Upper Ganges Valley Electricity Supply ... vs U.P. Electricity Board on 19 December, 1972

Equivalent citations: 1973 AIR 683, 1973 SCR (3) 107, AIR 1973 SUPREME COURT 683, 1973 (1) SCC 254, 1974 2 SCJ 280, 1973 (1) SCWR 231, 1973 SCD 123, 1973 3 SCR 107

Author: Y.V. Chandrachud

Bench: Y.V. Chandrachud, Hans Raj Khanna

PETITIONER:
UPPER GANGES VALLEY ELECTRICITY SUPPLY COMPANY LTD.

Vs.

RESPONDENT:
U.P. ELECTRICITY BOARD

DATE OF JUDGMENT19/12/1972

BENCH:
CHANDRACHUD, Y.V.
BENCH:
CHANDRACHUD, Y.V.
KHANNA, HANS RAJ
VAIDYIALINGAM, C.A.

CITATION:
1973 AIR 683 1973 SCR (3) 107
1973 SCC (1) 254
CITATOR INFO :
RF 1989 SC 890 (18,30)

ACT:
Arbitration Act (10 of 1940), s. 30--Speaking award -Error apparent on its face with respect to a severable Item-if entire award should be set aside-Court, if may amend award instead of remitting it.

HEADNOTE:
The respondent took over the appellant's Undertaking, in May 19591, but as the parties were at variance on the true market value to ',- paid to the appellant, the matter was referred to arbitration. As the arbitrators were unable to agree on the question whether the appellant was entitled to

compensation for the 'service lines which were laid with the help of contributions made by consumers, they referred the question to the umpire. The umpire framed an issue and gave a finding that the appellant was not entitled to claim from the respondent the value of the portion of the service lines which were laid at the cost of the consumers, for the sole reason that they were, laid at the cost of the consumers.

The appellant filed an application under s. 30 of the Arbitration Act, 1940, challenging the validity of the award on the question. The lower court and High Court hold against the appellant.

Allowing the appeal to this Court,

HELD : (1) The appellant's application for setting aside the award could succeed only if there was an error of law on the face of the award. The other conditions of s. 30 have no bearing on the, case.

(2)The umpire had made a speaking award and there was no question of the construction of any document incorporated in or appended to the award. If it is transparent from the award that a leggal proposition which forms its basis is erroneous, the award is liable to be

set aside.[111 D]

Unionof India Y. Bugo Steel Furniture P. Ltd., [1967] (1) S.C.R. 324, M/S. Allen Berry and Co. P., Ltd. v. The Union of India, A.I.R. 1971 S.C. 696, followed.

(3)The conditions of licence, the provisions of the Act namely, ss. 2(f), (1) and (n), 3(f), 7(1) as it stood at the time of taking over, Section 8 of the Indian Electricity Act, 1910, Paragraph VI of, the Schedule to the Act, and the legal position, all point only in one direction that the appellant is entitled to receive compensation for the service lines laid at the cost of the consumers. The umpire, however, in his calculations, had expressly excluded the value of the portion of service lines installed at the cost of consumers. In making the exclusion, the umpire had therefore mis-conducted himself in law rendering his award erroneous on its face. [113G]

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Calcutta Electric Supply Corporation v. Commissioner of Wealth-tax, West Bengal, 82 I.T.R. 154 referred to.

(4)The reference to the arbitrations in the present case was on the broad question of the fair market value of the appellant's undertaking, and the parties did not refer any specific question of law for the decision of the arbitrators. Therefore, the decision in Durga Prasad Chamria and Anr. v. Sewkishendas Bhatter, A.I.R. 1949 P.C. 334 has no application. [115B]

(5)The part of the award, which is invalid, being severable from that which is valid, there is no justification for setting aside the entire award. [115D]

(6)This Court should itself amend the award instead of remitting it in the interests of justice and to avoid undue delay in a dispute pending since 1959. [115E]

(7)The consumers' contribution for laying the service line were made from April 1, 1958 to March 31, 1959. The, taking over of the undertaking by the respondent being in May 1959, the consumers' contribution would roughly represent the market value of the service lines, even if, as required by the first proviso to s. 7(1) as it then stood, due regard was to be had to the nature and condition of the 'works', to the circumstance that they ate in such a Position as to be ready for immediate working, and to their suitability for the purposes of the undertaking. Therefore, the sum representing the consumers' contributions should be taken into account in arriving at the price to be paid to the appellant. [115G],

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1314 of 1967.

