M/S Anand Brothers P.Ltd.Tr.M.D vs Union Of India & Ors on 4 September, 2014

Equivalent citations: 2014 AIR SCW 5458, 2014 (9) SCC 212, (2015) 2 MAD LW 79, (2014) 143 ALLINDCAS 229 (SC), (2014) 2 CLR 789 (SC), (2014) 107 ALL LR 903, (2014) 3 ARBILR 470, (2014) 10 SCALE 313, (2015) 2 MAH LJ 1, (2015) 1 MPLJ 495, (2014) 4 JCR 212 (SC), (2015) 1 CIVLJ 1, AIR 2015 SUPREME COURT 125

Author: T.S. Thakur

Bench: Adarsh Kumar Goel, C. Nagappan, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.76 OF 2009

M/s Anand Brothers P. Ltd.
TR. M.D. …Appellant

Versus

Union of India & Ors. …Respondents

J U D G M E N T

T.S. THAKUR, J.

1. A non-speaking arbitral award in favour of the appellant-company was set aside by a learned Single Judge of the High Court of Delhi on the ground that the Arbitrator had not recorded his "findings" as required under Clause 70 of the General Conditions of Contract. Relying upon the decisions of this Court in M/s Daffadar Bhagat Singh and Sons v. Income-tax officer, A Ward, Ferozepur (AIR 1969 SC 340), Bhanji Bhadgwandas v. The Commissioner of Income-tax, Madras (AIR 1968 SC 139 and Rajinder Nath etc. v. Commissioner of Income-tax, Delhi (AIR 1979 SC 1933) the High Court held that the expression "finding" appearing in Clause 70 of the General Conditions of Contract implies something more than the mere recording of a conclusion by the Arbitrator. Inasmuch as the Arbitrator had failed to do so, the award rendered by him was unsustainable. The High Court accordingly set aside the award and remitted the matter back to the Arbitrator for a

fresh determination of the disputes between the parties.

2. An appeal was then preferred by the appellant-company before a Division Bench of the High Court who relying upon the decision of this Court in Gora Lal v. Union of India (2003) 12 SCC 459 affirmed the view taken by the learned Single Judge. Dissatisfied, the appellant has approached this Court by special leave.

3. When the matter initially came up before a Bench comprising R.V. Raveendran and J.M. Panchal, JJ. on 5th January, 2009 the Court noticed a divergence in the decision rendered by this Court in Gora Lal's case (supra) and that rendered in Build India Construction System v. Union of India (2002) 5 SCC 433. The matter was, therefore, referred to a larger Bench to resolve the conflict. That is precisely how this appeal has been listed before us.

4. Clause 70 of the General Conditions of Contract to the extent the same is relevant for our purposes, is to the following effect:

> ".....The Arbitrator shall give his award within a period of six months from the date of his entering on his reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual item of dispute."

5. A plain reading of the above would show that the Arbitrator was required to (i) give his award within the stipulated period as extended from time to time. (ii) the Award must be on "all matter referred to him"

(iii) the Award must indicate the findings of the Arbitrator along with sums, if any, awarded (iv) the findings and award of sums if any must be separate on each item of dispute. There is no gainsaying that Clause 70 makes a clear distinction between findings on each individual item of dispute on the one hand and the sum, if any, awarded in regard to the same on the other. That the Arbitrator had made his award in regard to each item of dispute raised by the appellant before it, is evident from a reading of the award. The question is whether the Arbitrator had recorded his findings on each such items. The High Court has, as noted above, answered that question in the negative; and set aside the award holding that the expression 'findings' must include the reasons for the ultimate conclusion arrived at by the Arbitrator. That view was assailed by learned counsel for the appellant who contended that the expression 'findings' should not imply the process of reasoning adopted by the Arbitrator for recording his conclusions. A finding howsoever cryptic would, according to the submission of the learned counsel for the appellant, satisfy the requirement of Clause 70 for otherwise the Clause would have been differently worded so as to make it mandatory for the Arbitrator to make what is called a speaking award giving reasons for the conclusions arrived at by him.

