

State Of Orissa & Ors vs Lall Brothers on 25 August, 1988

Equivalent citations: 1988 AIR 2018, 1988 SCR SUPL. (2) 579, AIR 1988 SUPREME COURT 2018, 1988 (4) SCC 153, (1989) 67 CUT LT 1, (1988) 3 JT 552 (SC)

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:
STATE OF ORISSA & ORS.

Vs.

RESPONDENT:
LALL BROTHERS

DATE OF JUDGMENT 25/08/1988

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

CITATION:
1988 AIR 2018 1988 SCR Supl. (2) 579
1988 SCC (4) 153 JT 1988 (3) 552
1988 SCALE (2) 542
CITATOR INFO :
RF 1989 SC 606 (7)

ACT:
Arbitration Act 1940: Sections 14, 17, 30 and 33-
Unreasoned award-No ground to set aside award-Lump sum
award-Not bad perse.

HEADNOTE:

The respondent-firm was entrusted with the construction work of a 'Minor Irrigation Project' by the State of Orissa-Petitioner. The work was due to be completed on 3rd August, 1977 but it was actually on 31st March? 1978. Disputes arose in regard to the payment for the work. The respondent-contractor raised certain claims and gave notice for the appointment of an arbitrator according to the contract. On 22nd April, 1980, the Chief Engineer appointed an arbitrator

but, on an application by the respondent, the judge removed him and appointed another arbitrator.

Before the arbitrator, the respondent filed its claim along with some documents and the petitioner filed its counter statement. No further evidence was adduced and on 23rd June, 1982. the arbitrator gave a lump sum award for Rs. 14.67 lakhs with interest at 9% from 30th April, 1978.

On 11th July 1983, the Sub-Judge made the award rule of the Court with the modification that the interest was directed to run from 23rd June, 1982, instead of 30th April, 1978.

The High Court allowed the appeal in part and deleted the direction regarding future interest awarded by the arbitrator and modified by the Subordinate Judge.

In the appeal by special leave to this Court. it was contended on behalf of the State-petitioner that the award in the instant case was an unreasoned award and a lump sum amount was awarded without specifying the amount awarded on particular grounds.

Dismissing the special leave petition .

PG NO 579

PG NO 580

HELD: 1. The fact that there is an unreasoned award, is no ground to set aside an award. Lump sum award is not bad per se, as such. [583A]

In the instant case, the award contained the recitals to the effect that the arbitrator had gone through the claim statement, counterstatement and documents produced before him and heard the representations made by the parties. There is no error of law apparent on the face of the award. There was no misconduct on the part of the arbitrator or in the conduct of the proceedings. [582G]

Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd., Indore, [1967] 1 SCR 105; Union of India v. Bungo Steel Furniture Pvt. Ltd., [1967] 1 SCR 324 and Allen Berry
JUDGMENT:

282, referred to.

2. An award 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, or where an award has been improperly procured, or is otherwise invalid under Sections 30 and 35 of the Arbitration Act 1940. [583B]

3. 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 has committed some mistake in arriving at his conclusion [583C]

4. It is not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled him to arrive at his conclusions. [593D] Champsey Bhara & Co. V. Jivraj Balloo Spinning & weaving co. Ltd., L. R. 50 I.A. Jivarajbhai Ujamshi Sheth & Ors. v. Chintamanrao Balaji & Ors.

[1964] 5 SCR 480 referred to.

5. If a question of law was not specifically referred to the arbitrator his decision is not final. [583F] Continental Construction Co. Ltd. v. State of Madhya Pradesh, [1988] 3 SCC 82 distinguished.

& CIVIL APPELLATE JURISDICTION : Special Leave petition (civil) No. 7396 of 1987.

PG NO 581 From the Judgment and Order dated 8.4. 1997 of the Orissa High Court in M. A. No. 378 of 1983.

M.K. Banerjee, Solicitor General, R.K. Mehta and Miss Mona Mehta for the Petitioners.

G.L. Sanghi, A.P. Jena and Vinoo Bhagat for the Respondent The Judgment of the Court was delivered by SBYASACHI MUKHARJI, J. This is an application for leave to appeal under Article 136 of the Constitution from the decision and judgment of the High Court of Orissa, dated 8th April, 1987. By the judgment the High Court had allowed the appeal in part and modified the award so far as it related to the payment of interest in the awarded amount. Another appeal challenging the validity of the award was, however, dismissed.

