Supreme Court of India
B.V. Radha Krishna vs Sponge Iron India Ltd on 4 March, 1997
Author: K Venkataswami
Bench: Cji, K. Venkataswami

PETITIONER:
B.V. RADHA KRISHNA

Vs.

RESPONDENT:
SPONGE IRON INDIA LTD.

DATE OF JUDGMENT: 04/03/1997

BENCH:
CJI, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T K. VENKATASWAMI, J.

Leave granted Heard learned counsel for the parties. The short question that arises for out consideration is whether the High Court was justified in interfering with the award by reducing the amount for he work done as well as allowing the interest only from the date of the notice demanding the amount.

The appellant contractor undertook the work of transportation of waste and finished products within the plan of the respondent company commencing from 16.4.1982 to 31.3.1983. The agreement in respect of that contract was executed by both the parties on 8.6.1982. As certain disputes arose between the parties in respect of transportation work the appellant issued notices to the respondent calling upon them to settle the bills and claim raised by him. As the respondent failed to settle the bills, the appellant moved the City Civil Court Hyderabad under Section 20 of the Arbitration Act (hereinafter referred to as "the Act") for appointment of the Sole Arbitrator to adjudicate upon the dispute between the parties. Mr. Justice K. Punnayya (retired judge of the High Court of Andhra Pradesh) was appointed as Sole Arbitrator by order dated dated 31.10.1985. The learned Arbitrator by the award dated 1.8.1986, after giving opportunity to both the parties, determined the amount of Rs. 5,29,864.55 as payable by the respondent Company to the appellant.

In addition to that the Arbitrator also awarded interest of the rate of 18 per cent per annum on the said amount from 1.4.1983 till the date of award being made the rule of Court.

The appellant moved the City Civil Court, Hyderabad by filling O.S. No.1027 of 1986 for making the award of the Arbitrator as rule of the Court and also prayed for the grant of interest at the rate of 21 per cent per annum from the date of decree till the date of realisation of the amount. The respondent company, on the other hand, filed O.P. No 349/86 challenging the award. The learned judge City Civil Court by a common judgment dated 30.8.1988 decreed the suit filed by the appellant for making the award as rule of the Court by awarding 20% interest from the date of decree till the date of realisation of the amount of dismissed the O.P. filed by the respondent challenging the award.

Aggrieved by the common judgment and order of the City Civil Court, the respondent Company moved the High Court in C.M.A. No. 1277/88 and C.R.P.No. 3695/88 against O.P. No. 349/86 and O.S. No.1027/86 respectively.

The Division Bench the High Court, by a common judgment dated 29.9.1995, partly allowed the appeal as well as the Revision Petition by reducing the amount from 5,29,864.55 to Rs. 1,72,347/- and interest 18% from 14.6.1984 instead of from 1.4.1983. The appellant is aggrieved by the said judgment of the High Court.

Mr. K. Madhava Reddy. learned Senior Counsel appearing for the appellant submitted that the High Court exceeded its jurisdiction in interfering with the well considered award of the arbitrator by examining the matter as a regular appellate court. Learned counsel also invited out attention to the discussion made by the Arbitrator as well as by the High Court regarding the relevant clause in the agreement and in particular to the expression one 'One Kilometre lead'. We find from the Award that the Arbitrator has taken into account the oral evidence of both the parties and also the documentary evidence placed before him to come to the conclusion that the version of the respondent company 'one Kilometre lead' means 'one Kilometre by one side' in not correct by way of understanding it.

This finding of the Arbitrator was upset by the High Court by going into the question as if sitting a appeal to render a contrary view. this, according to the learned counsel, is not the jurisdiction of the High Court as this is not an error apparent on the face of the record. He further argued that it is settled law that the Court while exercising power under Section 30 of the Arbitration Act cannot re-appreciate all the materials on the record for the purpose of recording a finding whether in the facts and circumstances of a particular case the award in question could have been made. In support of this contention he placed reliance on Hindustan Construction Company Ltd. Vs. Governor of Orissa and Others (1995) 3 SCC 8.

The learned counsel for the respondent however strenously argued supporting the judgment of the High Court. According to him the High Court has placed a correct interpretation on the clause in the agreement in question by referring to various dictionary and other technical meaning to be given to the word 'lead' occuring in the clause. He also submitted that the High Court has explained the oral evidence of R.W. 5 and therefore, the view taken by the High Court Should be accepted in preference

to the view taken by the Arbitrator.

