Ch. Ramalinga Reddy vs Superintending Engineer And Anr on 2 December, 1994

Equivalent citations: AIRONLINE 1994 SC 450

Bench: J.S. Verma, S. P. Bharucha, S.C. Sen

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           CASE NO.:
Appeal (civil)  5528-29 of 1994

PETITIONER:
CH. RAMALINGA REDDY

RESPONDENT:
SUPERINTENDING ENGINEER AND ANR.

DATE OF JUDGMENT: 02/12/1994

BENCH:
J.S. VERMA & S. P. BHARUCHA & S.C. SEN

JUDGMENT:
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JUDGMENT 1994 SUPPL. (6) SCR 266 The Judgment of the Court was delivered by BHARUCHA, J. These are appeals by special leave against the judgment and order of the High Court of Andhra Pradesh whereby the High Court set aside the arbitration award in respect of claims 2, 3, 7, 8 and 12 and modified the award in respect of claims 5, 6, 13 and 14. The claims were made by the appellant, a contractor, against the respondents, officers of the State Government, in respect of an excavation contract for KM 11.711 to KM 13.287 of the Darsi Branch Canal for an amount of Rs. 50, 89,342.

Two issues were raised before the High Court, and they are raised before this Court, namely, (i) whether the petition filed by the respondents to set aside the award under sections 30 and 33 of the Arbitration Act was barred by time, and (ii) whether the award was vitiated in regard to certain claims.

The award was made on 29th July, 1985. It was sent by the arbitrator to the court on 31st July, 1985 and was received by the court at 12 noon on 5th August, 1985. It is the case of the appellant that their advocate informed the Additional Government Pleader in writing of the receipt of the award on 5th August, 1985. On 7th August, 1985, the court issued notice of the award and it was received by the respondents on 10th August, 1985. The petition to challenge the award was filed by the respondents on 6th September, 1985.

The relevant provision of the Limitation Act, 1963 is Article 119 (b) and it reads thus:

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Description of suits            Period of Limitation         Time from
which period begins to run.
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119,Under the Arbitration Act, 1940.

(a) ____ ____ ____

(b) for setting aside an award or getting an award remitted for reconsideration. Thirty days The date of service of notice of the filing of the award.

Section 14 of the Arbitration Act, so far as it is relevant, reads thus:

> "Section 14 Award to be signed and filed -
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> (1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof arid of the amount of fees and charges payable in respect of the arbitration and award.
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> (2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing of the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award."

Section 14(1) of the Arbitration Act, 1940, requires arbitrators or umpires to give notice in writing to the parties of the making and signing of the award. Section 14(2) requires the court, after the filing of the award, to give notice to the parties of the filing of the award. The difference in the provisions of the two sub-sections with respect to the giving of notice is significant and indicates clearly that the notice which the court is to give to the parties of the filing of the award need not be a notice in writing. The notice can be given orally. (See Nilkantha Shidramappa Ningashetti v. Kashinath Somanna Ningashetti and others, [1962] 2 SCR 551). In Indian Rayon Corporation Ltd v. Raunaq and Company Pvt. Ltd. [1989] 4 SCC 31, it was held that the fact that parties have notice of the filing of the award is not enough. The notice must be served by the court. There must be (a) filing of the award in the proper court; (b) service of the notice by the court or its office to the parties concerned; and (c) such notice need not necessarily be in writing. It is upon the date of service of such notice that the period of limitation begins for an application for setting aside the award.

It was found by the High Court that "learned counsel for the respondent- contractor had not drawn our attention to any material to indicate that Exhibit B-l notice was given by the learned counsel for contractor to the learned Government Pleader on 5-8-1985 about the receipt of the award by the court on the basis of the directions of the court". It is, therefore, clear that no notice as required by Section 14(2) of the Arbitration Act, 1940, had been served on the respondents or their advocate on 5th August, 1985. Therefore, that date cannot be the starting point for limitation for the filing of a petition to impugn the award. The notice of the filing of the award was given by the court on 7th

August, 1985. The petition to challenge the award was filed by the respondents on 6th September, 1985. The High Court was, therefore, right in holding that the petition was in time.

