

State Of Rajasthan vs R.S. Sharma & Co on 16 August, 1988

Equivalent citations: 1988 SCR, SUPL. (2) 441 1988 SCC (4) 353, AIR ONLINE 1988 SC 4, 1988 (4) SCC 353, (1988) 4 JT 18, (1988) 4 JT 18 (SC)

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:
STATE OF RAJASTHAN

Vs.

RESPONDENT:
R.S. SHARMA & CO.

DATE OF JUDGMENT 16/08/1988

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

CITATION:
1988 SCR Supl. (2) 441 1988 SCC (4) 353
JT 1988 (4) 18 1988 SCALE (2) 644

ACT:
Arbitration Act, 1940 : Sections 14, 17, 30 and 33-
Award- Setting aside of by Court- Error apparent on face of
award- Award not invalid where by process of inference and
argument it may be demonstrated that the arbitrator had
committed mistake in arriving at some conclusion.

HEADNOTE:

A dispute over the completion of construction work under a contract led to the litigation between the appellant and the respondent-company. However, during the pendency of the proceedings in the High Court, the parties agreed to settle the dispute through arbitration.

The Arbitrators gave their award in favour of the respondent-company on the ground that the appellant had committed breach of contract and was also guilty of wrongful revocation of the agreement. The award did not contain any reason as to why and how the Arbitrators had arrived at the

sum awarded.

The appellant filed objection to the respondent's application for making the award Rule of the Court on the ground inter alia that (i) no reasons had been given for the award, (ii) the award being ambiguous showed non-application of mind, and (iii) the amount of interest awarded was unjustified. The learned District Judge allowed the objection and set aside the award on the ground of ambiguity and non-statement of reasons. The High Court, however, allowed the respondent's appeal and also directed payment of interest for the period during which the arbitration proceedings were pending.

Before this Court it was urged that, because the question whether on the ground of absence of reasons the award is bad per se is pending consideration by a Constitution Bench of this Court, the present case should await adjudication on this point by the Constitution Bench.

Disposing of the appeal, it was,

HELD: (1) One of the cardinal principles of the administration of justice is to ensure quick disposal of

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disputes in accordance with law, justice and equity. Justice between the parties in a particular case should not be in suspended animation. [445B-C, G]

(2) Interests of justice and administration of justice would not be served by keeping at bay final adjudication of the controversy in this case on the plea that the question whether an unreasoned award is bad or not, is pending adjudication by a larger Bench. [445E-F]

(3) It is not known whether the decision of this Court would have prospective application only in view of the long settled position of law on this aspect in this country or not. [445G]

(4) The law as it stands today is clear that unless there is an error of law apparent on the face of the award, the award cannot be challenged merely on the ground of absence of reasons. This is settled law by a long series of decisions. [445E]

(5) An award is not invalid merely because by a process of inference and argument it may be demonstrated that the arbitrator had committed some mistake in arriving at some conclusion. [446B]

(6) It is not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusions. [446C]

Jivarajbhai Ujamshi Sheth v. Chintamanrao Balaji & Ors., [1964] 5 SCR 480, referred to.

(7) It is an error of law apparent on the face of it and not a mistake of fact which could be the ground for challenging the award. [446F]

Union of India v. Bungo Steel Furniture P. Ltd., [1967] 1 SCR 324 and Allen Berry & Co. P. Ltd. v. Union of India,

[1971] 3 SCR 282, referred to.

8. In the present case the arbitrator gave no reasons for the award. There is no legal proposition which is the basis of the award, far less any legal proposition which is erroneous. And there is no allegation of any misconduct in the proceedings. [446E-F]

(9) The award of interest pendente lite in this case was in violation of the principles enunciated by this Court. [447B]

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Executive Engineer (Irrigation) Balimela v. Abhaduta Jena, [1988] 1 SCC 418, followed.

Food Corporation of India v. M/s. Surendra Devendra & Mohendra Transport Co., [1988] 1 SCC 57, explained.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3054 of 1988.

From the Judgment and Order dated 16.3.1988 of the Rajasthan High Court in S.B. Civil Miscellaneous Appeal No. 240/1987.

K. Parasaran, Attorney General, B.L. Saruparia and Badridas Sharma for the Appellant.

Soli J. Sorabjee, Paras Kulad, Rohinton F. Nariman and Rathin Das for the Respondent.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. Leave granted. Appeal is disposed of by the judgment herein.

