Supreme Court of India
Municipal Corporation Of Delhi vs Jagan Nath Ashok Kumar & Anr on 17 September, 1987
Equivalent citations: 1987 AIR 2316, 1988 SCR (1) 180
Author: S Mukharji
Bench: Mukharji, Sabyasachi (J)

PETITIONER:
MUNICIPAL CORPORATION OF DELHI

Vs.

RESPONDENT:
JAGAN NATH ASHOK KUMAR & ANR.

DATE OF JUDGMENT17/09/1987

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
OZA, G.L. (J)

CITATION:
1987 AIR 2316 1988 SCR (1) 180
1987 SCC (4) 497 JT 1987 (4) 25
1987 SCALE (2)695
CITATOR INFO :
APL 1989 SC 268 (17)
RF 1989 SC 890 (29)
RF 1989 SC 973 (11)

ACT:
Arbitration Act, 1940: ss. 20, 30, & 33-Arbitrator. Sole judge of quality and quantity of evidence-When germane and relevant reasons are indicated by the arbitrator award not unreasonable-Whether time essence of contract-Mixed question of law and fact.

Indian Evidence Act, 1872: s. 1-Applicability of to proceedings before an arbitrator.

Words and Phrases: Word "reasonable"-Meaning of.

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The respondent no. 1 was awarded a contract by the petitioner Corporation for construction of staff quarters, which was later rescinded on the ground that he could not complete the work as per the schedule. A Single Judge of the High Court referred the dispute to an arbitrator.

The arbitrator in his award submitted to the High Court found that there was a delay of nearly four months in the commencement of the work due to giving of the lay out etc., that there was also delay in the execution of sanitary work by another contractor who was previously employed and that this work was still incomplete at the time of the making of

the award, and as such complete site had not been made available to the respondent-contractor in time. He further found that there was provision in the agreement for extension of time for completion of the contract as well as for levy of compensation for delay, that subsequent to the expiry of the stipulated period of completion the petitioner-Corporation did not make time the essence of contract by directing the claimant to complete the work within a specified period but instead rescinded the contract. He, therefore, held that the decision of rescission of the contract was bad, wrongful, and hence the claim of the respondent for Rs.23,820 was just. He also allowed interest on the sum from the date of rescission of the contract. Certain counter claims of the petitioner-Corporation were also allowed by giving cogent }.1 reasons. 181

Rejecting the objection to the award raised by the petitioner, the Single Judge of the High Court directed the award to be made a rule of the Court. A Division Bench of the High Court summarily dismissed the appeal against that judgment and order.

In the special leave petition to this Court on the question: Whether reasonableness of the reasons in the speaking award was justiciable under Article 136 of the Constitution.

Dismissing the special leave petition,

HEADNOTE:

HELD: 1.1 The reasonableness of the reasons given by an arbitrator in making his award cannot be challenged in proceedings under Article 136. [183E]

1.2 Appraisement of evidence by the arbitrator is ordinarily never a matter which the court questions and considers. Section 1 of the Evidence Act, 1872 in its rigour is not intended to apply to proceedings before an arbitrator. In the instant case, the parties have selected their own forum and the deciding forum must be conceded the power of appraisement of the evidence. The arbitrator is the sole judge of the quality as well as quantity of evidence and it will not be for the Supreme Court to take upon itself the task of being a judge of the evidence before the arbitrator. It may be possible that on the same evidence the Court might have arrived at a different conclusion than the one arrived at by the arbitrator but that by itself could be no ground for setting aside the award of an arbitrator. 1186B-D]

Haji Ebrahim Kassam Cochinwall v. Northern Indian oil Industries Ltd., A.I.R. 1951 Calcutta 230, referred to.

2. There was no violation of any principles of natural justice in the instant case. It was not a case where the arbitrator had refused cogent and material factors to be

taken into consideration. The award could not therefore, be said to be vitiated by non-reception of material or non-consideration of the relevant aspects of the matter. [186A-B]

Mediterranean & Eastern Export Co. Ltd. v. Fortress Fabrics Ltd., 11948] 2 All. E.R. 186, referred to.

