N. Chellappan vs Secretary, Kerala State Electricity ... on 21 November, 1974

Equivalent citations: 1975 AIR 230, 1975 SCR (2) 811, AIR 1975 SUPREME COURT 230, 1975 (1) SCC 289, 1976 (1) SCJ 207, 1975 KER LT 287, 1975 2 SCR 811

Author: Kuttyil Kurien Mathew

Bench: Kuttyil Kurien Mathew, A.N. Ray, N.L. Untwalia

PETITIONER:
N. CHELLAPPAN

Vs.

RESPONDENT:
SECRETARY, KERALA STATE ELECTRICITY BOARD &ANOTHER

DATE OF JUDGMENT21/11/1974

BENCH:
MATHEW, KUTTYIL KURIEN
BENCH:
MATHEW, KUTTYIL KURIEN
RAY, A.N. (CJ)
UNTWALIA, N.L.

CITATION:
1975 AIR 230 1975 SCR (2) 811
1975 SCC (1) 289
CITATOR INFO :
D 1984 SC1072 (24)
R 1988 SC 205 (8)
R 1988 SC2045 (2)
RF 1990 SC1340 (8)
R 1990 SC1426 (22)

ACT:
Arbitration Act-Error apparent on the face of the record-Allowing time barred claims whether amount to error apparent on the face of the record Whether an umpire has jurisdiction to enter upon the reference in case arbitrators fail to make an award within the specified time-Parties Participating before the Sole Arbitrator without demur whether precluded from challenging the jurisdiction of the Arbitrator by acquiescence.

HEADNOTE:

The appellant was a contractor entrusted to construct a Dam by the Kerala State Electricity Board. Disputes arose between the appellant and the respondent about the non-execution of the work. 5 points were referred for the decision of 2 arbitrators. The arbitrators appointed an Umpire. The Arbitrator did not make the award within the time limit which was extended from time to time. Thereupon the appellant filed an application for revoking the authority of the arbitrators on the ground that the arbitrators did not make the award within the time limit and it was further prayed that the Umpire might be directed to enter upon the reference to proceed with the arbitration. One of the arbitrators in his statement submitted that he had no objection to his being discharged as he no longer wished to be an arbitrator. The appellant also filed another application praying to appoint the Umpire as a Sole Arbitrator in place of the two arbitrators. The Court by its order dated the 22nd June, 1972 revoked the authority of the arbitrators and directed the Umpire to enter upon the reference in his capacity as Umpire and also appointed the Umpire as the sole arbitrator. The trial court noted in its order that the Umpire was directed to make the award by consent of parties. The appellant and the respondent participated in the proceedings before the Umpire without demur. The Umpire made an award in favour of the appellant for nearly Rs. 30 lacs. The respondent filed an application challenging the award under sections 16, 30 and 33 of the Arbitration Act and praying to set aside the award. The appellant field an application to pass a decree in terms of the award. The Trial Court dismissed the application filed by the respondent and passed decree in terms of the award.

On an appealfiled by the respondent, the High Court came to the conclusion that the Umpireas sole arbitrator had no jurisdiction to pass the award as the orders revoking the authority of the arbitrators to pass an award and appointing the Umpire as sole Arbitrator was bad in law and that no sufficient opportunity was given to the respondent to substantiate its objections to the award.

On appeal by special leave it was contended by the respondent before this Court that the Umpire as sole Arbitrator had no jurisdiction to enter upon the reference and pass the award. It was also contended that the Umpire has allowed certain time barred claims of the appellant without examining the grievances of the claims.

Allowing the appeal,

HELD : Since the order was passed by the consent of the parties the Umpire had the jurisdiction. Even apart from the consent of the parties rule 4 in the First Schedule to the Arbitration Act authorities the Umpire to enter upon the reference in case arbitrators fail to make award within the

time specified. The Umpire did notlose his jurisdiction to pass the award merely because he wanted in order fromcourt by way of abundant caution authorising him to enter upon the reference.[818E-G]

HELD FURTHER : There is no doubt that the order was consent order. The respondent made no endeavour to have that order vacated by filing a review, if the statement in that order that it was passed on the basis of consent proceeded on a

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mistake of the court. On the other hand respondent participated in the proceedings before the Umpire. The respondent is precluded from challenging the jurisdiction of the Umpire by acquiescence. [817G-H]