6. On behalf of the respondent it was per contra argued by Mr. P.S. Patwalia and Mr. J.S. Attri, learned senior counsel that the question was no longer res-integra having been addressed in Gora Lal's case (supra) where this Court held that the expression "finding on each individual item of

dispute" clearly meant that reason in support of the findings must also be recorded by the Arbitrator. It was contended that a finding which is unsupported by any reason is no finding in the eye of law.

7. Before we examine whether the expression 'finding' appearing in Clause 70 would include reasons in support of the conclusion drawn by the arbitrator, we consider it appropriate to refer to the Constitution Bench decision of this Court in Raipur Development Authority v. M/s Chokhamal Contractors etc (1989) 2 SCC 721 where this Court was examining whether an award without giving reasons can be remitted or set aside by the Court in the absence of any stipulation in the arbitral agreement obliging the arbitrator to record his reasons. Answering the question in the negative, this Court held that a non-speaking award cannot be set aside except in cases where the parties stipulate that the arbitrator shall furnish reasons for his award. This Court held :

> "33..... When the parties to the dispute insist upon reasons being given, the arbitrator is, as already observed earlier, under an obligation[pic]to give reasons. But there may be many arbitrations in which parties to the dispute may not relish the disclosure of the reasons for the awards. In the circumstances and particularly having regard to the various reasons given by the Indian Law Commission for not recommending to the Government to introduce an amendment in the Act requiring the arbitrators to give reasons for their awards we feel that it may not be appropriate to take the view that all awards which do not contain reasons should either be remitted or set aside....." [

8. Having said that, this Court declared that Government and their instrumentalities should - as a matter of policy and public interest - if not as a compulsion of law, ensure that whenever they enter into an agreement for resolution of disputes by way of private arbitrations, the requirement of speaking awards is expressly stipulated and ensured. Any laxity in that behalf might lend itself and perhaps justify the legitimate criticism that government failed to provide against possible prejudice to public interest. The following passage is in this regard apposite:

> "There is, however, one aspect of non-speaking awards in non-statutory arbitrations to which Government and governmental authorities are parties that compel attention. The trappings of a body which discharges judicial functions and is required to act in accordance with law with their concomitant obligations for reasoned decisions, are not attracted to a private adjudication of the nature of arbitration as the latter, as we have noticed earlier, is not supposed to exert the State's sovereign judicial power. But arbitral awards in [pic]disputes to which the State and its instrumentalities are parties affect public interest and the matter of the manner in which Government and its instrumentalities allow their interest to be affected by such arbitral adjudications involve larger questions of policy and public interest. Government and its instrumentalities cannot simply allow large financial interests of the State to be prejudicially affected by non-reviewable — except in the limited way allowed by the statute — non-speaking arbitral awards. Indeed, this branch of the system of dispute resolution has, of late, acquired a certain degree of notoriety by the

> manner in which in many cases the financial interests of Government have come to suffer by awards which have raised eyebrows by doubts as to their rectitude and propriety. It will not be justifiable for Governments or their instrumentalities to enter into arbitration agreements which do not expressly stipulate the rendering of reasoned and speaking awards. Governments and their instrumentalities should, as a matter of policy and public interest — if not as a compulsion of law — ensure that wherever they enter into agreements for resolution of disputes by resort to private arbitrations, the requirement of speaking awards is expressly stipulated and ensured. It is for Governments and their instrumentalities to ensure in future this requirement as a matter of policy in the larger public interest. Any lapse in that behalf might lend itself to and perhaps justify, the legitimate criticism that Government failed to provide against possible prejudice to public interest."

