Supreme Court of India
Kapoor Nilokheri Co-Op. Dairy ... vs Union Of India (Uoi) And Ors. on 16 March, 1973
Equivalent citations: AIR 1973 SC 1338, (1973) 1 SCC 708
Author: A Alagiriswami
Bench: A Alagiriswami, C Vaidialingam, I Dua
JUDGMENT A. Alagiriswami, J.

1. This appeal is against the judgment of the High Court of Punjab and Haryana dismissing the appellant's appeal against the judgment of the Senior Subordinate Judge, Karnal making the award in a dispute between the appellant and the respondents a Rule of Court. The facts necessary for decision are as follows.

2. In 1948 the Government of India sponsored a scheme to build and establish a colony for the resettlement and rehabilitation of displaced persons at Nilokheri and started several industries including a dairy farm. Some of the founders of the appellant Society took over the dairy farm business from the Rehabilitation Administration under an agreement dated 1-10-1950. They later formed themselves Into a co-operative society and took over the same business and entered in to an agreement on 6-5-1953. There is no dispute that originally the whole transaction was made under the agreement of 1-10-50 and that the disputes had to be decided on the basis of the agreement of 6-5-1953. On the ground that the appellant Society did not pay its dues regularly in pursuance of the agreement the dispute between the parties was referred to an arbitrator, a Subordinate Judge of the Punjab Judicial Service. The award was made on 30-11-1963. Thereupon the respondents applied to the Senior Subordinate Judge of Karnal to make the award a Rule of Court and the Subordinate Judge accordingly made it a Rule of Court. The appellant's appeal to the High Court also having failed this appeal has been filed by special leave.

3. Before the Arbitrator the appellant's total claim against the respondents was for a sum of Rupees 1,26,800/-. In addition they also claimed that the respondents should be directed to transfer the 150 acres of land allotted to them at the rates charged from other agriculturists after adjustment of the rent already received by the Administration. On the other hand the counter claim of the respondents was for a sum of Rupees 79,232.65 and also that the Government land in possession of the appellant should be returned to the Nilokheri Administration.

4. The Arbitrator being a Judicial Officer has treated the matter as if it were a suit before him and given reasons for the award which is as long as a judgment of a civil Court in a similar matter would be. That has given the appellant a good deal of room for arguments on various matters. But the main points urged before the Courts below as well as before us were these:

1. The Arbitrator had misconducted himself in that having failed to include the question of privilege in the award he had interpolated the order of 14-9-63.

2. He had not considered the question on the basis of the pleadings.

3. He had no jurisdiction to make an award in respect of the land and buildings which were not part of the reference.

4. He had misconstrued the term 'provisional' in the agreement regarding cattle.

5. He had been influenced by the speech made by the then Chief Minister of Punjab on 14-11-63 at Nilokheri accusing the Society of mismanagement.

Points 1, 2 & 4:

5. It was on point (1) that Mr. B.R.L. Iyengar, the learned Advocate for the appellant, made his most serious complaint. There is no doubt that if his complaint that the Arbitrator did not give a ruling on the question of privilege claimed by the respondents in respect of certain documents summoned by the appellant and did not decide the question or pass an order therein on 14-9-63, the date on which the order in the file purports to have been made but had subsequently interpolated it, is sustained the appellant would be entitled to succeed completely and the award would have to be set aside in to without reference to any other consideration. No award given by an Arbitrator who is held guilty of such fraudulent misconduct could ever be upheld. But having given our most anxious consideration to this question we are not able to persuade ourselves to take a view different from that of the learned Subordinate Judge and the High Court who considered the matter. In addition to relying on the evidence of their two witnesses the argument of the appellants was based on these facts: The appellants had given their written arguments regarding the question of privilege even on 12-1-63. The written arguments on behalf of the respondents was given on 14-9-63, and the appellants had reiterated their arguments on this question even in their rejoinder on 24-9-63. The order sheet does not show that the order regarding privilege was pronounced on 14-9-63, the date which the order bears. There is no reference in the award to this question having been decided on 14-9-63.