HELD FURTHER: Negativing the contention that the Umpire should have examined the genuineness of the claims and whether the claims were time-barred. In the award the Umpire has referred to the claims under this head and the arguments of the respondent for disallowing the claim and thereafter awarded the amount without expressly aderoting to or deciding the question of limitation. From the findings of the Umpire under this head it is not seen that these claims were barred by limitation. No mistake of law appears on the faze of the award. The Umpire as sole arbitrator was not bound to give a reasoned award and if in passing the award he makes a mistake of law or fact that is no ground for challenging the validity of the award. It is only when a proposition of law is stated in the award and it is the basis of that award that is erroneous, can the award be set aside or remitted on the grounds of error of law apparent on the face of the record. An error of law on the face of the award means that you can find in the award or a document actually incorporated thereto stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can say is erroneous. The Court has no jurisdiction to investigate into the merits of the case and to examine the documentary and oral evidence on the record for the purpose of finding out whether or not the arbitrator has committed an error of law. [820F-H; 821E-D]

ARGUMENTS

For the appellants :

1. The High Court of Kerala erred in holding that the order of the Subordinates Judge, Trivandrum, dated the 22nd June 1972 in O.P. 11 of 1972 was made without jurisdiction and in further holding that the Umpire who entered on reference consequent upon the said order had no jurisdiction for the following reasons :

(a) The order in O.P. 11 of 1972 is by consent of parties. The consent given by the counsel for both sides before the learned Sub Judge amounts to a fresh arbitration agreement. Therefore, the Umpire had jurisdiction to enter on reference.

(b) Before the learned Subordinate Judge both the arbitrators expressed their unwillingness to continue as

arbitrators. Admittedly, the arbitrators failed to make an award within the prescribed time. The time having been extended five times earlier and the last date of the extended period having expired on 18th December, 1971 the Umpires could have entered on the reference on any day after the 19th December, 1971. However, as the appellant approached the Court of Subordinate Judge on 28th January, 1972 and as the respondent Board by its letter informed the Umpire that they would be approaching the court for enlargement of time, the Umpire did not enter on reference forthwith. After O.P. It was allowed as per the agreement of parties and after O.P. 19 filed by the Board for enlargement of time of the arbitrators, was dismissed on the same date, the Umpire was bound to enter on reference forthwith both under the order of the Court and under Rule 4 of Schedule I of the Arbitration Act. Therefore, all that the court did in asking the Umpire to enter on reference as Umpire was to parry out the provisions of Rule 4 of Schedule I to the Arbitration Act.

(c) The Board is precluded from challenging the authority of the Umpire inasmuch as he entered on reference pursuant to consent of parties. The Respondent Board participated in the proceedings without any protest. Therefore, the Board is estopped from challenging the authority of the Umpire. The Board by their conduct in participating in the proceedings before the Umpire is deemed to have waived the objections, if any, against the jurisdiction of the Umpire. There was no inherent lack of jurisdiction in the Umpire and therefore the participation by the Board amounts to acquiescence. They are estopped from challenging his authority.

(d) After 18-12-1971 on which day the enlarged time for the arbitrators to make the award expired the arbitrators became functous officio.

(e) In substance, the function of an 'Umpire' and a 'sole arbitrator' is the same. In fact the order of Court under Section 12(2) is later in point of time and hence it can be ignored if it was unnecessary.

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2.The High Court was in error in exercising its suo moto jurisdiction in setting aside the order dated the 22nd June 1972 in O.P. 11 of 1972. The learned Subordinate Judge was the competent authority to entertain an application under Sections 5, 11 and 12 of the Arbitration Act. Therefore, his order asking the Umpire to enter on reference does not suffier from jurisdictional errors enumerated in Section 115 of the C.P.C. The court could exercise suo moto power of revision only if the order could be revised under Section 115.

3.The award being an award of money and there being no reason given for the award, there could be no error in the award much less on the face of it. The arbitrator is not bound to give reason for the award and he has given none.

The court is not competent to enter into an elaboratre discussion of the evidence etc., in order to find out whether there is any error in the award. The synopsis of contesting parties does not form part of an award.

The High Court has proceeded as though it is sitting in appeal on the award.

The arbitration agreement specifically states that no other question of dispute, or difference, arisings, settlements except those detailed in the agreement remains. So, the dispute as to who caused the breach of contract has also been given up. Since there is no dispute as to who caused the breach of contract the security amount which is appellant's own money is liable to be refunded without any protest. Hence the Umpire was competent to make the award in respect of the said sum and has rightly awarded it to the appellant. The 'retention amount' and the "amount withheld" are clearly in respect of the 'work'.

