

Neelakantan & Bros. Construction vs Superintending Engineer, National ... on 16 August, 1988

Equivalent citations: 1988 AIR 2045, 1988 SCR SUPL. (2) 462, AIR 1988 SUPREME COURT 2045, (1988) 2 KER LT 82, (1988) 3 JT 743 (SC), 1988 (4) SCC 462

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:

NEELAKANTAN & BROS. CONSTRUCTION

Vs.

RESPONDENT:

SUPERINTENDING ENGINEER, NATIONAL HIGHWAYS, SALEM & ORS.

DATE OF JUDGMENT 16/08/1988

BENCH:

MUKHARJI, SABYASACHI (J)

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MUKHARJI, SABYASACHI (J)

RANGNATHAN, S.

CITATION:

1988 AIR 2045 1988 SCR Supl. (2) 462

1988 SCC (4) 462 JT 1988 (3) 743

1988 SCALE (2) 586

ACT:

Arbitration Act, 1940 : Sections 2, 20, 30 and 33-
Arbitration- Statements of parties filed-Evidence adduced-
Change of Arbitrator -Parties did not protest and
participate in proceedings before successor-Whether amounts
to acquiescence-Appointment of successor-Whether can be
challenged as invalidating proceedings_Award-Unreasoned-No
legal proposition made-Whether can be interfered with.

HEADNOTE:

The petitioner-Construction firm entered into agreements with respondent No. 3, Superintending Engineer of a Circle for execution of certain civil works. Respondent No. 1-Superintending Engineer of another Circle entered into a

reference for arbitration and parties filed statements and adduced evidence. Before the adjudication was completed, respondent No. 1 was transferred and his successor-in-office entered into the task of adjudication with the knowledge, consent and active participation of the petitioner in the proceeding. Since the arbitrator could not complete the award within time, he sought extension of time by a letter to the petitioner and the petitioner agreed to such extension by a letter. The petitioner did not ask for any further or fresh opportunity for adducing any evidence. Thereafter, the arbitrator made his award.

The petitioner challenged the award under ss. 30 and 33 of the Arbitration Act, 1940 before the District Judge on the ground that the previous arbitrator having entered into reference, his successor-in-office had no jurisdiction to conclude it and the award was violative of principles of natural justice.

The District Judge held that the successor-in-office to the original arbitrator was competent to pass the award. Upholding this, the High Court rejected the challenge to the award. Hence the petitioner filed the Special Leave Petition in this Court contending that once an arbitrator had entered into a reference, the next incumbent could not conclude the said arbitration proceedings without a fresh agreement, that there was violation of principles of natural justice and

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that the award was bad.

Dismissing the Special Leave Petition,

HELD: 1. If the parties to the reference either agree before, hand to the method of appointment, or afterwards acquiesce in the appointment made, with full knowledge of all the circumstances, they will be precluded from objecting to such appointment as invalidating subsequent proceedings. Attending and taking part in the proceedings with full knowledge of the relevant fact will amount to such acquiescence [465G]

N. Challappan v. Secretary, Kerala State Electricity Board and another, [1975] 1 S.C.C. 289 relied on.

Chowdhury Murtaza Hossein v. Mussumat Bibi Bechunnissa, 3 I.A. 209 and Prasun Roy v. The Calcutta Metropolitan Development Authority and another, [1982] 2 Scale 125, referred to.

Russell on Arbitration, 18th Edition/20th Edition, pages 105/432-435, referred to.

In the instant case, the petitioner had full knowledge of the change of the incumbent and did not protest and proceedings went on before the new incumbent. Thus, the petitioner had knowledge of the alleged defect and had acquiesced in the proceedings before the successor. There was, therefore, no violation of principles of natural justice. [465C, F]

2. Unless there was a patent mistake of law and gross

misstatement of facts resulting in miscarriage of justice or of equity, the award remains unassailable. [466C]

Champsey Bhara & Company v. Jivraj Ballo Spinning and Weaving Company Ltd., 50 I.A. 324 and Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd., Indore, [1967] 1 S.C.R. 105, referred to.

In the instant case, the arbitrator gave no reason for the award. There is no legal proposition which is the basis of the award, far less any legal proposition which is erroneous. There is no appeal from the verdict of the arbitrator. The Court cannot review, in such circumstances, the award and correct any mistake in the adjudication by the arbitrator. [466D]

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3. In the facts and circumstances of the case, the award is unassailable. The High Court was right in upholding the District Judge's dismissal of the challenge to the award. [466F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition [Civil] Nos. 11 (150-58 of 1987.

From the Judgment and Order dated 31.7.1987 of the Madras High Court in Appeal against Order Nos. 541 to 544 and 558 to 562 of 1981.

A.K. Sen, V. Krishnamurthy and V. Balachandran for the Petitioner.