Appeal by special leave from the judgment and decree dated April 15, 1966 of the Allahabad High Court in F.A.F.O. No. 279 1963.

B. Sen and S. N. Mukherjee, for the appellant. C. B. Agarwala, O. P. Rana and Ravinder Bana, for the res- pondent.

The Judgment of the Court was delivered by CHANDRACHUD, J. On February 5, 1929 the Governor-in Council of the then Government of the United Provinces granted to Messrs. Martin & Co. a licence under section 3 of the Indian Electricity Act, 1910 for supply of electric energy within the Districts of Bijnor and Moradabad. Messrs. Martin & Co., who were Managing Agents of the appplants company, assigned that licence to it. By a notice dated January 31, 1957 the Government of Uttar Pradesh exercised its option to purchase the Undertaking of the appellant on the expiry of two years from the date of the notice. This period was on appellant's request, extended till May 4, 1959. The respondent-Uttar Pradesh State Electricity, Board was constituted on April 1, 1959 and under section 71 of the Electricity (Supply) Act, 1948, the option of the Government of Uttar Pradesh to purchase electrical undertakings stood transferred to the respondent.

By a letter dated May 1, 1959 respondent informed the appel- lant that it had decided to purchase the Undertaking on payment of a sum of Rs. 25,38,407/-, being the fair market value of all its assets, inclusive of solatium. On May 4, 1959 respondent made a provisional payment of rupees 15 lakhs to the appellant which, the latter accepted under protest. The Undertaking was eventually taken over by the respondent on May 4/5, 1959.

Being unable to agree on the true market value of the Under- taking, parties referred their differences to two arbitrators. Out of the several contentions raised before the arbitrators, we are concerned with one only : Whether, in the computation of the market value of its Undertaking, the appellant was entitled to compensation for the "service lines" which were laid with the help of

contributions made by consumers. On this question, arbitrators were unable to agree and therefore they referred it to the decision of an umpire, Shri Randhir Singh.

Out of the eight issues framed by the umpire, issues 1 (a), 1 (b), 7 and 8 only are relevant. These issues read thus :

> Issue No. 1 (a) : Is the Board entitled to get a credit for the amount of consumers' contribution paid for the service lines, laid on their premises and at their cost ? Issue No. 1 (b) : What is the amount of the Consumers' contribution for the period 1st of April, 1958 to 4/5 May, 1959 ?
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> Issue No. 7 : Has any excess- payment been made by the Board to the Company ? If so are the Board entitled to a refund, and interest thereon ? What should be the rate of interest if any ?
>
> Issue No. 8 : What was the fair market value of the Undertaking on the midnight of 4/5 May 1959 ? Issue No. 1 (a) : "The Company is not entitled to claim from the Board the value of the portion of the service lines which were laid at the cost of the consumers." Issue No. 1 (b) : "The Consumers' contribution from 1.4.58 to 31st of March, 1959 is Rs. 2,38,255/-. The amount of the contribution from 1.4.59 to 415 May, 1959 has not been proved."
>
> On Issue No. 8, the umpire found that on the date of purchase, the fair market value of the assets of the Undertaking was Rs. 23,81,670/-. As the appellant had already received a sum of rupees 15 lakhs from the respondent and as the respondent was entitled to a refund of Rs. 9,80,238/- on account of security deposits held by the appellant, the Umpire came to the conclusion by his award dated November 27, 1961 that the appellant had received Rs. 9,8,568/- in excess of the amount of the fair market value. On Issue No. 7, the Umpire accordingly held that the respondent had made an excess payment of the. aforesaid amount to the appellant which the latter was liable to refund with future interest as awarded.
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> The appellant, by an application under section 30 of the Arbitration Act, 1940 challenged the validity of the award in the court of the Civil Judge, Moradabad on the ground that the Umire had legally misconducted himself in not awarding compensation for the service lines. The learned Judge upheld a part of the award, to the extent to which the market value of the Undertaking was fixed at Rs. 23,81,670/- but he set aside the rest of it. Obviously, he misunderstood the appellant's contention in regard to its right to receive compensation for the service lines. He mixed up that claim with the claim in regard to security deposits and overlooked considering the main question whether the appellant was entitled to compensation for the service lines.