The claim of the appellant was to the extent of about Rs. 78 lakhs. The Umpire, after considering the objection of the respondent disallowed claims upto about Rs. 48 lakhs on the ground that they are outside the scope of the arbitration agreement. After this, the respondent participated in the arbitration without protest. They are now estopped from challenging the award on the ground of excess of jurisdiction.

The Umpire, being a Judge, both in respect of questions of law and fact is competent to decide even the question of limitation. From the synopsis of arguments narrated by the Umpire it is clear that he has considered the plea of limitation raised by the Respondent. If the Umpire has considered the question the court cannot be asked to reopen the matter.

The appellant has withdrawn O.S. 33 in the Court of Subordinate Judge, Badagara pursuant to the arbitration agreement. The suit was within the period of limitation. Therefore, the claim is within the period of limitation.

Since the claim under Item No. 1 specifically formed part of the arbitration agreement the Board is precluded from raising the plea of limitation. The Board was competent to contract and admit even time-barred claims under Section 25 of the Contract Act.

Therefore, the award is not liable to be set aside either on the ground of limitation or on the ground that the matter relating to security deposit etc., falls outside the scope of reference. At any rate, both the above claims are distinct and severable from the rest of the award.

3.The court has to decide the application under Section 33 only on affidavits. It is only if the court feels that evidence is required it can permit adducing of evidence. The court in this case considered the affidavits and arguments and found that no ground is made out to require oral evidence being adduced. The application filed by the respondent to set aside the award and the affidavit in

support of it clearly show that on none of the grounds mentioned therein the award can be set aside. Therefore, the court was right in not permitting adducing of evidence. The respondent had sufficient opportunity to convince the court that the award suffers from error apparent on the face of the award.

Arguments for Respondent No. 1

1.The High Court, was right in holding that the Umpire had no jurisdiction to make the award and that the award is therefore invalid. The order passed by the trial court on O.P. 11 of 1972 on 22-6-1972, revoke the authority of the two

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arbitrators, was wholly outside the scope of Sections 5 and 11 of the Arbitration Act, 1940. In the trial court the appellant's advocate had expressly given up all contentions of fact including the contention that the said order on O.P. 11 of 1972 was a consent order. He must also be deemed to have given up the contention that the respondent Electricity Board had acquiesced in the proceedings before the Umpire and is estopped from challenging the award. The correspondence between the Umpire and the appellant shows that the Umpire had rightly refused to enter on the reference under clause 4 of Schedule I of the Arbitration Act. If the trial court had not wrongly allowed O.P. 11 of 1972, it was bound to allow the respondent's application for extension of time of the arbitrators, being O.P. 1 9 of 1972. The Umpire's purported jurisdiction must therefore be traced only to the trial court's order on O.P. 11 of 1972 which was clearly invalid.

2.Supposing that the Umpire had jurisdiction to make the award, the order of thetrial court passed on 10-4-1973 in O.P. 21 of 1973 (dismissing the respondent'sapplication for setting aside the award and granting the appellant's application for passing a decree in terms of the award) deserves to be set aside and the respondent's application for setting aside the award restored. The trial court's order dated 10-4-1973 is vitiated because the court arbitrarily refused to allow the respondent to lead any evidence and even to file an affidavit in rejoinder. This had caused injustice to the respondent.

3.Without prejudice to the above contentions, it is submitted that in any case the award is clearly bad in respect of the following :

(a) The arbitrator acted beyond the scope of reference in awarding to the appellant the sum of Rs. 1,81,500/- which was paid by him by way of security for the due performance of the contract. Under item 2(a) of the agreement of reference the appellant was only entitled to be paid for the value of the work done by him; this item did not include the amount of security which could be refunded to him only

if he had duly performed his part of the contract. The question whether the appellant had duty performed his part of the contract and was entitled to a refund of the security, was not referred to arbitration, and the arbitration agreement had specifically provided that points of dispute not referred to arbitration were "deemed to be abandoned".
(b) The four claims amounting to Rs. 4,95,000/- which were covered by point I of the points of reference were patently barred by limitation. The award on its face shows that these claims had arisen before the end of March 1966 that the agreement of reference was made more than three years thereafter on 22-8-1970 and that there was not even a contention raised by the appellant that there was any acknowledgement or part payment so as to extend the period of limitation. The award of Rs. 4,95,000/- was thus clearly based upon an erroneous assumption of law and the award is to that extent vitiated by in error of law apparent in the face thereof.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 682 of 1974.