6. The Arbitrator himself was examined as a witness before the Subordinate Judge and he asserted that he had pronounced the order on 14-9-63. So did another witness Mr. Suhendar Singh, the Administrator of the Nilokheri Administration. On the appellant's side its President and the advocate who appeared on their be half gave evidence to the contrary. The learned Subordinate Judge in dealing with this question considered that there was no reason to disbelieve the Arbitrator and that in any case whether the question of privilege was decided or not on 14-9-63 and made known to the Society the same day or not, is not very relevant in connection with the alleged misconduct of the Arbitrator and the proceedings on the ground that the parties had already advanced their arguments before the Arbitrator by that date and the respective cases had concluded and there is nothing on record to suggest that the Society, at any stage, pressed that the question of privilege be decided before the award was given so that it might be able to produce secondary evidence, in case the question of privilege was decided against it. The High Court considered that it was not necessary to determine about the truthfulness of the testimony of either the advocate or the Arbitrator because there is no real issue which necessitates such a finding nor can a specific decision be given in the absence of more material on the record. It took the view that the order as to privilege has caused no injustice to the Society and it is not its case that at any stage it wanted to produce more evidence which was not allowed by the Arbitrator. It finally came to the conclusion that the

Arbitrator could not be held guilty of any misconduct in relation to the order on the question of privilege.

7. We agree with the High Court in this view. That is the most charitable view to take in the circumstances of this case. It is obvious that till they found that the award was against them the appellants did not make any serious complaint about the question of privilege. The documents in respect of which privilege was claimed related to the interpretation of the word 'provisional' in respect of 47 Nilli She Buffaloes costing Rupees 35580-1-9 and 39 Tharparkar Cows costing Rs. 11941.00, against both of which the word 'provisional' appears. The appellant's case was that this word was put in because depreciation was to be allowed in respect of those cattle and the final cost of these two sets of animals was not decided by that time. The Arbitrator himself has occasion to look into the document before deciding on the question of privilege and we have also had the benefit of looking into these documents. They are not very helpful to the appellants except enabling them to make a grievance of it. There was already on record a copy of the standing order of the Military Cattle Farm at Ambala regarding this question of depreciation wherein it is pointed out that for the lactation period of 9 months a sum of Rs. 150 was to be allowed as depreciation and thereafter at the rate of 10 per cent of the book value of the animal. Based on this the appellant had claimed a depreciation of Rs. 33, 683-0-0. We have looked into the calculation sheet filed by the appellant be Core the Arbitrator. Curiously nobody seems at any stage, either before the Arbitrator or before the Subordinate Judge or before the High Court to have cared to have a look at these documents at all. To take only one instance, in respect of the Nilli She Buffalo the value is given as Rs. 750 and the depreciation as Rs. 600 instead of showing the depreciation as Rs 150 and the price of the cattle as Rs. 600. Same is the case with regard to the Tharparkar Cows. If this had been looked into it would have been at once noticed that in respect of the depreciation, even if they had been entitled to it, the appellants could not claim Rs. 33,083/- but only about Rs. 6000/- and odd.

8. Moreover, it has been rightly pointed out on behalf of the respondents that at no stage did the appellants insist that the question of privilege should be decided so as to enable them to let in any secondary evidence. In the written arguments filed on 12-1-63 on behalf of the appellants it has been stated:

The matter of privilege has been argued at length before your good-self. The documents have now to be got looked into by your learned self. The claimants feel sure that these documents do not leave any doubt, whatsoever, about the genuineness of their claim. In any case if the privilege is upheld then from the fact that the department is raising the plea of privilege on such ordinary document a strong presumption should be raised against the department and it should be presumed that had the records been made part of the file, they would have held the case of the claimants.

Thus, the appellants did not make an issue of the question of privilege but left it to the Arbitrator. In their rejoinder filed on 24-9-63 the appellants had stated as follows:

The claimants as well as respondent base their claims on the agreement and on nothing else. All that the Hon'ble Arbitrator has to decide is as to what the agreements R1 and R2 really mean? There are no assurances, or agreements or arrangements besides the agreements R1 and R2.

There is, therefore, very little room for the appellants to have any genuine grievance about these documents in respect of which the privilege was claimed not being available before the Arbitrator. Furthermore, the word 'provisional' might not necessarily mean that the final figure would be less than the figure found in the agreement. There is evidence that the price paid for some of the cattle purchased by the Nilokheri Administration was not finally known and, therefore, if ultimately the price happened to be more than what was shown in the agreement the appellants would have to pay more. There is in fact evidence on record to show that the Administration had recommended to the Government to give credit to the appellants for the sum of Rs. 3412/- in respect of these cattle but that the Government of India turned down this recommendation and, therefore, a debit was raised against the appellants in respect of this amount. We also think that there is considerable force in the argument on behalf of the respondents that as the parties had filed applications for extension of time for pronouncing of award after the hearing was over on 14-9-1963, they would have raised this question at that time if they had really any grievance. In fact in their letter dated 12-8-1963 the appellants showed their interest in the award proceedings coming to a close soon.