This appeal challenges the order of the High Court of Rajasthan, dated 16th March, 1988. The respondent's tender for construction of complete masonry dam (Civil Engineering Works) Mahi Bajaj-Sagar Project, Banswara, was accepted by the appellant for a sum of Rs.5,90,30,791 vide letter dated 29.4.1974 and a provisional agreement was entered into between the parties on 23.5.1975. The construction was commenced by the respondent-company but it did not complete the same and, it is alleged, left the work unfinished in the year 1979, which was of the value of Rs. 1,79,80,054. The letter of acceptance was dated 23.5.1975. It is stated that the respondent did not start the work in spite of written notices and, ultimately, by a letter dated 24th December, 1979 of the Executive Engineer (Dam Division), Banswara, the respondent was informed that as it had committed breach of the conditions of the contract, the same had been terminated and that the State Govt. would complete the work under the clauses and conditions of the contract. The work had to be completed departmentally at the cost and risk of the respondent-company. After some litigation between the parties when the Civil Revision was pending in the High Court of Rajasthan at Jodhpur, a compromise between PG NO 444 the parties was arrived at on the 13th April, 1982. It was agreed that the dispute would be settled through arbitration. By an agreement dated 13th June, 1982 the parties named their arbitrators.

The arbitrators entered upon the reference on 19th June, 1982. On 5th May, 1982, the respondent-company presented its claims under 40 heads claiming a total sum of Rs. 1,90,53,059.28. This amount was later on revised to Rs. 1,82,20,261.02. The State filed a counter-claim for a sum of Rs. 1,70,63,026.37 which was revised to Rs. 1,25,706.17. It is stated that the arbitration proceedings were conducted for 52 days during which the number of sittings was 25. Various issues were framed. Minutes of the proceedings were recorded. The arbitrators gave the award on 8.12.1982. It is stated that the award did not contain any reason as to why and how they had arrived at the figure of Rs. 75,41,755 in favour of the respondent-company. The award, however, mentioned that the State of Rajasthan committed breach of contract and was also guilty of wrongful revocation of the agreement and the actions taken under Clauses 2 and 3 of the conditions of the Contract, were wrongful and unjustified. However, no reasons were indicated as to how the arbitrators arrived at those findings.

The respondent filed an application in the Court of the learned District Judge for making the award Rule of the Court. The appellant, however, filed an objection on the grounds inter alia that no reasons had been given by the arbitrators for the award and the amount of interest awarded was unjustified. It was further averred that the award being ambiguous, showed non-application of mind and the question as regards the plant machinery of the respondent-company lying at the dam site, were beyond the scope of the arbitrator.

The learned District Judge by his judgment and order dated 11th August, 1987 allowed the objection and set aside the award on the ground of ambiguity and non-application of mind. The award also suffered from the vice of non-statement of reasons, according to the learned District Judge. According to him, the award was not in accordance with law. He further held that the plant & machinery lying at the dam site was beyond the reference made to the arbitrators. He was of the opinion that the interest amount was ambiguous and thus liable to be set aside. There was an appeal to the High Court. The High Court allowed the appeal and passed a decree for Rs. 75,41,755 being the amount of all claims and directed that the State should pay interest @ 5% p.a. on the said amount for the period from 1.8.1983 to 8.12.1985, being the period during which the arbitration proceedings were PG NO 445 pending. This decision of the High Court is under challenge in this appeal.

It was contended before us that the question whether on the ground of absence of reasons, the award is bad per se, is pending consideration by a Constitution Bench of this Court in C.A. No. 3137-39/85, 3145/85- Jaipur Development Authority v. Firm Chhokhamal Contractor etc. It was, hence, urged that this should await adjudication on this point by the Constitution Bench. We are unable to accept this contention. In our opinion pendency of this question should not postpone all decisions by this Court. One of the cardinal principles of the administration of justice is to ensure quick disposal of disputes in accordance with law, justice and equity. In the instant case the proceedings have long procrastinated. Indeed, the learned Judge of the High Court, after narrating the incidents from 1975 to 1985, concluded his judgment in March 1988 by observing that that was the end of the journey. He was wrong. That was only the end of a chapter in the journey and the appellant wants to begin another chapter in the journey on the plea that the award is not a reasoned one. The bargaining between the parties was entered into in 1974-75 and the award was made on

8th December, 1985 i.e. a decade after the beginning of the transaction.