Appeal by Special Leave from the judgment & decree dated the 10th October, 1973 of the Kerala High Court in A. S. No. 153 of 1973.

B. Sen, C. Krishnan Nair and K. N. Bhat, for the Appellant. V, M. Tarkunde and A. G. Pudissery, for the Respondents. The Judgment of the Court was delivered by MATHEW, J.-This is an appeal, by special leave, from the judgment of the Kerala High Court reversing an order passed by the District Judge making an award passed by the umpire a rule of the court after dismissing an application to set aside the award.

By a contract dated 21-4-1964, the construction of the Kuttiyadi Dam was entrusted by the Kerala State Electricity Board (for short the 'Board') to Shri Chellappan, the appellant, The work was left unfinished and therefore dispute arose between the appellant and the Board by reason of the non-execution of the work. While these disputes were pending, a second contract dated 15-7-1967 was entered into between the appellant and the Board for the execution of the remaining part of the work on or before 31-5-1969. On 4-6- 1968, the appellant stopped the work and the Chief Engineer terminated the second contract on 15-10-1968. The Board thereafter carried on with the unfinished work. On 22-8- 1970, five points were referred for the decision of two arbitrators both retired Chief Engineers, one to be nominated by the Board and the other by the appellant. The arbitrators entered on the reference and they nominated Shri G. Kumara Pillai, a retired judge of the Kerala High Court

as umpire. the arbitrators did not make the award within the' time limit which was extended from time to time and which expired on 18-12-1971. Thereupon the appellant filed O.P. No. 11 of 1972 on 28-1-1972 for revoking the authority of the arbitrators under section 5 and 11 of the Arbitration Act. The grounds for the application were that the arbitrators did not make the award within the time limit for submission of the award and that they were disqualified by bias from proceeding with the arbitration. The prayer in the application was that Shri Kumara Pillai may be directed to enter upon the reference in his capacity as umpire and to proceed with the arbitration. The arbitrators filed statements explaining the reasons for the delay in making the award and denying the bias attributed to them. One of the arbitrators in his statement submitted that he has no objection to- his being discharged as he no longer wished to be an arbitrator. In this O.P. the appellant filed another application on 31-3-1972 to appoint Shri Kumara Pillai as a sole arbitrator in place of the two arbitrators. By an order dated 22-6-1972, the court allowed O.P. 11 of 1972 and revoked the authority of the arbitrators and directed the umpire to enter upon the reference in his capacity as umpire and also 'allowed' the application (I.A. 1918/'72) to appoint Shri Kumara Pillai as the sole arbitrator. On 5-3- 1972, the Board filed O.P. No. 19 of 1972 for extension of time for passing the award by the. arbitrators. This was disposed of by an order dated 22-6-1972 stating that since O.P. 11 of the 1972 bad been allowed, it had become unnecessary to extend the period. The umpire entered on reference in his capacity as umpire on 30-6-1972. Both the appellant and the Board participated in the proceedings before the umpire without demur and the umpire made the award in favour of the appellant for nearly Rs. 30 lakhs on 15-2-1973. The umpire field the award in court on 30--2-1973 and prayed by O.P. 21 of 1973 that notice of the filing of the award be issued to the parties and that the award be made a rule of the court. Notice was ordered on the application on 21-2-1973. The Board filed an application on 22-3-1973 [I.A. 895(a)] challenging the award under sections 16, 30 and 33 of the Arbitration Act and praying to set aside the award. On 24-3 1973, the appellant filed an application to pass a decree in terms of the award for interest at 15 per cent from the, date of the decree. The appellant filed his objection on 26-3-1973 to the Board'& application to set aside the award. The case was posted for hearing on 4-4-1973. On that day, the Board filed an application-I.A. 1176 of 1973-stating that it was necessary to file a detailed affidavit in rejoinder to the objections filed by the appellant to the application of the Board to set aside the award and praying for an adjournment of the hearing. The application for adjournment was allowed. The matter came, up for hearing on 6-4-1973. On that day, the Board filed I.A. 1223 of, 1973 praying for time for filing the affidavit in rejoinder. On the same day, the appellant's counsel stated "I submit that I shall not be pressing the fresh points raised in the affidavit for the purpose of today's arguments."

