was wrong and leave should be granted from the said decision and the matter be referred to the Constitution Bench as several cases are pending on this point.

The learned single Judge of the High Court in his decision had observed that the award was undoubtedly not an elaborately reasoned award setting out all the reasons which prompted the learned arbitrator to arrive at the conclusion he did reach, but it was a speaking award. The learned Judge however, held that it was not necessary to examine this aspect since even if it was a speaking order, it was not bad in law. It is true that the law as it stands upto date since the decision of Champsey Bhara and Company v. Jivraj Balloo Spinning and Weaving Company Ltd., A.I.R. 1923 P.C. 66 that it was not necessary that all awards should be speaking awards. See in this connection the observations of this Court in Hindustan Steelworks Construction Ltd. v. Shri C.Rajasekhar Rao,

4 JT 1987 3 S.C. 239.

Previously the law both in England and India was that an arbitrator's award might be set aside for error of law appearing on the face of it, though the jurisdiction was not lightly to be exercised. Since question of law could always be dealt with by means of a special case this is one matter that could be taken into account when deciding whether the jurisdiction to set aside an award on this ground should be exercised or not. The jurisdiction was one that existed at common law independently of statute. In order to be a ground for setting aside the award, an error in law on the face of the award must be such that there could be found in the award, or in any document actually incorporated with it, some legal proposition which was the basis of the award and which was erroneous. See Halsbury's Laws of England, 4th edition. paragraph 623, page 334. The law has undergone a sea change in England. It is obligatory in England now after the Arbitration Act, 979, that the award should give reasons.

In the instant case. the arbitrator has set out the history in the interim award. The arbitrator has stated that the agreement dated 22nd April. 1970 provided that I.C.L.. will uplift all available coke produced at the Gauhati Refinery by which name also the Noonmati Refinery was called. the said upliftment being so regulated that the quantity uplifted every week was equivalent to the production of coke at the refinery in the previous week and that whereas it was thereby further provided that the upliftment by I.C.L. shall also be as regulated that the accumulated quantity of coke in the refinery coke yard does not fall below 2500 tons and does not exceed 4500 tons. The other history of the matter, it was recited that the order dated 24th May, 1984 was passed by consent of the parties by this Court that the claim of the Indian oil Corporation for interest on stocks said to have been held in the Gauhati Refinery from 1st October, 1982 onwards and its claim for expenses of shifting the coke from 1st October, 1982 upto 3 1st August, 1983 would be referred to the arbitration of a retired Judge of the Supreme Court mutually acceptable to the parties. Two preliminary issues, the arbitrator framed were, namely, (1) Is the claimant entitled to charge any interest on unlifted stock of raw petroleum coke in view of its letter dated October 18, 1982? and (2) Is the claimant entitled to any shifting charges in view of its letter dated 18th October, 1982? The gist of the letter dated 18th October, 1982 is set out in the arbitration agreement. The arbitrator in his award pro- to observe as follows:

> "And whereas it is not in dispute between the parties that since the said letter of 18th October, 1982, I.O.C. had not delivered or offered to deliver any raw petroleum coke for I.C.L. Now, therefore, having heard counsel for the parties and perused the documents and statements filed by them, the despatch and receipt of none of which is disputed, and having considered thereafter, I adjudge, hold and award as follows:
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> The letter dated 18th October, 1982 is no bar to Indian oil Corporation's claim for shifting charges and interest in respect of the period from 1st October, 1982 to 17th October, 1982. Because of the said letter which has been admittedly acted upon by the Indian oil Corporation Ltd. which had not delivered any coke to Indian Carbon Ltd. Or made any offer to do so the Indian oil Corporation Ltd. is not entitled to the interest claimed in respect of the period from 18th October, 1982 onwards nor to

shifting charges in respect of any shifting done on or after 18th October, 1982."

The aforesaid grounds are the reasons of the arbitrator for making the award. The award is that the Indian oil Corporation is not entitled to any interest nor any shifting charges. The reasons for the said conclusion are the aforesaid three factors mentioned by the arbitrator. How the arbitrator has drawn inference is apparent from the reasons. It is to be noted that this Court has been insisting on the arbitrators to give some indications to indicate how the mind of the arbitrator acts. This Court in the case of Siemens Engineering and Manufacturing Company of India Ltd. v. Union of India, [1976] Suppl. S.C.R. 489 was concerned with the decision of the Collector of Customs. This Court observed that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. This Court observed further that every quasi-judicial order must be supported by reasons.

In Rohtas Industries Ltd. and Another v. Rohtas Industries Staff Union and others, [1976] 3 SCR 12 where this Court was concerned with an award under section 10A of the Industrial Disputes Act, 1947. This Court observed that there was a need for a speaking order where considerable numbers are affected in their substantial rights. It was further reiterated that in such a situation a speaking order may well be a facet of natural justice or fair procedure. In Dewan Singh v. Champat Singh, [1970] 2 SCR 903, this Court reiterated that it was an implied term of the arbitration agreement that the arbitrators must decide the dispute in accordance with the ordinary law and they cannot decide disputes on the basis of their personal knowledge. The proceedings, it was held, before the arbitrators were quasi- judicial proceedings and they must be conducted in accordance with the principles of natural justice. It was, therefore, obligatory to give reasons. As mentioned hereinbefore there has been since then trend that reasons should be stated in the award and the question whether the reasons are necessary in ordinary arbitration agreement between the parties has been referred to the Constituion Bench.