The law as it stands today is clear that unless there is an error of law apparent on the face of the award, the award cannot be challenged merely on the ground of absence of reasons. This is settled law by a long series of decisions. Interests of justice and administration of justice would not be served by keeping at bay final adjudication of the controversy in this case on the plea that the question whether an unreasoned award is bad or not, is pending adjudication by a larger Bench. There have been a large number of sittings before the arbitrators. Parties have been heard. There was no misconduct in the proceedings. There has been no violation of the principles of natural justice. In such a situation it would be inappropriate to postpone the decision pending adjudication of this question by a larger Bench of this Court. We do not know how long it would take to decide that question, and whether ultimately this court would decide that unreasoned awards per se are bad or whether the decision would have prospective application only in view of the long settled position of law on this aspect in this country or not. Justice, between the parties in a particular case, should not be in suspended animation. Law as it stands today, as observed in *Jivarajbhai Ujamshi Sheth & Ors. v. Chintamanrao Balaji & Ors.*, [1964] 5 SCR 480 is that award made by an arbitrator is conclusive as a judgment between the parties and the Court is entitled to set aside an award only if the arbitrator has misconducted himself in PG NO 446 the proceedings or when the award has been made after the issue of an order by the Court superseding the arbitration or if the arbitration proceedings have become invalid under Sec. 35 of the Arbitration Act or where an award has been improperly procured or is otherwise invalid under Sec. 30 of the Act. An award may be set aside by the Court on the ground of error on the face of the award, but an award is not invalid merely because by a process of inference and argument it may be demonstrated that the arbitrator had committed some mistake in arriving at some conclusion. In that decision Shah, J. and Sarkar, J. as the learned Chief Justices then were, were of the view that it was not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusions. They held the award not severable. Hidayatullah, J. as the learned Chief Justice then was, observed that if the parties set limits to action by the arbitrator, then the arbitrator had to follow the limits set for him and the Court can find his auxiliary jurisdiction. Instant case before us is also not a severable award. In *Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd., Indore* [1967] 1 SCR 105 Bachawat, J. speaking for the Court observed that an arbitrator could give a lump sum award. He was not bound to give a separate award for each claim. His award on both fact and law is final. There is no appeal from his verdict. The Court cannot review his award and correct any mistake in his adjudication, unless an objection to the legality of the award is apparent on the face of it.

In the present case the arbitrator gave no reasons for the award. There is no legal proposition which is the basis of the award, far less any legal proposition which is erroneous. Also there is no allegation of any misconduct in the proceedings. It is an error of law apparent on the face of it and not mistake of fact which could be the ground for challenging the award. See in this connection the observations in *Union of India v. Bungo Steel Furniture P. Ltd.*, [1967] 1 SCR 324. Also see the observations of this Court in *Allen Berry & Co. (P) Ltd. v. Union of India, New Delhi*, [1971] 3 SCR 282. Hence, the High Court was right in the instant case.

There is, however, one infirmity in the award as sanctioned by the High Court, that is to say, the grant of interest pendente lite. The arbitrators have observed as follows :

"By adjustment of interest held to be due to the Respondents with that held to be due to the Claimants on their items of claims which were not in the nature of claim PG NO 447 for damages for breach, we hold that the Respondents do pay Rs. 17,92,957 (Rupees seventeen lacs ninetytwo thousand nine hundred fiftyseven only) as interest, to the Claimants upto the date of the AWARD. Claimants further do pay to the Respondents Rs. Nill."

This was awarding interest pendente lite. This is in violation of the principles enunciated by this Court in *Executive Engineer (Irrigation), Balimela & Ors. v. Abhaduta Jena & Ors.*, [1988] 1 SCC 418. Our attention was drawn by Shri Soli J. Sorabjee, counsel for the respondent, to the decision of this Court in *Food Corpn. of India v. M/s. Surendra, Devendra & Mohendra Transport Co.*, [1988] 1 SCC 547 where at pages 555-556 of the report, the Court referred to certain decisions cited by Chinnappa Reddy, J. in *Executive Engineer (Irrigation)*, (supra) in which he had expressed the view that those were cases in which the references to arbitration were made by the Court or in Court proceedings of the disputes in the suit. In that context it was held in those cases that the arbitrator had power to grant interest. It was contended before us that this was a similar case. There was a Court proceeding in this case regarding the appointment of the arbitrator and, as such, on the same analogy it should be treated that the arbitrator had power to grant interest. We are unable to accept this. What Mr justice O. Chinnappa Reddy meant to say by the latter judgment in *Executive Engineer (Irrigation)*, case referred to in *Food Corporation of India*, (supra) was where the disputes regarding the merit of the case were pending in the Court and such disputes instead of being decided by the Court adjudication had been referred to an arbitrator by the Court, in such cases the arbitrators deciding in the place of the Court, would have the same powers to grant interest pendente lite as the Courts have under Section 34 of the Civil Procedure Code. Instant case is not such a proceeding. In that view of the matter this part of the award, which was affirmed by the High Court of granting of interest, must be deleted. We do so accordingly.

Shri K. Parasaran, learned Attorney General, assures us that the amount awarded as modified, would be paid within 8 weeks from today.

The appeal is thus disposed of without any order as to costs.

R.S.S.

Appeal disposed of.