The appellant filed an appeal in the High Court of Allahabad against that judgment while the respondent filed its cross- objections. By a judgment dated April 15,1966 the High Court held that the Umpire was justified in refusing to award compensation to the appellant for the service lines. 'the appeal as well as the cross-objections were dismissed by the High Court. This appeal by special leave is directed against that judgment.

The only point of dispute in the appeal is whether the appellant is entitled to compensation for the service lines. Before considering this question, it is necessary to emphasise that these proceedings arise, not out of a suit but out of an application made under section 30 of- the Arbitration Act, 1940 for setting aside an award. That section provides that an award shall not be set aside except on one or more of the grounds therein mentioned. Two of the three grounds on which alone an award is liable to be set aside under section 30 are that the arbitrator or umpire has misconducted himself or the proceedings, or (ii) that the award has been improperly procured or is otherwise invalid. It is well settled that if parties constitute an arbitrator as the sole and final judge of the disputes arising between them, they bind themselves as a rule to accept the award as final and conclusive. An award is Ordinarily not liable to be set aside on the ground that either on facts or in law, it is erroneous. In Hodgkinson v. Fernie(1) the true principle_was states thus :

"Where a cause or matters in difference are referred to an arbitrator. He is constituted the sole and final judge of all questions both of law and fact... The only exceptions to that rule are, cases where the award is the result of corruption or fraud, and one other, which though it is to be regretted, is now, I think, firmly established, viz., where the question of law necessarily arises on the face of the award, or upon some paper accompanying and forming part of the award."

This view was cited with approved in Union of India v. Bungo Steel Furniture P. Ltd.(2) and was recently adopted in Mls. Allen Berry and Co. P. Ltd. v. The Union of India. (3) It is therefore plain that the appellant's application for setting aside the award can succeed only if there is an error of law on the face of the award. The other conditions of section 30 have no. bearing on the case.

It is unnecessary to consider the comprehension of the expression "on the face of the award" because the Umpire has made a speaking award and there is no question here of the construction of a document incorporated in the award or appended to it. If it is transparent from the award that a legal proposition which forms its basis is erroneous, the award would be liable to be set aside.

In order to find the true legal position, it is necessary to look at a few provisions of the Indian Electricity Act, 1910 (herein, "the Act"). Section 2(1) of the Act defines a' "service "line" as meaning any electric supply-line, through which energy is, or is intended to be, supplied (i) to a single consumer either from a distributing main or immediately from the supplier's premises or (ii) from a distributing main to a group of consumers on the same premises or on adjoining premises supplied from the same point of the distributing main. Under section 2(c), "consumer" means any person

who is supplied with energy by a licensee or by the Government. Under section 3(f) the provisions contained in the Schedule to the Act are to be deemed to be incorporated' with and to form part of every licence granted under the Act, save in so far as they are expressly added to, varied or excepted by the licence. Paragraph VI(1) of the Schedule casts on the licensee an ob- ligation, subject to certain exceptions, to supply electric energy to the opner or occupier of premises situated within the area of (1) 1857 (3) C.B. (N.S.) 189.

(3) A.LR. 1971 S.C. 696.