3. Whether in a particular contract time was the essence of the contract or not, is a mixed question of law and fact. In the instant case, the reasons given by the arbitrator in holding that it could not be taken
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that time was the essence of the contract, were cogent and based on materials on record and have a rational nexus with the conclusion arrived at by him. [184C;186A]

4. The word 'reasonable' have in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. An arbitrator acting as a Judge has to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to the primordial necessity of order in the social life. Therefore, where reasons germane and relevant for the arbitrator to hold in the manner he did have been indicated, it cannot be said that it was unreasonable. [187E-F; 184E

Re a Solicitor, [1945] K.B. 368 at 371 of the Report) and Stroud's Judicial Dictionary, Fourth Edition, page 2258, referred to.

In the instant case the arbitrator acted reasonably and rationally. The challenge to the award was, therefore, rightly rejected by the High Court. [187G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 9524 of 1987.

From the Judgment and order dated 25.5.1987 of the Delhi High Court in F.A.O.. No. 58 of 1987.

R.B. Datar and Ranjit Kumar for the petitioner. The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. The respondent No. 1 herein was awarded the contract in question for the construction of staff quarters for the Municipal Corporation of Delhi, the petitioner herein and the work had to be completed within the stipulated period mentioned in the contract. Since, however, the work was not being done in the manner as the Delhi Municipal Corporation thought it ought to have been done, the petitioner wrote 29 letters during June, 1978 to July, 1980 regarding the timely completion of the work. It is alleged that the work was not completed by the 15th of January, 1980 as per the schedule in the contract. Show cause notice was given to the respondent-contractor. The contractor failed to give satisfactory reply and according to the petitioner, the contract was rescind. Thereafter several other letters were written which are not material to refer.

There was an arbitration clause in the agreement. On 2nd November, 1982 an application was filed under section 20 of the Arbitration Act, 1940 (hereinafter called 'the Act') in the Delhi High Court. A learned Single Judge of the said High Court directed reference of the dispute and directed the Commissioner of the Municipal Corporation or anyone nominated by him to enter into reference. The Commissioner on 17th of March, 1983 appointed one Shri S.M. Hasnain, Arbitrator and Superintending Engineer No. II, of the Municipal Corporation of Delhi as the arbitrator. He is respondent No. 2 in this petition. The said arbitrator entered upon the reference and thereafter on 21st of August, 1984 submitted his award allowing some claims of the contractor and some counter-claims of the Municipal Corporation. The Municipal Corporation filed its objections to the said award. The learned Single Judge of the High Court by his judgment and order dated 22nd of October, 1986 directed that the award be made a rule of the Court. A Letters Patent Appeal was filed thereafter but the same was summarily dismissed by a Division Bench of the Delhi High Court on 25th May, 1987. The petitioner seeks leave in this petition under Article 136 of the Constitution to challenge the said order. As the learned Division Bench did not give reasons, we must refer to the order of the learned Single Judge.

The arbitrator gave reasons in support of the award. The question is whether reasonableness of the reasons in a speaking award is justiciable under Article 136 of the Constitution. We are of the opinion that such reasonableness of the reasons given by an arbitrator in making his award cannot be challenged in a proceeding like the present. It is desirable, however, that we state our reasons for so holding.