Great emphasis was laid by learned counsel for the appellant upon the judgment of this court, delivered by a bench of two learned Judges, in Food Corporation of India and others v. E. Kuttappan, [1993] 3 SCC 445. The two judgments aforementioned were considered and it was said:

> "On the strength of afore-mentioned two cases of this Court, i.e. Nilkantha case and Indian Rayon case it was claimed on behalf of the appellants that though the legal requirement is that the notice be sent by the court, some other act of the court is enough to foist awareness of the filing of the award in court, wherefrom the period of limitation was to commence. Instantly, it was urged that when the award had factually been placed before the court and the court had accepted its placement into it on October 25, 1988 itself, the factual filing of the award had been made and sequelly notice to the respondent through his counsel. Even though the court had subsequently on November 3, 1988 issued notice for November 7, 1988, the former act, according to the appellant, was enough compliance with court sending the notice and the latter act was of no consequence. It does not lie in the mouth of the respondent to say that though he filed the award in court through his counsel, with or without the implied or express authority of the arbitrator, he did not have the corresponding knowledge of the filing of the award, when the award was readily received by the court. It seems to us that the mute language inherent in the action of the court did convey to the party placing the award before it, the factum of the award being filed in court. The mere fact that at a subsequent stage, the court issued notice to the parties informing them of the filing of the award in court for the purpose of anyone to object to die award being made the rule of the court is an act of the court which cannot in law prejudice the rights of the parties. If once it is taken that the period of limitation for the purposes of filing the objection, insofar as the respondent was concerned, had begun on October 25, 1988, the objections filed by it on December 6, 1988 were obviously barred by time, those having been filed beyond the prescribed period of thirty days", (Emphasis supplied.) It will be noted that it was held that it did not lie in the mouth of the party who had filed the award in court through his advocate to contend that he did not have knowledge of the filing of the award and he could not contend that it was only the subsequent date upon which the court issued notice that was the starting point for limitation. This judgment, as the passage quoted indicates, does not in any way dilute what was laid down in the cases of Nilkantha Shidramappa Ningashetti and Indian Rayon Corporation Limited (supra); indeed, it could not, for those were decisions of a larger and a coordinate bench, respectively. The judgment holds only that a party who has filed the award in court through his advocate is estopped from contending that, so far as he is concerned also, the period of limitation to challenge the award begins only when the court issues notice in respect of its filing. The ratio of the judgment has, therefore, no application to the facts of the case before us.

There is, accordingly, no merit in the first issue.

As aforestated, the High Court set aside the arbitration award in respect of Claims 2, 3, 7, 8 and 12 and modified the award in respect of Claims 5, 6, 13 and 14.

Claim 14 related to the payment of interest on the amount claimed in the arbitration proceedings. The arbitrator awarded interest. The High Court took the view that he was in error in awarding interest for the period commencing on the date on which he entered upon the reference and ending upon the date of the award and set aside the award to that extent. At the stage of the hearing of the Special Leave Petitions, learned counsel for the respondents conceded that, in view of the law laid down by this Court in Secretary, Irrigation Department, Government of Orissa and Ors., v. G.C. Roy, [1992] 1 S.C.C. 508, the appellant was entitled to interest even for this period.

The award in respect to claims 5 and 13 was modified. Learned counsel for the appellant did not press the appeals in this behalf.

Claim 2 was for "loss sustained due to arranging of wagon for proclaim excavations". The arbitrator awarded Rs. 20,000 in respect of Claim 2. Claim 12 was for "payment of extra expenditure incurred due to release of water in Darsi Branch Canal". The arbitrator awarded Rs. 50,000 in respect of Claim 12. The arbitrator was appointed by an order of the court and what he was to decide was indicated therein. This entitled him "to consider such other points raised in the pleadings before this Court at suit stage."

These pleadings did not make any reference to Claims 2 or 12. The claims in this behalf were made in the pleadings of another suit. The High Court was, therefore, right in holding that Claims 2 and 12 were beyond the scope of the reference to the arbitrator and that the award in respect of Claims 2 and 12 had to be set aside.

Claim 3 was for "extra rate for excavation of rocks, i.e.. F.F. rock, hard rock, etc." The arbitrator awarded Rs. 7,45,025 and Rs. 1,38,878 in respect of Claim 3, Claim 7 was for "extra cost due to baling out of water". The arbitrator awarded Rs. 1,15,945 for Claim 7. It is important to note that for the extra work that was done the appellant was paid at the contract rate. What was now sought was an increase in the rate that had been tendered by the appellant and accepted. The arbitrator awarded an extra rate of Rs. 6.97 p. for excavation of 1 Cum HR with 10% overheads and Rs. 4.36 p. for excavation of 1 Cum of FFR with 10% overheads under Claim 3. In respect of Claim 7 he made an award on the basis of Rs. 0.88 per Cum with 10% overheads. Clause 11 of Schedule E of the Special Conditions of Contract provides that every tenderer is expected, before quoting his rates, to inspect the site of the proposed work and to carry out such investigation as may be necessary to enable him to correctly evaluate the work; the Government would not, after acceptance of the contract rate, be liable to pay any extra charges in case the successful tenderer made a misjudgment. Clause 11 also states that it would be presumed that the successful tenderer had satisfied himself as to the nature

and location of work, general and local conditions, including magnitude of possible seepage, river stages, etc., before arriving at his rates and the Government would bear no responsibility for lack of such acquaintance and the consequences thereof. Clause 6 of Part VII of the General Conditions of Contract states that no extra payment would be made for baling out water for dewatering. Having regard to these terms of the contract between the parties, it is difficult to accept the submission that the appellant had encountered hard rock due to a tank nearby which had not been disclosed in the tender documents and that is why he was entitled to the extra rates as claimed. The High Court was right in pointing out that the contract expressly stated that no payment would be made on account of the lack of acquaintance of the contractor with the work site, he having been deemed to have satisfied himself in respect thereof before having quoted the rates. The arbitrator was bound by the contract between parties and to decide the claims referred to him in the light thereof. His award being found to be contrary to the plain terms of the contract, it was liable to be set aside to that extent The award in respect of Claims 3 and 7 was, therefore, rightly set aside.