9. Reference may also be made to The Arbitration and Conciliation Act, 1996 which has repealed the Arbitration Act of 1940 and which seeks to achieve the twin objectives of obliging the Arbitral Tribunal to give reasons for its arbitral award and reducing the supervisory role of Courts in arbitration proceedings. Section 31(3) of the said Act obliges the arbitral tribunal to state the reasons upon which it is based unless the parties have agreed that no reasons be given or the arbitral award is based on consent of the parties. There is, therefore, a paradigm shift in the legal position under the new Act which prescribes a uniform requirement for the arbitrators to give reasons except in the two situations mentioned above. The change in the legal approach towards arbitration as an Alternative Dispute Resolution Mechanism is perceptible both in regard to the requirement of giving reasons and the scope of interference by the Court with arbitral awards. While in regard to requirement of giving reasons the law has brought in dimensions not found under the old Act, the scope of interference appears to be shrinking in its amplitude, no matter judicial pronouncements at time appear to be heading towards a more expansive approach, that may appear to some to be opening up areas for judicial review on newer grounds falling under the caption "Public Policy" appearing in Section 34 of the Act. We are referring to these developments for it is one of the well known canons of interpretation of statues that when an earlier enactment is truly ambiguous in that it is equally open to diverse meanings, the later enactment may in certain circumstances serve as the parliamentary exposition of the former. (See: Ram Kishan Ram Nath v. Janpad Sabha AIR 1962 SC 1073 and Ghanshyam Dass v. Dominion of India (1984) 3 SCC 46 at 58).

10. In Jogendra Nath v. Commissioner of Income Tax AIR 1969 SC 1089, this Court held that subsequent legislation on the same subject may be looked into with a view to giving a proper exposition of a provision of the earlier Act. Borrowing the principle from the above pronouncements it is reasonable to hold that the obligation cast upon the arbitrator in terms of Clause 70 in the case at hand ought to be understood in the light of not only the exposition of law by this Court in Chokhamal's case (supra) but also in the light of the statutory prescription that now mandates recording of reasons by the Arbitrator. The judicial climate in which arbitral awards are being made and viewed also lends itself to an interpretation that would make it obligatory for the Arbitrator to record reasons in support of the findings recorded by him.

11. Let us in the above backdrop examine the textual meaning and contextual significance of the expression 'finding' appearing in Clause 70. The expression has not been defined either in the agreement executed between the parties or in any statute for that matter. The expression shall, therefore, have to be given its ordinary literal meaning having regard to the context in which the same is used. A textual interpretation that matches the contextual is known to be the best. The principle is well settled but the decision of this Court in Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. And Ors. (1987) 1 SCC 424 has sounded a timely reminder of the same when it said:

> "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the court construed the expression 'Prize Chit' in Srinivasa (1980) 4 SCC 507 and we find no reason to depart from the court's construction."

12. Keeping the above in view, we may turn to the Oxford Dictionary which gives the following meaning to the word 'finding':

> "the conclusion reached by judicial or other inquiry".
>
> Black's Law Dictionary defines 'find' and 'finding of fact' thus:
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> "find - to determine a fact in dispute by verdict or decision.
>
> and, finding of fact: A determination by a judge, jury, or administrative agency of a fact supported by the evidence in the record, usually presented at the trial or hearing." Webster Comprehensive Dictionary defines the expression 'finding' as under:
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> "the act of finding; that which is found; discovery; 2. Law A conclusion arrived at before an official or a court. 3 Support; expense." P. Ramanathan Aiyar's Law Lexicon

(Second Ed.) assigns the following meaning to the term "finding":

"The decision of a judge, arbitrator, jury, or referee." It further explains the term thus:

"A term used by the profession and by the courts as meaning the decision of a trial court upon disputed facts."

13. It is evident from the above that English language and law dictionaries and the Law Lexicons give a wide range of meaning to the expression 'finding'. The predominant use of the expression is in relation to determination by a Judge, Jury, Administrative Agency, Arbitrator or a Referee. The determination is described either as a finding, decision or conclusion; upon disputed facts. It is also described as a determination of a fact supported by evidence on the record. It is interchangeably used as a conclusion or decision a term used by the legal profession and by Courts. The term "conclusion" is in turn defined by Black's Law Dictionary as under:

"The final part of a speech or writing (such as jury argument or a pleading);

a judgment arrived at by reasoning;

an inferential statement;

the closing, settling, or final arranging of a treaty, contract, deal, etc."