(2) [1967] 1 S.C.R. 32,4.

supply, within one month of the requisition. Under clause

(b) of the first provision to Paragraph VI(1), however, the licensee is not bound to comply with such requisition unless, among other things, the person making the requisition, if required by the licensee so to do, pays to the licensee the cost of so much of any service line as may be laid down or placed for the purposes of the supply upon the property in respect of which the requisition is made. Section 7 of 'the Act, as it stood then, conferred on the State Government an option to purchase the undertaking of a licensee " on payment of the value of all lands, buildings, works, materials and plant of the licensee suitable to, and used by him for, the purposes of the undertaking-." The first proviso to section 7(i) said that "the value of such lands, buildings, works, materials and IC plant shall be deemed to be their fair market value at the time of purchase, due regard being had to the nature and condition for the time being" of such lands, buildings, works etc. Section 2 (n) defines "work' to include electric, supply line and any building, plant, machinery, apparatus and any other thing of Section 2(f) defines "electric supply line"

> as meaning a wire, conductor or other means used for conveying, transmitting or distributing energy. It is patent from these provisions that the appellant was entitled to receive compensation for the service lines laid with the help of contributions made by consumers. Section 7 (1) of the Act conferred upon the appellant the right to receive the fair market value of "works' amongst other assets. Under section 2(n) "'works" includes an electric supply-line and by reason of the definitions in sections 2(f) and (1), a supply-line includes a service line. Under paragraph VI (2) of the Schedule, any service line laid for the purpose of supply in pusuance of a requisition made by a consumer has to be maintained by the licensee, "notwithstanding that a portion of it may have been paid for by the person making the requisition"; the licensee, however, has the right to use such service fine "for the supply of energy to any other person". Under section, 8 of the Act, if neither the State Electricity Board nor the State Government nor the local authority is willing to purchase a licensee's undertaking and the licence is revoked, the licensee has the right to dispose of "all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit".

An interesting sidelight of the issue involved in this appeal is H that in 1923, the Government of India in its Department of Industries and Labour, had sought the opinion of the officiating Advocate-General, Bengal, on the, "question of ownership of the service line the cost of which has been paid for by the consumer". Shri B. L. Mitter who was then the officiating Advocate-General opined that "the property in a service line is in the licensee It makes no difference whether the consumer pays for any portion under schedule rule VI(1)

(b). The service line is part of the "Works' (Sec. 2) (n) and the licensee maintains it. Schedule VI(2)". In 1924, a copy of this opinion was forwarded by the Government of India to The Government of the United Provinces., When years later, the same question cropped over once again, the Government of Uttar Pradesh informed all the electric supply undertakings in the State by their letter dated December 5, 1952 that the Government had decided "that the ownership of a service line vests in the licensee irrespective of whether the cost of the whole or part of it, has been paid for by a consumer or not".

On March 10, 1953, the, Government of Uttar Pradesh sent an intimation to all the electricity supply companies in the State including the appellant that the Governor of Uttar Pradesh had, under section 21 (2) of the Act, given his sanction to an amendment or modification in the existing conditions of the licences by the addition of a new clause

4. That clause reads thus :

> "The whole of the service line, irrespective of the payment made by the consumer, shall be and remain the property of the company to whom and at whose cost it shall be maintained and the Company reserves the rights to extend. alter, remodel or replace the said service line or cable to afford a supply to other consumers, should this be necessary."

Finally, it is of some relevance that in Calcutta Electric Supply Corporation v. Commissioner of Wealth-tax, West Bengal(1), it was held by this Court that service lines laid with the help of contributions made by consumers for a part of the licensee's wealth for the purposes of computing the net wealth under Wealth-tax Act, 1957.

The conditions of the licence, the provisions of the Act and the legal position point only in one direction : that the appellant is entitled to receive compensation for the service lines laid at the cost of the consumers. In the award. the Umpire has made calculations for arriving at the market value of the appellant's undertaking and has expressly excluded therefrom the "value of the portion of services installed at the cost of the consumers." In (1) 82 I.T.R. 154.