A. V. Rangam for the Respondents.

The Judgment of the Court was delivered by SBYASACHI MUKHARJI, J. These are petitions under Article 136 of the Constitution seeking leave to appeal against the judgment and order of the High Court of Madras dated 31st July, 1987. The petitioner company undertook the work of widening and strengthening pavements in Nation Highway No. 7, Madurai-Kanya-kumari Road from Reaches 37.6 k.m. to '1', k.m. on the Madurai-Kanyakumari Road and the work was divided into fourteen Reaches and 14 separate agreements were entered into between the petitioner and the Superintending Engineer, National Highways, Tirunelveli. respondent No. 3 to the present petitions. There is not much dispute on this point. At the relevant time, according to, the petitioner, the Superintending Engineer. National Highways, Salem was one Thiru Mohan. He entered into reference. He took up the matter for arbitration and called for statements from the parties. Statements were filed before him and evidence were also adduced before him. But before he could complete the adjudication he was transferred and was succeeded by one Thiru J.R. Cornelius, Superintending Engineer. The contention of the petitioner in this case was that he had no Jurisdiction to, proceed and complete the arbitration. It appears however, that he entered into the task of adjudication with the knowledge and consent of the petitioner and the petitioner had participated actively in the proceeding before him. From the notices served by Thiru Mohan

previously and subsequently by Thiru Cornelius. it is apparent that the petitioner had knowledge of the change of the incumbent of the Superintending Engineer who was to arbitrate in the matter. This is evident from the documents appearing at pages 164 PG NO 465 and 165 of the present paper book and both the parties had notice of the succession in office. The arbitrator could not complete the award within time and there was need for extension of time. He wrote a letter to the petitioner on 1st May 1977 stating "extension of time was necessary to pass orders on reference and hearing has been concluded". In reply to that letter on 11th May, 1977 the petitioner agreed to such extension. The petitioner was content with that situation and never asked for any further or fresh opportunity either to make any submission or to adduce any evidence. In that light the arbitrator has made the award. This was challenged before the learned District Judge by means of a suit under sections 30 and 33 of the Arbitration Act, 1940 that the previous arbitrator Thiru Mohan having entered into reference and Thiru Cornelius had no jurisdiction to conclude. It was violative of the principles of natural justice, it was submitted. But as mentioned hereinbefore, the petitioner had knowledge of the change of the incumbent. He did not protest and the proceedings went on before Thiru Cornelius. It is apparent from the terms of the agreement between the parties that the Superintending Engineer of the Circle for the time being was the named arbitrator. The learned District Judge held that Thiru Cornelius was competent to pass the award. The High Court also upheld that and rejected the challenge to the award on this ground made by the petitioner.

Shri A.K. Sen, learned counsel for the petitioners, urged before us that once an arbitrator had entered into reference, the next incumbent could not conclude the said arbitration proceeding without a fresh agreement. In the facts of this case, as the petitioner had knowledge of the alleged defect and had acquiesced in the proceedings before the successor, namely, Thiru Cornelius; we are of the opinion, that this contention of Shri Sen cannot be entertained. It was contended that there was violation of the principles of natural justice. This objection cannot be entertained. If the parties to the reference either agree beforehand to the method of appointment, or afterwards acquiescence in the appointment made with full knowledge of all the circumstances, they will be precluded from objection to such appointment as invalidating subsequent proceedings. Attending and taking part in the proceedings with full knowledge of the relevant fact will amount to such acquiescence, explains Russell on Arbitration, 18th Edition at page 105. This was stated by the Judicial Committee long ago in *Chowdhury Murtaza Hossein v. Mussumat Bibi Bechunnissa*, 3 I.A. 209. See also the observations of P.B. Mukherji, J. in the decision of the Calcutta High Court PG NO 466 Calcutta, A.I.R. 1456 Calcutta 470 at 472. This Court held in *N. Challappan v. Secretary, Kerala State Electricity Board and another*, [1975] 1 S.C.C. 289 that acquiescence defeated the right of the appellant at a latter stage. See also the observations of this Court in *Prasun Roy v. The Calcutta Metropolitan Development Authority and another*, [1982] 2 Scale 125. See Russell on Arbitration, 20th Edition, pages 432-435. Shri Sen contended that no notice was issued after the appointment of the new arbitrator. This was factually incorrect, as mentioned before. Then, it was said that the award was bad as it did not consider all the claims. This also cannot be entertained. It must be assumed that the arbitrator had considered all the evidence adduced before him. There was no disregard of any principle of law. There was nothing to indicate that the arbitrator had not considered all the evidence. Unless there was a patent mistake of law and gross misstatement of facts resulting in miscarriage of justice or of equity, the award remains unassailable. In this case the arbitrator gave no reason for the award. There is no legal proposition which is the basis of the

award, far less any legal proposition which is erroneous. There is no appeal from the verdict of the arbitrator. The Court cannot review, in such circumstances, the award and correct any mistake in the adjudication by the arbitrator-See *Champsey Bhara B Company v. Jivray Ballo Spinning and Weaving Company Ltd.*, 50 I.A. 324 and the observations of Bachawat, J. in *Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd., Indore*, [1967] 1 S. C. R. 105 of this Court.

In the facts and circumstances of the case, in our opinion, this award is not assailable. The High Court was, therefore, right in upholding the learned District judge's dismissal of the challenge to the award. These petitions, therefore, fail and are dismissed accordingly ,without any order as to costs.

N.P.V.

Petitions dismissed.