In this case, however, we are in agreement with the High Court of Bombay that reasons were stated in the award. We have set out hereinbefore the three grounds, namely, (1) The letter dated 18th October, 1982 is no bar to Indian oil Corporation's claim for shifting charges and interest in respect of the period from 1st October, 1982 to 17th October, 1982. (2) The inference drawn from the contents of the letter and (3) Because of the said letter which has admittedly been acted upon by the Indian oil Corporation Ltd., and which had not delivered any coke to the Indian Carbon Ltd. Or made any offer to do so. For these reasons, the arbitrator held that the Indian oil Corporation Ltd., is not entitled to interest claimed in respect of the period from 18th October, 1982 onwards nor to shifting charges from 18th October, 1982. These are the reasons for giving the award. No error of law was pointed out in those reasons. Indeed no proposition of law was stated in the aforesaid reasons, which could be objected to as an error of law. There was, however, no error of fact. It was a possible view to take. It could not be urged that it was an impossible view to take. The arbitrator has made his mind known on the basis of which he has acted that, in our opinion, is sufficient to meet the requirements even if it be reasons should be stated in the award. It is one thing to say that reasons should be stated and another thing to state that a detailed judgment to 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. This question was considered by the Court of Appeal in England in Bremer

Handelsgesellschaft v. Westzucker, [1981] 2 Lloyd's Law Reports 130. There Lord Donaldson speaking for the court at pages 132 and 133 of the report observed as follows:

> "It is of the greatest importance that trade arbitrators working under the 1979 Act should realize that their whole approach should now be different. At the end of the hearing they will be in a position to give a decision and the reasons for that decision. They should do so at the earliest possible moment. The parties will have made their submissions as to what actually happened and what is the result in terms of their respective rights and liabilities. All this will be fresh in the arbitrators' minds and there will be no need for further written submission by the parties. No particular form of award is required. Certainly no one wants a formal "Special Case".

All that is necessary is that the arbitrators should set out what, on their view of the evidence, did or did not happen and should explain succinctly why, in the light of what happened, they have reached their decision and what that decision is. This is all that is meant by a "reasoned award".

For example, it may be convenient to begin by explaining briefly how the arbitration came about-

> "X sold to Y 200 tons of soyabean meal on the terms of GAFTA Contract 100 at US. $Z per ton c.i.f. Bremen. X claimed damages for non-delivery and we were appointed arbitrators". The award could then briefly tell the factual story as the arbitrators saw it. Much would be common ground and would need no elaboration. But when the award comes to matters in controversy, it would be helpful if the arbitrators not only gave their view of what occurred, but also made it clear that they have considered any alternative version and have rejected it, e.g., "The shippers claimed that they shipped 100 tons at the end of June. We are not satisified that this is so", or as the case may be. "We are satisfied that this was not the case". The arbitrators should end with their conclusion as to the resulting rights and liabilities of the parties. There is nothing about this which is remotely technical, difficult or time consuming.
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> It is sometimes said that this involves arbitrators in delivering judgments and that this is something which requires legal skills. This is something of a half truth. Much of the art of giving a judgment lies in telling a story logically, coherently and accurately. This is something which requires skill, but it is not a legal skill and it is not necessarily advanced by legal training. It is certainly a judicial skill, but arbitrators for this purpose are Judges and will have no difficulty in acquiring it. Where a 1979 Act award differs from a judgment is in the fact that the arbitrators will not be expected to analyse the law and the authorities. It will be quite sufficient that they should explain how they reached their conclusion, e.g., "We regarded the conduct of the buyers, as we have described it, as constituting a repudiation of their obligations under the contract and the subsequent conduct of the sellers, also as described, as amounting to an acceptance of that repudiatory conduct putting an end to the contract". It can be left to others to argue that this is wrong in law and to a professional Judge, if leave to appeal is given, to analyse the authorities. This is not to

> say that where arbitrators are content to set out their reasoning on questions of law in the same way as Judges, this will be unwelcome to the Courts. Far from it. The point which I am seeking to make is that a reasoned award, in accordance with the 1979 Act, is wholly different from an award in the form of a special case. It is not technical, it is not difficult to draw and above all it is something which can and should be produced promptly and quickly at the conclusion of the hearing. That is the time when it is easiest to produce an award with all the issues in mind."

See the observations in Russel on Arbitration, 20th Edn., page 291 Reasons for the Award and the decision referred to therein. "

> In a case of this nature, issues are simple, points are fresh and facts are clear, the reasons given by the arbitrator, in our opinion, meet the requirements of a reasoned award. It is apparent that the arbitrator has not acted irrelevantly or unreasonably. Arbitration procedure should be quick and that quickness of the decision can always be ensured by insisting that short intelligible indications of the grounds should be available to find out the mind of the arbitrator for his action. This was possible in the instant case. In the instant case the arbitrator has spoken his mind, and he is clear as to how he acted and why he acted in that manner.
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> The purpose of section 12 of the English Tribunal and Inquiries Act which required the statutory tribunal to furnish a statement of the reasons if requested to do so before it gave its decision was to enable a person whose property or whose interests were affected to know if the decision was against him what the reasons were. Justice R.S. Bachawat in his Law of Arbitration, First Edition 1983, pages 320 and 321 states that the provision was read as meaning that proper and adequate reasons must be given. The reasons that are set out must be reasons which will not only be intelligible but also deal with the substantial points that have been raised. When the arbitration clause required the arbitrator to give a reasoned award and the arbitrator does give his reasons in the award, the sufficiency of the reasons depend upon the facts of the particular case. He is not bound to give detailed reasons. The Court does not sit in appeal over the award and review the reasons. The Court can set aside the award only if it is apparent from the award that there is no evidence to support the conclusions or if the award is based upon any legal proposition which is erroneous.
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> Judges in that light, the award in question was unassailable in the instant case.
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> In the aforesaid view of the matter, we are of the opinion that the High Court was right in the view it took. The special leave petition fails and is accordingly dismissed.

G.N. Petition dismissed.