14. It is trite that a finding can be both; a finding of fact or a finding of law. It may even be a finding on a mixed question of law and fact. In the case of a finding on a legal issue the Arbitrator may on facts that are proved or admitted explore his options and lay bare the process by which he arrives at any such finding. It is only when the conclusion is supported by reasons on which it is based that one can logically describe the process as tantamount to recording a finding. It is immaterial whether the reasons given in support of the conclusion are sound or erroneous. That is because a conclusion supported by reasons would constitute a "finding" no matter the conclusion or the reasons in support of the same may themselves be erroneous on facts or in law. It may then be an erroneous finding but it would nonetheless be a finding. What is important is that a finding presupposes application of mind. Application of mind is best demonstrated by disclosure of the mind; mind in turn is best disclosed by recording reasons. That is the soul of every adjudicatory process which affects the rights of the parties. This is true also in the case of a finding of fact where too the process of reasoning must be disclosed in order that it is accepted as a finding in the sense the expression is used in Clause 70.

15. The above exposition matches even the contextual interpretation of Clause 70 which provides a mechanism for adjudication of disputes between the parties and not only requires the Arbitrator to indicate the amount he is awarding in regard to each item of claim but also the "findings on each one of such items". The underlying purpose of making such a provision in the arbitration clause governing the parties, obviously was to ensure that the Arbitrator while adjudicating upon the

disputes as a Judge chosen by the parties gives reasons for the conclusions that he may arrive at. The expression 'finding' appearing in Clause 70, therefore, needs to be so construed as to promote that object and include within it not only the ultimate conclusion which the Arbitrator arrives at but also the process of reasoning by which he does so. Clause 70 could not, in our opinion, have meant to be only a wooden or lifeless formality of indicating whether the claim is accepted or rejected. Any such statement would have made no qualitative addition to the adjudication of the claim for the arbitrator would award a sum of money but withhold the reasons for the same. We are in respectful agreement with the view taken by this Court in Gora Lal's case (supra) when it said:

> "The point for determination in this case is: whether the arbitrator ought to have given reasons in support of his findings, along with the sums awarded, on each item of dispute. To decide this point, we have to go by the text and the context of clause 70 of the arbitration agreement quoted above. Under the said clause, the arbitrator was required to identify each individual item of dispute and give his findings thereon along with the sum awarded. In this context, one has to read the word "findings" with the expression "on each item of dispute" and if so read it is clear that the word "finding" denotes "reasons" in support of the said conclusion on each item of dispute. The word "finding" has been defined in "Words and Phrases, Permanent Edn., 17, West Publishing Co." to mean "an ascertainment of facts and the result of investigations". Applying the above test to clause 70, we are of the view that the arbitrator was required to give reasons in support of his findings on the items of dispute along with the sums awarded. We make it clear that this order is confined to the facts of this case and our interpretation is confined to clause 70 of the arbitration agreement in this case."

16. In the case at hand the Arbitrator's award was admittedly unsupported by any reason, no matter the Arbitrator had in the column captioned 'findings' made comments like 'sustained', 'partly sustained', 'not sustained'. The High Court was, therefore, justified in setting aside the award made by the Arbitrator and remitting the matter to him for making of a fresh award.