9-L631 SupCI 73 making this exclusion, the Umpire misconducted himself in law, thereby rendering the award erronous on its face. The reason for this error may easily be this : Under section 7 of the Act to which we have called attention, the licensee was entitled to the "payment of the value of all lands, buildings, works" etc. This section, along with certain others, was amended by the Electricity (Amendment) Act, 32 of 1959, which came into force on September 5, 1959. By this amendment, a

new section 7A was inserted in the Act in order to provide for the "Determination of purchase price". Under the relevant part of sub-section (2) of that section, the market value of an undertaking is to be the value of all lands, buildings, works etc. other than "service lines. C .... which have been constructed at the expense of consumers". The appellant's undertaking having been acquired on 4/5 May, 1959, the provisions of old section 7 and not of the newly added section 7A would govern his rights. The Umpire made his award on November 27, 1961 relying, probably, on section 7A which had no application. Learned counsel for the respondent is right that even a mistake of law cannot vitiate the award unless the mistake is apparent on the face of the award. But here, the Umpire framed specific issues for decision, the first of these being : whether the respondent was "entitled to get a credit for the amount of consumers' contribution paid for the service lines. laid on their premises and at their cost". The finding of the Umpire on this issue was that "The Company is not entitled to claim from the Board the value of the portion of the service lines which were laid at the cost of the consumers". The calculations made by the Umpire in the award for ascertaining the true market value of the appellants undertaking show that the " value of the portion of services installed at the cost of the consumers" was expressly excluded from the total market value of the assets of the undertaking. It seems beyond the pale of controversy that the Umpire did not award compensation to the appellant in respect of the service lines for the sole reason that they were laid at the cost of the consumers. Some market- value the service-lines must have had, even if it be no more than the scrap value. But to the way of thinking which the Umpire adopted, that consideration had no relevance. The service-lines were paid for by the consumers and that. for the Umpire, was the end of the matter. That, patently, was the wrong end, Respondent drew our attention to the decision in Durga Prasad Chamria and Anr. v. Sewkishendas Bhattar and Ors.(1) in which it was held that if a question of law is specifically referred to an (1) A.T.R. 1949 P.C. 334.

arbitrator for his decision. it would be contrary to well- established principles for a court of law to interfere with the award, even if the court itself would have taken a different view of the point of law, had it been before it. This decision can have no application because the parties here did not refer any specific question of law for the decision of the arbitrators. The reference to arbitrators was on the broad question as to what was the fair market- value of the appellant's undertaking. Being unable to agree on this question, the two arbitrators referred the matter to an umpire. The umpire raised a question of law and decided it. Parties had invited none to decide a specific question of law.

We are Dot disposed to hold, as contended by the respondent, that if a part of the award be found to be invalid, the entire award should be set aside and remitted back for a fresh decision. The error which has occurred in the award of the Umpire relates to a matter which is distinct and separate from the rest of the award. The part which is invalid being severable from that which is valid, there is no justification for setting aside the entire award. Normally, we would have remitted the award for a decision in the light of our judgment but that is likely to involve undue delay and expense in a dispute which is pending since 1959. Learned counsel for the appellant was agreeable that we should ourselves amend the award. Learned counsel for the respondent demurred but- he was unable to indicate any cogent reason why we should not adopt a course which. far from causing any prejudice to the parties, was clearly in the interests of justice.

The Umpire has held that on the date of sale. the fair market value of the appellant's undertaking was Rs. '23 81.670. He arrived at this figure after excluding from the total market value, the sum of Rs. 2,38.255 which represented the consumers' contributions to the cost of laying the service lines. These contributions, according to him, were made from April 1, 1958 to March 31, 1959. The date of sale being 4/5 May, 1959 the consumers' contribution will roughly represent the market value of the service, lines even if, as, required by the first proviso to section 7(1) of the Act as it then stood, due regard is to be had to the nature and condition for the time being of the "works" to the state of repair thereof, to the circumstance that they are in such a position as to be ready for immediate working and to the suitability of the same for the purposes of the undertaking.

Accordingly, we direct that the award of the Umpire will stand amended to the extent that the fair market value of the appellant's undertaking shall be Rs. 23,81,670 plus Rs. 2,38,255, plus Rs. 5,26,962/60 that is to say Rs. 31,46,887/60. We have not allowed solatium on the additional amount, so as to off- set reasonable depreciation in the value of the service lines after they were laid.

The appeal is accordingly allowed to the extent indicated and with costs.

V.P.S. Appeal allowed.