In I.A. 1223 of 1973, the Board had stated that it was prepared to satisfy the court that the application under sections 16, 30 and 33 of the Arbitration Act was prima.facie maintainable and that it was necessary to adjourn the hearing for evidence and for final argument. The endorsement on the petition dated 6-4-1973 is "Call on the adjourned date". On 10-4-1973 the court passed final orders dismissing the application filed by the Board to set aside the award and passed a decree in terms of the award with interest at 6 per cent from the date of the decree till the realisation of the amount. All these orders were passed in O.P. 21 of 1973. On I.A. No. 1223 of 1973, the Court passed the order "rejected" on 10-1973.

In the appeal filed by the Board against the decree, the High Court came to the conclusion that the umpire as sole arbitrator had no jurisdiction to pass the award as the orders revoking the, authority ,of the arbitrators to pass an award and appointing the umpire as sole arbitrator were bad in law and that no sufficient opportunity was given to the Board to substantiate its objection to the award. The Court further held that the umpire made a mistake in respect of two matters referred. The Court, therefore, set aside the order in O.P. 11 of 1972 as well as the Award and the decree and remitted the case to the Court below for fresh disposal according to law.

The main point which arises for consideration is whether the umpire as sole arbitrator had jurisdiction to enter upon the reference and pass the award. To decide the question it is necessary to see whether the order in O.P. 11 of 1972 appointing the umpire as sole arbitrator was passed without jurisdiction or was vitiated by an error which made it bad in law. In paragraph 5 of that order, the court has stated :

> "When the, matter came up for enquiry, it was represented by both sides, that since the petitioner (appellant) has expressed in so many words his want of confidence in the arbitrators and since the arbitrators themselves have expressed their willingness to be relieved of their duties as 'arbitrators, they, may be dispensed with. In view of this agreement, it has become necessary to revoke the authority of respondents 2 and 3 (arbitrators) and to appoint the 4th respondent as umpire and to direct him to make the award".

We find it difficult to accept the, reasoning of the High Court that the umpire had no jurisdiction to enter upon the reference. In the first place, the orders in O.P. 11 of 1972 was an order passed on consent of the appellant and the Board. Quite apart from this, rule 4 in the first schedule to the, Arbitration Act authorises an umpire to enter upon the reference in case, the arbitrators fail to make the award within the time specified. Whatever be the reason, since the arbitrators did not make, the award within the extended time, the umpire, by virtue of the provision of rule could have entered upon the reference and made the award. It is, no doubt, true that the umpire expressed his unwillingness to enter upon the reference without an order of the court. That was because the Board had filed an application for extension of time for the arbitrators to pass the award. We do not think that the umpire lost his jurisdiction to pass the award merely because he wanted an order from court by way of abundant caution authorizing him to enter upon the reference.

Mr. Tarkunde for the respondent contended that the learned Judge who passed the order in O.P. 11 of 1972 has said in his order making the award a rule of the court after rejecting the application of the Board to set aside the award, that the order passed in O.P. 11 of 1972 was a considered order and that the Board should have appealed against that order if it felt aggrieved by it and that the order had become final. Counsel submitted that when the Judge who passed the order in O.P. 1 1 of 1972 has himself stated that it was an order passed on merits in his order making the award a rule of the court and that the Board should have appealed against the order, it can only lead the conclusion that the order in O.P. 1 1 of 1972 was not a consent order. Counsel also submitted that although the appellant filed an objection to the application of the Board to set aside the award, that objection was withdrawn when the respondent sought to file an affidavit in rejoinder to that objection, and the

effect of the, withdrawal of the objection by the appellant was that the averment in the application filed by the Board to set aside- the award that the order in O.P. 11 of 1972 was not passed on the basis of consent, stood uncontradicted.

As we already said, paragraph 5 of the order in O.P. 11 of 1972 leaves no room for doubt that it was a consent order. The Board made no endeavour to have that order vacated by filing a review, if the statement in that order that it was passed on the basis of consent proceeded from a mistake of the court. On the other hand, we find that the Board participated in the proceedings before the umpire without any demur to his jurisdiction. The only inference from this conduct on the part of the Board is that it had not objection to the order revoking the authority of the arbitrators. Therefore, by acquiescence the Board was precluded from challenging the jurisdiction of the umpire.

> "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 revelant fact will amount to such acquiesence"

(see Rusesell on Arbitration", 17th ed., p.

215).