17. That brings us to the decision of this Court in Build India Construction System (supra) which was relied upon to canvass that it stated a proposition contrary to that stated in Gora Lal's case (supra). In Build India Construction System (supra) this Court noted in no uncertain terms that the validity of the award had not been specifically questioned on the ground of its having been given in breach of any obligation of the Arbitrator to give reasons as spelled out by the arbitration clause. The judgment of the learned Single Judge did not show, observed this Court, that such a plea was urged before him. The objection petition filed to challenge the award was also found by this Court to be vague and general hence insufficient to give rise to an effective challenge to the award on the ground of it being non-speaking. The plea regarding the Award being non- speaking was raised for the first time before the Division bench in appeal. This Court in that backdrop held that the Division Bench fell in error in entertaining and upholding such a plea at such a late stage. This Court said:

> "11. There are several other factors which preclude the respondents from urging such a plea. The reference to arbitrator does not suggest an obligation having been cast on

> the arbitrator to give reasons for the award. Such a plea, as has been urged in this Court, was not taken by the respondents before the arbitrator. Even in the objections filed in the Court, the validity of the award has not been specifically questioned on the ground of its having been given in breach of any obligation of the arbitrator to give reasons as spelled out by the arbitration clause. The judgment of the learned Single Judge does not show such a plea having been urged before him. In the objection petition, there is a vague and general plea raised that rejecting the claims forming the subject-matter of cross- objection and allowing the claim of the appellant without assigning any reason was bad. Such an omnibus and general plea cannot be read as submitting that the amendment dated 4-9-1986 applied to the contract between the parties and that in view of the amended arbitration clause the unreasoned award was bad. It appears that the plea was for the first time raised at the appellate stage before the Division Bench of the High Court. Unwittingly the Division Bench fell into the error of entertaining such a plea and disposing of the appeal by upholding the same though the plea was not even available to the respondents to be raised at that stage."

18. It is, in the light of the above observations, difficult to read Build India Construction System (supra) as an authority for the proposition that Clause 70 of the General Conditions of the Contract did not oblige the Arbitrator to record reasons. The decision must, therefore, remain confined to the facts of that case only.

19. It was next contended by learned counsel for the appellant that the High Court has directed the Arbitrator to make an award in terms of the Arbitration and Conciliation Act, 1996. Since, however, the arbitration proceedings had been conducted under the old Act any remission to the Arbitrator could only be under the provisions of the said Act. Mr. Patwalia, learned Additional Solicitor General, did not dispute that position. He submitted that this Court could make it clear that the Arbitrator would conduct the proceedings under the provisions of the Arbitration Act, 1940.

20. It was lastly argued by learned counsel for the appellant that since the proceedings have remained stayed for a considerable period, this Court could direct the Arbitrator to dispose of the same expeditiously. Our attention was, in this connection, drawn to a letter dated 2nd March, 2009 whereby the respondents have appointed Shri Dharma Sheel, Supdt. Engineer (Personnel and Legal) Headquarter as a Sole Arbitrator to adjudicate upon the dispute between the parties as Col. Dalip Banerjee, earlier appointed had expressed his inability to continue nor was Col. S.N. Kuda, initially appointed, ready to go on with proceedings. It was urged that if for any reason Shri Banerjee, the newly appointed Arbitrator is also unable to take up the assignment, the respondents could be directed to appoint another Arbitrator within a time frame with a direction to the Arbitrator so appointed to conclude the proceedings as early as possible. We see no reason to decline the limited prayer made by learned counsel for the appellant especially when Mr. Patwalia submitted that in case Shri Banerjee was also unable to enter upon reference for any reason the respondents shall, within such time, as may be fixed by this Court nominate another Arbitrator.

21. In the result this appeal fails and is hereby dismissed. We, however, make it clear that consequent upon the orders passed by the High Court the Arbitrator shall conclude the proceedings in terms of the provisions of the Arbitration Act of 1940 expeditiously. We further make it clear that in case the Arbitrator already nominated is for any reason unable to take up the assignment the respondents shall within six weeks from today appoint a substitute Arbitrator who shall then enter upon the reference and conclude the proceedings as early as possible. No costs.

.....J. (T.S. THAKUR) .....J. (C. NAGAPPAN)
.....J. (ADARSH KUMAR GOEL) New Delhi September 4, 2014