In order to appreciate this the award of the arbitrator must be looked into. The arbitrator in his award has dealt with various claims, one of the main claims was the claim of 23,850 out of which 8,300 was in the form of fixed deposit receipt carrying interest and the balance amount of 15,520 was deducted as security of 10% from the bills of the claimant. According to the claimant this amount had wrongly been forfeited by the Corporation at the time of rescission of the contract and that the same should be refunded to him. It was held by the arbitrator that there was provision in the agreement for extension of time for completion of the contract, as well as for levy of compensation for delay. Therefore, it could not be taken that time was the essence of the contract. The arbitrator had opined that according to the respondents' own admission there was delay of nearly four Months in the commencement of the work due to giving of the layout etc. There was also delay in the execution of sanitary work by another contractor previously employed by the petitioner and this work was still incomplete at the time of the making of the award and as such complete site had not been made available to the present contractor in time. Further there was provision in the agreement for extension of time or levy of compensation for delay and, therefore, according to the arbitrator time could not be considered in such a contract to be the essence of the contract. Furthermore, subsequent to the expiry of the stipulated period of completion, the Corporation did not make time the essence of the contract by directing the claimant to complete the work within a specified period but instead rescinded the contract. In those circumstances it was held by arbitrator that the decision of rescission of the contract has bad, wrongful and hence the claim of Rs.23,820 was considered to be just. We do not find any lack of reason in the reasons given by the arbitrator. Whether in a particular contract time was the essence of the contract or not is a mixed question of law and fact. But the reasons given by the arbitrator appear to be reasonable and have rational

nexus with the conclusion arrived at by him. It was stated that it was admitted on behalf of the Corporation that there was initial delay of four months. This was controverted by the Corporation. They say that there was no admission. This, in our opinion was a significant factor that there was some delay and in spite of the delay the corporation gave letters to the contractor to complete the work and in the contract itself there was provision for extension of time. In our opinion, where reasons germane and relevant for the arbitrator to hold in the manner he did have been indicated, it cannot be said that it was unreasonable. Another factor the arbitrator had noted was that the site was not available due to the conduct of another contractor previously employed by the petitioner. This factor is also a relevant factor. The fourth item of the award was a claim for damages for Rs.60,000(). This amount was not granted on the ground that the claimant was not able to prove this amount. The fifth item in the award was a claim for interest at 18 % per annum on certain items from the date of rescission of the contract to the date of payment of decretal amount. The arbitrator allowed the interest as the amount had been withheld due to unjustified and wrongful rescission of the contract. Reasons given by the arbitrator appear per se not unreasonable. The arbitrator has not awarded any costs. There were also counter claims by the Corporation against the contractor. The first counter claim was forfeiture of Rs.23,820 on account on the rescission of the contract. Inasmuch as the rescission was held to be unjustified in the facts of this case, the forfeiture was also held to be wrongful. There was a claim of Rs.32,640 as payment of compensation at 10% of Rs.3,28,400, but as the time was not the essence of the contract and the rescission of the contract was unjustified, this claim could not be sustained and it was so rejected by the arbitrator. The next claim was for Rs.85,620 for the execution of the remaining work at the risk and cost of the respondent. The arbitrator found that the contractor had as far as possible discharged his contractual obligation and the rescission of the contract was unjustified and wrongful. Therefore, the Corporation's claim for getting the work executed at the risks and costs of the contractor was unjustified and the claim was so logically rejected and no amount was awarded on that score. The next claim was for Rs.2739 on account of mild steel Lying with the contractor. On examination it was found that some quantities of steel had been consumed in the work and as such recovery could only be made for the balance quantity of 1172 kgs. at the recovery rate of Rs.1.50 per kg. and the claim was, therefore, allowed in favour of the Corporation for Rs.1,758. The Corporation further claimed a sum of Rs.6,083.20 on account of non-return of certain steel. After taking into account the steel consumed in the work and after allowing for permissible variation and wastage, it was held that recovery claim for Rs.3,862 only was justified. The award was made accordingly. There was another claim of Rs.6,473 on account of penal rate recovery of mild steel. It was held for good reasons indicated in the award that the claim for Rs.5,620 was justified. The Corporation claimed Rs.13,578 for penal rate recovery of cement for the quantity in excess of the theoretical consumption. After going into the material the arbitrator found that the cement issued to the claimant was consumed in the work and the claim of the Corporation for the penal rate recovery was not justified. The next was the claim for Rs.1400 by the Corporation on account of non-return of 700 empty cement bags to the Municipal store. This was enquired into and found to be justified and a sum of Rs.1400 was awarded in favour of the Corporation. There was a further claim of Rs.65 for adjustment of cost of steel on account of three transfer entries. From the documents produced the claim was awarded in favour of the Corporation. The next claim was for interest at the rate of 12% per annum w.e.f. 1.9.81 on the amount of alleged counter-claim preferred against the claimant. As it was held that the rescission of the contract was unjustified and wrongful, the Corporation was at

liberty to recover its justified claims from the dues of the claimant at its disposal and pay the balance amount to the claimant within a reasonable time. There was a further claim for Rs.10,000 as arbitration costs and the claim was rejected. It appears to be very reasonable and fair award.