In or about 1975-76 the respondent was entrusted with the work of "Construction of balance work of earth dam of Koska Minor Irrigation Project" vide an agreement No. 207 F-

2. The said work was due to be completed on 3rd August, 1977 but it was actually completed on 31st March, 1978. The estimated value of the work was Rs.25,06,299. It is stated that the contractor, respondent herein, had executed only 18 out of 33 items of work beside one extra item and he was paid a sum of Rs.23.63.122 for the work done. According to, the petitioner no further amount was due to, the contractor, the respondent.

Final bill was prepared on 12th February, 1980 and it was unconditionally accepted by the respondent- contractor. This contention, however, was sought to be disputed before us by the respondent contractor by producing certain bill stated to be the final bill which was 'accepted under protest'. It is, however, not necessary for us to go into this question at this stage.

On or about 16th April, 1980, the respondent-contractor raised certain claims and gave notice for appointment of an arbitrator according to the contract. On 22nd April, 1980, the Chief Engineer appointed Shri N.K. Mishra as arbitrator. However, on the application of the respondent the subordinate Judge removed Shri N.K. Mishra and instead appointed Shri P.C. De as the arbitrator. Before the arbitrator the respondent filed its claim along with some documents and the petitioner filed his counter statement. It is stated on behalf of the State that no further evidence PG NO 582 was adduced by the respondent but the petitioner produced the measurement books. The petitioner contended that no amount was due. The respondent disputed that. The arbitrator on behalf of the claim statement and some document filed by the respondent-contractor, gave a lump sum award for Rs. 14,67,000 plus interest at 9% from 30.4. 1978. The award was given on 23rd June, 1982. On 11th July, 1983, the learned Subordinate judge made the award rule of the Court with the modification

that the interest was directed to run from 23.6.1982 instead of 30.4. 1978. The High Court allowed the appeal in part and deleted the direction regarding future interest awarded by the arbitrator and modified by the learned Subordinate Judge. In appeal it was contended before the High Court for the said judgment by the Subordinate Judge that the following objections were taken against the award, namely:

"(i) that there is an error of law apparent on the face of the award ;

(ii) that the arbitrator has misconducted himself by giving a lump sum award without examining, each item of the claims,

(iii) that the claimant having accepted the final bill unconditionally deposit, the contract between the parties stood closed and, therefore, the arbitration clause was not operative and the arbitrator appointed had no jurisdiction to adjudicate upon the disputes ;

(iv) that the award of interest is without jurisdiction".

Except the documents on record, neither of the parties adduced any evidence. It was urged before us that the High Court did not accept challenge to the award but modified the order of interest as indicated before. The award in question contained the recitals to the effect that the arbitrator had gone through the claim statement, counter statement and documents produced before him and heard the representations made by the parties. There is no error of law apparent on the face of the award. There was no misconduct on the part of the arbitrator or in the conduct of the proceedings. It was contended before us that this is an award which was an unreasoned and a lump of amount was awarded without specifying the amount awarded on particular grounds.

PG NO 583 In our opinion, the High Court was right in refusing to accept the challenge to the award. The fact that there is an unreasoned award, is no ground to set aside an award. Lump sum award is not bad per se. as such. An award 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 the proceedings or when the award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35 of the Arbitration Act or where an award has been improperly procured or is otherwise invalid under section 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 has committed some mistake in arriving at his conclusion.

It is not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled him to arrive at his conclusions. See in this connection the observations of the Judicial Committee in *Champsey Bhara & Co. v. Jivraj Balloo Spinning & Weaving Co. Ltd.*, L.R. 50 I.A. 324 and of this Court in *Jilarajbhai Ujamshi Sheth & Ors. v. Chintamanrao Balaji & Ors.*, [1964] 5 SCR 480. The fact that a lump sum award has been given, is no ground to declare the award bad. See further *Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd. Indore*, [1967] 1 SCR 105 and

Union of India v. Bungo Steel Furniture Pvt. Ltd., [1967] 1 SCR 324 as well as the decision of this Court in Allen Berry & Co., (P) Ltd. v. Union of India, New Delhi, [1971] 3 SCR 282.

Learned Solicitor General for the petitioner relied on Continental Construction Co. Ltd. v. State of Madhya Pradesh, [1988] 3 SCC 82. Reliance was misplaced. If a question of law was not specifically referred to the arbitrator his decision is not final. It was reiterated that the arbitrator is bound by law, and if an error of law in the award is on the face of it, it is amenable to be corrected.

In that view of the matter the points sought to be urged in this application for leave, are not entertainable. The application fails and is accordingly dismissed.

N.V.K.

Petition dismissed.