In Chowdhri Murtaza Hossin v. Mussumat Bibi Bachunnissa(1) the Privy Council said :

> On the whole, therefore, their Lordships think that that appellant, having a clear knowledge of the circumstances on which he might have founded an objection to the arbitrators proceeding to make their award, did submit to the arbitration going on; that he allowed the arbitrators to deal with the case as it stood before them, taking his chance of the decision being more or less favourable to himself; and that it is too late for. him, after the award has been made, and on the application to file the award, to insist on this objection to the filing of the award."

> The High Court said that acquiescence of the Board by participating in the proceeding before the umpire as sole arbitrator would not confer jurisdiction as there was inherent lack of jurisdiction in that the order in O.P. 11 of 1972 was bad in law and that it did not clothe the umpire with any jurisdiction. We are of the view that even and suming that the order in O.P. 11 of 1972 was not passed on consen the umpire had power to pass the award. As we said, the umpire could have entered upon the reference under rule 4 of the First Schedule when the arbitrators failed to, make the award within the extended time. Neither the fact that the umpire wanted an order from the court to enter upon the reference nor the fact that an application was made by the Board on 5-2-1972 to extend the time for the arbitrators to make the award would denude the umpire of his jurisdiction to enter upon the reference and pass an award under rule 4 of the First Schedule. Therefore, when the Board without demur

> participated in the proceedings before the umpire and took the chance of an award in its favour, it cannot turn round and say that the umpire had no inherent jurisdiction and therefore its participation in the precedings before the umpire is of no avail. The fact that the umpire did not purport to act in the exercise of his jurisdiction under rule 4 of the First Schedule but under the order of the Court, would not make any difference when we are dealing with the question whether he had inherent jurisdiction. As the umpire became clothed with jurisdiction when the extended period for making the award by arbitrators expired, it cannot be said that he bad no inherent jurisdiction. As we said, neither the fact that the umpire expressed his unwillingness to enter upon the reference without an order of the court nor (1) 3 I.A. 209 at 220.

the fact that an application to extend the period for making the award by the arbitrators long after the expiry of the period for making the award had the effect of depriving him of his jurisdiction under rule 4 of the First Schedule. The High Court was, therefore, clearly wrong in thinking that acquiescence did not preclude the Board from challenging the jurisdiction of the umpire as sole arbitrator. We do not find any substance in the contention of the Board that the application for setting aside the award was not posted for evidence as normally such an application should be disposed of on the basis of affidavits. We do not think that there was any exceptional circumstance in this case so that the court should have allowed. the Board to adduce other evidence (see s. 33 of the Arbitration Act). The next question for consideration is whether the High Court was right in its view that the claim of the appellant in respect of the two matters dealt with by it was validly allowed by the umpire.

The terms of the agreement for reference to arbitration be between the appellant and the Board provided :

> "It is agreed that the Contract Agreement No. 15/CEC/67/68 stands terminated by letter No. C2F.359/66, dated 15-11-1968 of the Chief Engineer, Civil. The Contractor agrees to withdraw the Suit No. O.S. 38/1970 filed in the Badagara Sub-Court by him.
>
> It is agreed that there is no other question of dispute or difference arising for settlement except those specifically detailed below in respect of the above contract. All other questions or claims of contractor, if any, whether existing, now or if arising from findings in the award under this reference or during arbitration proceedings or otherwise are hereby withdrawn and are deemed to be abandoned.
>
> Points of Reference
>
> 1. Regarding the first contract, i.e. Agreement No. CEC/4/64-65.
>
> Whether the claim to the sum 'reserved by the contractor to be enforced' in his letter dated 1-7-1967 to the Chairman, or any other lesser sum, is tenable and if so, whether the same is recoverable from the Board.

Regarding the second contract, Agreement No. 15CEC/67-68, Jr dated 15-7-1967.

(a) What is the sum still payable for the work under the said Agreement and Departmental Instructions.

(b) What is the sum payable to the Board in respect of supplies and/or services rendered to the Contractor by the Board in respect of, the Contract.

(c) What is the price, payable to the Contractor for such of the materials at site of Contract as were taken by the Board.

(d) What are the claims of the Board against the Contractor in respect of and/or under the provisions of the said Agreement."