In this case, there was no violation of any principles of natural justice. It is not a case where the arbitrator has refused cogent and material factors to be taken into consideration. The award cannot be said to be vitiated by non-reception of material or non-consideration of the relevant aspects of the matter. Appraisement of evidence by the arbitrator is ordinarily never a matter which the Court questions and considers. The parties have selected their own forum and the deciding forum must be conceded the power of appraisement of the evidence. In the instant case, there was no evidence of violation of any principle of natural justice. The Arbitrator in our opinion is the sole judge of the quality as well as quantity of evidence and it will not be for this Court to take upon itself the task of being a judge of the evidence before the arbitrator. It may be possible that on the same evidence the Court might have arrived at a different conclusion than the one arrived at by the arbitrator but that by it self is no ground in our view for setting aside the award of an arbitrator.

It is familiar learning but requires emphasis that section 1 of the Evidence Act, 1872 in its rigour is not intended to apply to proceedings before an arbitrator. P.B. Mukharji, J. as the learned Chief Justice then was, expressed the above view in Haji Ebrahim Kassam Cochinwall v. Nothern Indian oil Industries Ltd., A.I.R. 1951 Calcutta 230 and we are of the opinion that this represents the correct statement of law on this aspect. Lord Goddard, C.J. in Mediterranean & Eastern Export Co. Ltd. v. Fortress Fabrics Ltd., [1948] 2 All E.R. 186 observed at pages 188/189 of the report as follows:

> "A man in the trade who is selected for his experience would be likely to know and indeed to be expected to know the fluctuations of the market and would have plenty of means of informing himself or refreshing his memory on any point on which he might find it necessary so to do. In this case according to the affidavit of sellers they did take the point before the Arbitrator that the Southern African market has slumped. Whether the buyers contested that statement does not appear but an experienced Arbitrator would know or have the means of knowing whether that was so or not and to what extent and I see no reason why in principle he should be required to have evidence on this point any more than on any other question relating to a particular trade. It must be taken I think that in fixing the amount that he has, he has acted on his own knowledge and experience. The day has long gone by when the Courts looked with jealousy on the jurisdiction of the Arbitrators. The modern tendency is in my opinion more especially in commercial arbitrations, to endeavour to uphold Awards of the skilled persons that the parties themselves have selected to decide the questions at issue between them. If an Arbitrator has acted within the terms of his submission and has not violated any rules of what is so often. called natural justice the Courts should be slow indeed to set aside his award." This in our opinion is an appropriate attitude.

In this case the reasons given by the arbitrator are cogent and based on materials on record. In Stroud's Judicial Dictionary, Fourth Edition, page 2258 states that it would be unreasonable to

expect an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the verdict of a jury or the decision of a judge sitting as a jury usually determines what is "reasonable" in each particular case. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. See the observations, in Re a Solicitor [1945] K.B . 368 at 371 of the report .

After all an arbitrator as a Judge in the words of Benjamin N. Cardozo, has to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life". F Indeed reading the award of the arbitrator, one would say that he acted reasonably and rationally.

In the premises the award of the arbitrator was assailed on trivial grounds and the challenge was rightly rejected by the High Court. The respondent is entitled to the costs of the challenge upto the High Court. So far as the costs of this petition to this Court is concerned, parties are directed to bear their respective costs. The petition for leave to appeal is, therefore, dismissed and the leave refused.

P.S.S. Petition dismissed.