Claim 6 was in respect of "payment of idle labour charges". The arbitrator awarded a sum of Rs. 1,00,000 there against. The High Court noted that this claim was made on three grounds : excess flourine content in drinking water due to which labourers suffered; idle labour due to supply of ineffective explosives; and delay in the issue of cement. The High Court noted, rightly, that it was the obligation of the appellant to make necessary enquiries about local conditions before quoting his rates and he could not, therefore, make any claim due to his own lapse in not making enquiries about the flourine content of the drinking water. It was justified in holding that the award on that account was bad. It found that the explosives supplied had been ineffective and that there had been a delay in the supply of cement. Rather than set aside the award against Claim 6 on the basis that it was indivisible and a part of it was erroneous, the High Court limited it to 2/3 rd of Rs. 1,00,000. We see no reason to interefere.

Claim 8 was for "payment of extra rates for work done beyond agreement time at schedule of rate prevailing at the time of execution". The arbitrator awarded the sum of Rs. 39,540. Clause 59 of the A.P. Standard Specifications, which applied to the contract between the parties, stated that no claim for compensation on account of delays or hindrances to the work from any cause would lie except as therein defined. The claim falls outside the defined exceptions. When extensions of time were granted to the appellant to complete the work, the respondents made it clear that no claim for compensation would lie. On both counts, therefore, Claim B was impermissible and the High Court was right in so holding. Learned counsel for the appellant drew our attention to the judgment of this Court in P.M. Paul v. Union of India. [1989] 1 S.C.R. 115. The disputes that were there referred to the arbitrator were: who was responsible for the delay in completion of the building contracted for, what were the repercussions of such delay and how the consequences of the responsibility were to be apportioned. After discussing the evidence and the submissions of the parties, the arbitrator found that there was escalation and that it was therefore, reasonable to allow compensation on account of losses under the first claim, which was "on account of losses caused due to increase in prices of materials and cost of labour and transport during the extended period of contract.....". In this context, this Court said that once it was found that the arbitrator had jurisdiction to hold that there was delay in the execution of the contract due to the conduct of the respondent, the respondent was liable for the consequences of the delay, namely, increase in prices. There was in

P.M. Paul's case no clause in the contract which provided that the respondent would not be liable to pay compensation on account of dealy in the work from any cause nor was it stipulated, when extension of time was granted to the appellant to complete the work, that no claims for compensation would lie.

The judgment in Sudarsan Trading Co. v. Government of Kerala and Anr., [1989] 1 S.C.R. 665, does not assist the appellant, if fully read. It was there observed that there are two different and distinct grounds involved in many cases concerning the setting aside of arbitration awards. One is that there is error apparent on the face of the award and the other is that the arbitrator exceeded his jurisdiction. In the latter case the court can look into the arbitration agreement but in the former it cannot. An award may be set aside on the ground that the arbitrator had exceeded his jurisdiction in making it. In the case before us, the arbitrator was required to decide the claims referred to him having regard to the contract between the parties. His jurisdiction, therefore, was limited by the terms of the contract. Where the contract plainly barred the appellant from making any claim, it was impermissible to make an award in respect thereof and the court was entitled to intervene.

Learned counsel for the appellant also relied upon the judgment in Jajodia (Overseas) Pvt. Ltd. v. Industrial Development Corporation of Orissa Ltd. [1993] 2 S.C.C. 106, and upon the observations made therein that the court should be very circumspect about setting aside an award reached by an arbitrator, for parties had agreed that disputes that may arise or had arisen between them should be resolved not by a court of law but by arbitration. We agree, but circumspection does not mean that the court will not intervene when the arbitrator has made an award in respect of a claim which is, by the terms of contract between parties, plainly barred.

In the result, the appeals are allowed only to this extent, mat the appellant is entitled to receive, in respect of Claim 1A, interest on the amount of the award for the period commencing on the date on which the arbitrator entered upon the reference and ending upon the date of the award, and the judgment of the High Court shall stand modified to that extent. For the rest, the judgment of the High Court is affirmed.

The appellant shall pay to the respondents the costs of the appeals, quantified at Rs. 10,000.