The Managing Director, J. And K. ... vs M/S. Good Luck Carpets on 19 January, 1990

Equivalent citations: AIR1990SC864, (1990)4SCC740, AIR 1990 SUPREME COURT 864, (1990) 1 ARBILR 367, (1990) IJR 196 (SC), (1991) 1 APLJ 29.1, 1990 (4) SCC 740

Bench: N.D. Ojha, J.S. Verma

JUDGMENT

1. Special leave is granted.

The facts necessary to decide this Civil Appeal are that an incentive scheme to patronize cottage industry of carpet weaving was formulated by the State of Jammu and Kashmir. Applications on behalf of the persons who wanted to take advantage of the scheme were invited up to 16th August, 1980. The respondent was one of the applicants. An agreement between the parties was arrived at on 24th September, 1980. One of the Clauses of the agreement, namely, Clause (12) was with regard to reference of any dispute, arising out of the agreement, being made to the arbitration of the Managing Director of Jammu and Kashmir Handicrafts Corporation. An application was made by the respondent under Section 20 of the Jammu and Kashmir Arbitration Act for appointment of an Arbitrator on the ground that a dispute under the agreement has arisen between the parties. By an Order dated 25th July, 1986 a retired District Judge was appointed as an Arbitrator. He entered into reference on 8th August, 1986. Notice was issued to the appellant which put in appearance and filed objection. Subsequently, however, there was default in appearance on behalf of the appellant and an ex parte award was made on 21st December, 1986. An application to set aside the award was filed by the appellant which was dismissed by a single Judge of the High Court and an L.P.A. filed against the judgment of the single Judge was dismissed by a Division Bench on 1st March, 1989. Aggrieved, the appellant has preferred this Civil Appeal.

2. Learned Advocate General appearing on behalf of the appellant has raised three points in support of this appeal :

> 1. The Arbitrator before making an exparte award should have given notice of his intention to do so to the appellant.
>
> 2. The Arbitrator has allowed claims which were neither contemplated by the incentive scheme nor by the agreement where under the reference was made.
>
> 3. The Arbitrator had no jurisdiction to award interest either for the period prior to the date of institution of the proceedings or pendente lite and future.

3. We shall deal with the second point first. The learned Advocate General has placed before us the award and pointed out that the nature of the incentive contemplated by the scheme and the various items with regard to which decree was claimed by the respondent have been mentioned therein. It has been urged that according to the scheme the appellant was liable to pay to the respondent salary for a period of one year of one craftsman as also rent for the same period of the center in which the industry was run by the respondent. One of the items of the claim mentioned in the award is of 'Rupees 1,03,883.80 p. The details of Rs. 1,03,883.80 p. are to be found in the Claim Petition made by the respondent before the Arbitrator. Item No. (a) of the Claim Petition is for a sum of Rs. 69,897.60 p. as pay of Master Craftsman for one year and Item No. (b) is for a sum of Rs. 26,100.00 as rent of the six centers where the respondent started its business. The total amount of Item Nos. (a) and (b) comes to Rs. 95,997.60 p. It has been urged by the learned Advocate General that since in view of the scheme the appellant was liable to pay to the respondent by way of incentive only the amount covered by the aforesaid two items, the Arbitrator could have made an award ' with regard to a sum of Rs. 95,997.60 p. only. According to him, the award with regard to the other items claimed by the respondent is beyond the jurisdiction of the Arbitrator inasmuch as the Arbitrator derived his jurisdiction only from the reference and since the reference could be only with regard to the aforesaid two items, any amount awarded over and above these two items would apparently be beyond the scope of the reference.

4. Having heard learned Counsel for the parties we find substance in the above submission. Here we may point out that the learned Counsel for the respondent has urged that the agreement containing the arbitration Clause cannot be looked into even to find out as to what was the nature of the dispute contemplated by it with regard to which a reference to an arbitrator was contemplated, more so when the award was a non-speaking one. We find it difficult to agree with this submission for two reasons; Firstly, the award is not a totally non-speaking one inasmuch as it gives a resume' of the incentive scheme and the agreement between the parties as also the items of the claim made by the respondent. Of course while fixing the amount found payable by the appellant, no reasons are recorded. Secondly, if there is any challenge to the award on the ground that the arbitrator had no jurisdiction to make the award with regard to a particular item inasmuch as it was beyond the scope of reference, the only way to test the correctness of such a challenge is to look into the agreement itself. In our opinion, looking into the agreement for this limited purpose is neither tantamount to going into the evidence produced by the parties nor into the reasons which weighed with the arbitrator in making the award. It cannot be disputed that the jurisdiction of an arbitrator flows from the reference, nor can it be disputed that a reference can only be made with regard to such disputes which are contemplated by the agreement containing the arbitration Clause.

If what is to be found out is whether the award is without jurisdiction being beyond the scope of reference, there can be no doubt that the agreement containing the arbitration Clause has to be looked into for that limited purpose. It is after having perused the scheme and the agreement for the limited purpose aforesaid that we have come to the conclusion that there is substance in the submission made by the learned Advocate General that the arbitrator had no jurisdiction to make the award except with regard to the two items referred to above, the total of which comes to Rs. 95,997.60 p. The award with regard to the other items being without jurisdiction cannot be sustained in the proceedings for making the said award Rule of the Court.

5. Coming to the third point, namely, about the jurisdiction of the arbitrator to award interest raised by him, the learned Advocate General has relied on a decision of this Court in Executive Engineer (Irrigation) v. Abnaduta Jena AIR 1988 SC 1520. The said decision lays down certain exceptions to the general Rule that an arbitrator cannot award interest, on proof of which it becomes permissible to an arbitrator to award interest. One of such exceptions is Section 34 of the CPC read with Interest Act of 1978 which includes an arbitrator within the definition of Court. It has, however, been submitted by the learned Advocate General, which submission has not been refuted by the learned Counsel for the respondent. that neither the Interest Act of 1839 nor the Interest Act of 1978 applies to the State of Jammu and Kashmir. In our opinion the present case does not fall within any of the exceptions laid down in the case of Executive Engineer (Irrigation) (supra) and this being so the arbitrator was not competent to award any interest.

6. This, however, does not take away the jurisdiction of the Court to allow interest from the date on which the award is made Rule of the Court. In the instant case this date is 28th May, 1987. We are of the opinion that it is a fit case where the respondent may be allowed interest on the amount of Rupees 95,997.60 p. from the said date. Coming to the question of the rate of interest the agreement between the parties contemplates payment of interest to the appellant by the respondent in a certain contingency at the rate of 18% per annum. The said rate, in our opinion, can be taken as a reasonable basis for fixing the rate on which interest is to be awarded to the respondent for the simple reason that even the appellant considered that rate to be reasonable for recovery from the respondent.

7. In view of our decision on the first two points urged by the learned Advocate General we do not think it necessary to go into the first point urged by him namely, that the arbitrator before making the ex parte award should have given notice of his intention to do so to the appellant.

8. In view of the foregoing discussion, this appeal is allowed in part. The judgments of the Division Bench and the single Judge are set aside, and the award of the arbitrator modified to the aforesaid extent; with the result that now a decree shall be passed against the appellant and in favour of the respondent on the basis of the award for a sum of Rs. 95,997.60 p. with interest at the rate of 18% per annum from 28th May, 1987 till the date of payment together with the amount of costs awarded by the arbitrator, the same not having been disputed before us. So far as the costs of the present appeal are concerned, in view of their divided success, the parties shall bear their own costs. The learned Advocate General prays for and is granted two months' time to make the afore said payment.