9. We do not, therefore, feel that we would be justified in reversing the concurrent findings of both the Courts below that the order regarding privilege was made and pronounced on the date on which it was made. There is no particular reason why the Arbitrator should have resorted to this fraudulent act. The award would not have been weakened in any way if the documents in respect of which privilege had been claimed had been placed on record. Nor is it in any way strengthened by the order on the question of privilege.

10. We may also refer to the fact that soon after the agreement, on 28-5-53 the appellants' Manager had written to the Chief Accountant of the Rehabilitation Colony that the cost of the animals was mentioned as provisional because the books were not complete and he requested that exact book value of the animals as on 1-10-1950 may be intimated to him. Another document, Ext. A-36 also shows that the appellants knew what the book value was. Incidentally the same figures appear in the calculations filed by the appellants on the question of depreciation in respect of the Tharparkar Cows. To the same effect is the letter Ext. R-5 dated 14-12-53. The figures given by the appellants' Society in Ext. R-7 dated 27-10-52 are the same as found in the appellants' counter claim before the Arbitrator.

11. In the circumstances the appellants should also be deemed to have waived any objections that they may have had on the question of privilege. In "Russell on Arbitration" (Seventeenth Edition) at page 182 statement of law is given as follows:

Objections to a decision of the arbitrator as to whether or not to admit evidence, may be waived, like other objections to the manner in which the proceedings are conducted.

A party to an arbitration cannot be allowed to lie by and then, if the award is unfavorable, seek to set it aside on the ground that during the proceedings the arbitrator gave a ruling or decision contrary to the rules of evidence which the party during the proceedings took no steps to question.

We are, therefore, of the opinion that the Arbitrator cannot be said to have misconducted himself in the matter of his order on the question of privilege, nor are the appellants entitled to any relief on the question of depreciation based on the word 'provisional' in the agreement.

12. Mr. Nariman, the Additional Solicitor General, appearing on behalf of the respondents also con tended that the appellants having specifically stated that their claims are based on the agreement and on nothing else and all that the Arbitrator had to decide was as to the effect of the agreement, the Arbitrator had really to decide a question of law, i.e. of interpreting the document, the agreement of 6-5-53 and his decision is not open to challenge. We agree with him: see the decisions in Durga Prosad v. Sewkishendas and Ghulam Jilani v. Muhammad Hassan (1901) 29 Ind App 51 (PC) Point 3:

13. The appellants' contention that the Arbitrator has no jurisdiction in respect of the land and buildings is also without substance because in their claim before him the appellants themselves had contended that the land should be conveyed to them. The agreement makes it quite clear that only the use of the land was made available to the Society for growing the fodder and other foods for the animals and the limit of 135 acres was fixed against 80 miles cattle. It was also made clear that if there is any deficiency in the number of cattle 13/4 acres would have to be relinquished for every head of cattle found short It is also clear from the evidence that instead of using the land for raising fodder the appellants used it for raising cash crops. The appellant's President himself admitted that they raised Paddy, Jowar etc. He maintained, contrary to what is found in the contract, that there was no restriction against raising crops other than fodder crops. Some basis was sought for this argument on behalf of the appellants in the evidence of the Administrator wherein he said that the contract had not been rescinded. But he had been working as Administrator only from 1-6-1960 and the arbitration had started even on 4-9-1959. As already mentioned, in the claim of the appellants and the counterclaim of respondents as well as in the arguments on behalf of the Government the return of the land was asked for because the Society had used the land for purposes other than stipulated in the agreement and not because the agreement was terminated. Therefore, this argument about the respondents not being entitled to claim return of the land because agreement had not been terminated seems to have been an afterthought. This plea has been taken for the first time only in the special leave petition. We hold that there is no merit in this argument and the Arbitrator was competent to give an award on the matter of return of the land.

Point 5:

14. We accept the conclusion Of the Courts below that there is no substance in this contention.

15. A bare look at the facts of this case would show that having received cattle worth about sixty thousand rupees as well as other equipment worth over ten thousand rupees and not having paid the installments as stipulated in the agreement it needed a lot of nerve on the part Of the appellants to have made out a claim of Rs. 1,26,800/- against the Administration. However, they have succeeded in hanging on to the land and other facilities for over 14 years since the date of reference to the arbitration. There is no justice at all in their claim and we do not see any defect in the award or in the judgment of the Courts below. They have merely tried to drag on the case relying on any

little thing that was available more as a matter of afterthought.

16. The appeal is dismissed. The appellant will pay the respondents costs.