Union Of India vs Orient Engg. & Commercial Co. Ltd. & Anr on 7 October, 1977

Equivalent citations: 1977 AIR 2445, 1978 SCR (1) 622, AIR 1977 SUPREME COURT 2445, 1978 (1) SCC 10, 1978 (1) SCR 632, 1977 3 ALL LR 702, 1978 2 SCJ 83, 1978 HINDULR 57, 1977 U J (SC) 695

Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, Jaswant Singh, D.A. Desai

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
ORIENT ENGG. & COMMERCIAL CO. LTD. & ANR.

DATE OF JUDGMENT07/10/1977

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
SINGH, JASWANT
DESAI, D.A.

CITATION:
1977 AIR 2445 1978 SCR (1) 622
1978 SCC (1) 10

ACT:
Witness-Summoning of a witness-Arbitrator or other quasi-judicial authority, whether covered by s. 121 of the Evidence Act-Duty of the Court before issuing summons under Order XLVI Rule 3, C.P.C. read with s. 121 of the Evidence Act when parties present a list of witnesses to be summoned.

HEADNOTE:
Respondent No. 1 filed, under Order XVI Rules 1 and 2 read with s. 151, C.P.C., a list of witnesses to be summoned including the Arbitrator who made an award in a matter between the appellant and the respondent No. 1. The Registrar of the High Court in the routine course granted summons without satisfying himself as to the sufficiency of

cause to summon the arbitrator as required under Order XVI Rule 3, C.P.C. An objection petition u/s. 151, C.P.C. filed before the learned Judge of the High Court against the orders of the Registrar was dismissed.

Allowing the appeal, the Court,

HELD : (1) It is not right that every one who is included in the witness list is automatically summoned, but the true rule is that if grounds are made out for summoning a witness, he will be called. The court must realise that its process should be used sparingly and after careful deliberation if the arbitrator should be brought into the witness box. If a party has a case of mala fides and makes out prima facie that it is not a frivolous charge or has other reasonably relevant matters to be brought out, the court may, in given circumstances, exercise its power to summon even an arbitrator because nobody is beyond the reach of truth or trial by court. [634 A-B, C-D]

(2)Courts should bear in mind the reason behind s. 121 of the Evidence Act when invited to issue summons to an arbitrator. It will be very embarrassing and in many cases objectionable if every quasi-judicial authority or tribunal were put to the necessity of getting into the witness box and testify as to what weighed in his mind in reaching his verdict. The slightest attempt to get to the materials of his decision, to get back to, his mind and to examine him as to why and how he arrived at a particular decision should be immediately and ruthlessly excluded as unreasonable. When an arbitrator has given an award, if grounds justifying his being called as a witness are affirmatively made out, the court may exercise its powers-otherwise not.

In the instant case the court has not approached the question from the proper perspective and on the materials on record, there is no justification for the examination of the arbitrator. [633 C-D, H]

Khub Lal v. Bishambhar Sahai A.I.R. 1925 Allahabad 103, approved.

[The Court left open to the High Court to issue-necessary Process on a fresh application stating why he wants to examine the arbitrator, if and when made by the respondent.]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1296 of1977. Appeal by Special Leave from the Judgment and Orderdated 25-1-77 of the High Court of Delhi at New Delhi in T. No. 2253of 1976 in Suit No. 459-A of 1974.

Soli J. Sorabji, Addl. Solicitor General E. C. Agarwala and Girish Chandra for the Appellant.

Bakshi Shivcharan Singh and H. S. Marwah for Respondent No. The Order of the Court was

delivered by KRISHNA IYER, J.-We live and learn from counsel's arguments each day and in this case we were asked to unlearn. Counsel for the appellant has objected, in this appeal, to the examination, as a witness, of an arbitrator who has given his award on a dispute between the appellant and the 1st respondent. His contention is that, on broad principle and public policy, it is highly obnoxious to summon an arbitrator or other adjudicating body to give evidence in vindication of his award. This is a wholesome principle as- is evident from s. 121 of the Indian Evidence Act. That provision states that no Judge or Magistrate shall, except upon the special order of some court to which he is subordinate be compelled to answer any questions as to his own conduct in court as such Judge or Magistrate or as anything which came to his knowledge in court as such Judge or Magistrate, but he may be examined as toother matters which occurred in his presence whilst he was so acting. Of course, this--section does not apply proprio vigore to the situationpresent here. But it is certainly proper for the court to bear in mindthe reason behind this rule when invited to issue summons to an arbitrator. Indeed, it will be a very embarrassing and, in many cases, objectionable if every quasi-judicial authority or tribunal were put to the necessity of greeting into the witness box and testify as to what weighed in his mind in reaching his verdict. We agree with the observations of Walsh, A.C.J. in Khub Lal v. Bishambhar Sahai(1) where the learned Judge has pointed out that the slightest attempt to get to the materials of his decision,, to get back to his mind and to examine him as to why and how he arrived at a particular decision should be immediately and ruthlessly excluded as undesirable. In this case, a list of witnesses was furnished by the 1st respondent :and the Registrar of the High Court, in the routine course, granted summons perhaps not adverting as to why the arbitrator himself was being summoned. That was more or less mechanical is evident from the fact that the reason given for citing the arbitrator is the omnibus purpose of proving the case of the party-not the specific ground to be made out. We should expect application of the mind of the Registrar to the particular facts to be established by a witness before the coercive process of the court is used. It is seen that the learned Judge before whom objection was taken under s. 151 C.P.C. to the summons to the arbitrator ,dismissed the petition on the score that he saw no ground to refuse to summon the arbitrator as a witness. The approach should have been the other way round. When an arbitrator has given an award, if grounds justifying his being called as a witness are affirmatively made out, the court may exercise its power, otherwise not. It is not right that every one,.who is included in the witness list is automatically summoned; but the true rule is that, if grounds are made out for summoning a witness be will be called; not if the demand is belated, vexatious or frivolous. Thus the court also has not approached the question from the proper

(1)A.I.R. 1925 All. 103.

perspective. If arbitrators are. summoned mindlessly whenever applications for setting aside the award are enquired into, there will be few to undertake the job. The same principle holds good even if the prayer is for modification or for remission of the award. The short point is that the court must realise that its process should be used sparingly. and after careful deliberation, if the arbitrator should be brought into the witness box. In no case can he be summoned merely to show how he arrived at the conclusions he did. In the present case, we have been told that the arbitrator had gone wrong in his calculation and this had to be extracted from his mouth by being examined or cross-examined. We do not think that every Munsif and every Judge, every Commissioner and, every arbitrator has to undergo a cross-examination before his judgment or award can be upheld by the appellate court, How vicious such an approach would be is apparent on the slightest reflection.

Of course, if a party has a case of mala fides and makes out prima facie that it is not a frivolous charge or has other reasonably relevant matters to be brought out the court may., in given circumstances, exercise its power to summon even an arbitrator, because nobody is beyond the reach of truth or trial by Court. In the present case, after having heard counsel on both sides, we are not satisfied that on the present material there is justification for the examination of the arbitrator. We therefore set aside the order.

However, we make it clear that if the court is convinced, after hearing the respondent on a fresh application stating why he want to examine the arbitrator, it is still open to it to issue the necessary process. Such a step must be a deliberate step and not a routine summons. With these observations, we allow the appeal. There will be no order as to costs.

Appeal allowed.,