The, contention of the Board before the High Court was that the claim reserved by the appellant by his letter dated 1-7-1967 to the Chairman had not been agreed to & reserved for adjudication by the Board but had been rejected by it definitely and unequivocally by the letters prior to 1967, that the appellant's letter of. 1-7-1967 had not been incorporated in the contract and therefore the claim referred under point I had been barred by limitation. The gist of the correspondence evidenced by the letters which passed between the parties would show that while the Board was insisting that the appellant's claim for rain damage flood damage and power failure had all been rejected and could no longer be re-agitated, and that the second contract should be executed without any reference to these, the appellant was insisting on his claims under these heads being reserved for adjudication in such ways as may be open to him under law. Counsel for the Board contended that there was nothing to show that the Board agreed to the reservation of these claims or that it had acknowledged its liability in respect of these claims, and that, without considering these aspects and examining the relevant correspondence and documents, the umpire, found that the claims had been substantiated and awarded a sum of about Rs. 5 lakhs to the appellant in respect of these claims. In other words, the contention was that the umpire should have examined the genuineness of the claims and considered whether the claims had been rejected by the Board and if so, when, and whether at any subsequent stage, the claims had been kept alive by any acknowledgement by the Board, or in any other manner known to law and in so far as the umpire did not address himself at all to the plea of limitation, the award was vitiated by an error of, law apparent on the face of the record.

The High Court did not make any pronouncement upon this question in view of the fact that it remitted the whole case to the arbitrators for passing a fresh award by its order. We do not think that there is any substance in the contention of the Board. In the award, the umpire has referred to the claims under this head and the arguments of the Board for disallowing the claim and then awarded the amount without expressly adverting to or deciding the question of limitation. From the findings of the umpire under this head it is not seen that these claims were barred by limitation. No mistake of law appears on the face of the award. The umpire as sole arbitrator was not bound to give a reasoned award and if in passing the award he makes a mistake of law or of fact, that is no ground for challenging the validity of the award. It is only when a proposition of law is stated in the award and which is the basis of the award, and that is erroneous, can the award be set aside or remitted on

the ground of error of law apparent on the face of the record.

> "Where an arbitrator makes a mistake either in law or in fact in determining the matters referred, but such mistake 8 21 does not appear on the face of the award, the award is good notwithstanding the mistake, and will not be remitted or set aside.
>
> The general rule is that, 'as the parties choose their own arbitrator to be the judge in the disputes between them, they cannot, when the award is good on its face, object to his decision, either upon the law or the facts."

(see "Russell on Arbitration", 17th ed. p.

322).

An error of law on the face of the award means that you can find in the award or a document actually incorporated thereto, as, for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous (see Lord Dunedin in Champsey Bhara & Co. v. Jivraj Balco Co."). In Union of India v. Bungu Steel Furniture Pvt. Ltd.(2), this Court adopted the proposition laid down by the Privy Council and applied it. The Court has no jurisdiction to investigate into the merits of the case and to examine the documentary and oral evidence on the record for the purpose of finding out, whether or not the arbitrator has committed an error of law.

The only other point which remains for consideration is whether the direction in the award to return the security deposit of Rs. 1,81,000 to the appellant can be said to be a matter arising, out of the second contract and referred to arbitration, under point 2(a) or point 2(d) of the points of reference.

Counsel for the appellant contended that the security, though given in connection with the first contract, was transferred to and treated as part of, the second contract and, therefore, the return of the said amount to the appellant which had been directed by the umpire was covered by point 2(a) or 2(d) of the reference.

On the other hand, it was contended for the Board that point 2(a) of the reference related only to the sum still payable for the work done under the second contract and therefore the return of the security amount would not be covered by point 2(a). And, as regards point 2(d), the contention of the, Board was that it related to the claims of the Board against the respondent in respect of or under the agreement. The Board, therefore, contended that the matter was not referred to the arbitrators either under point 2(a) or 2(d). The High Court did not express any final opinion on this question. No doubt, the agreement to refer makes it clear that there (1) [1923] A. C.480.

(2) [1967] 1 S.C.R. 3.24 were no other questions of dispute or difference arising for settlement except those which were specifically detailed in the agreement and it was also stated in the agreement that all other questions and claims of the respondent were withdrawn and should be deemed to be abandoned. Whether the return of the security amount would fall under point 2(c) would depend

upon the answer to the question whether it is a claim of the Board. The question whether the Board can re- tain the amount under the contract is a claim of the Board failing within point 2(d).

We allow the appeal and set aside the judgment of the High Court, but, in the-circumstances, we make no order as to costs.

P.H.P. Appeal allowed.
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