We are afraid we cannot accept the contention of the learned counsel appearing for the respondent Company. We are of the view of that the learned counsel for the appellant is right in contending that the High Court exceeded its jurisdiction under Section 30 of the Arbitration Act by dealing with the issue as an appellate court. Regarding the issue in question, the Arbitrator has observed as follows :-

> "The next point that requires consideration is whether R.W.- 1's contention that one kilometre lead mentioned in Ex. R-1 means one kilometre by one side but not to and fro as contended by the claimant, is acceptable? R.W.1 asserts in his evidence that in all transport contracts it would be mentioned only as lead which mean by one side... In fact R.W. 1's version that "one kilometre lead means one Kilometre by one side" is contradicted by their own witness R.W.-5, to whom a part of P.W.-1's present contract was given under the work order Ex.R-8 dated 14.3.1983. R.W -5 deposed that one Kilometre lead includes to and fro. He further clarified that though the word "lead" does not mention the word to and fro", it is meant or understood as to and fro. R.W.-5's evidence that the lead of 1 k.m. means one kilometre to and fro. falsifies R.W.-1's version in this regard. P.W.-1's evidence on this aspect is that in the case of internal transport the word 'lead' only is mentioned and it would mean to and fro. If the lead is only one side, the tender notice would specifically mention as "one side". In support of his contention he relied upon Ex.C-2 the Tender Notice issued by the Singarani Collaries Co. Ltd. Bellampally, dated 5.11.1985 published in the Indian Express. Hyderabad edition dated 19.11.1985. Under Ex. C-2 Sealed Tenders are invited from reputed transport contractors for transport of coal is self dumping lorried at the following place : "One Way distance Approx. quantity in K.M.'s(Approx.) in tonnes by/month SRP 2A to 9,000 RAP-I CSP It is therefore, clear that Ex.C-2 which relates to transport contract specifically mentions as "one way distance", Ex. C-2 clarifies that as the lead is for one side, it is mentioned specifically as "one way distance". R.W.-1 was confronted with Ex.C-2 in the Cross-examination and he admitted that Ex. C-2 relates to the transport contract. R.W.-1, of course, says that Ex.C-2 relates to that Company (Singarani Collories). It is true that Ex. C-2 relates to Singarani Colleries, but it is also Government Company. All the Government companies have to follow the same rules pertaining to the transport contracts. Even R.W.-1 stated in his evidence that in all the transport contracts it would be mentioned as lead only and would not be mentioned as one way lead. But Ex. C-2 proves that the view expressed by R.W.-1 is not correct. Since R.W.-5 who is the witness of the respondent-company and who transported and dumped 22,000 M.Ts. of material from out of P.W. 1's contract, unequivocally stated that one kilometre lead mentioned in tender notice is meant and understood as one kilometre lead to and fro and since Ex. C-2 also specifically mentions as one side lead P.W.-1's version is accepted and R.W.-1's version cannot be accepted.
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> From may above discussion, I hold that the claimant transported 10.195.80 M.Ts. of material within one kilometre lead to and fro. as contended by the claimant but not

the entire material of 47,463.29 M.Ts. as contended by the respondent Company."

As against the above discussion and conclusion of the Arbitrator, The high Court on the same issue observed as follow :-

"....(T)he learned Arbitrator did not discuss the meaning of the term 'lead' used in ordinary or engineering parlance. He relied on two factors, namely, the tender notice of another Company (Ex.C-2) and the so-called admission of R.W.

-5 which we shall refer to later. What is important is to find out whether the world 'lead' means the distance covered from the point of origin to the point of destination only, or the return empty trip form the destination to the point of origin should also be taken into consideration. If a distance of say, 4 Kms was to be covered by way of 'lead' whether it would mean that a distance of only 2 Km from the point of origin to the point of destination would be taken into account or whether the return trip of 2 Km also would be included within the meaning of the word 'lead'. We have no doubt in our mind that, that is not the meaning which could be attributed to the word 'lead'. 'Lead' means and for all practical purposes it is only the one way distance to be covered from the point of origin to the point of destination unless otherwise specified."

"The concise Oxford Dictionary. 1990 Edition, spells out different contexts. As far as the present context is concerned the meanings of the word 'lead' is stated to be as follows "Bring to a certain position or destination"

In Oxford Universal Dictionary (Illustrated) the meaning of the word 'lead' under the sub-head 'Engineering is given as follows" "The distance to which ballet,coal, soil etc. is to be conveyed to its estination."

This meaning attributed to the word 'lead' in the Oxford Dictionary makes it abundantly clear that only one way distance from the point of origin to the point of destination is to be taken into account.

The High Court further observed : "We are also of the view that tit admits of one and only meaning and the Arbitrator, on a consideration of irrelevant factor, namely, tender notice of Singarani Colleries and going by a non- existent admission of R.W.-5 understood the word 'lead' in a sense contrary to its plain meaning. Without any factual or legal basis and, therefore, there is an error of law apparent on the face of the award. The construction of a material portion of document is a question of law, but not merely one of fact. There is no basis at all for the Arbitrator's conclusion and the legal error is therefore apparent.

The disposal of the matter by the High Court in the manner shown aboye does not come within the ambit of section 30 of the Arbitration Act. This Court, time and again, has pointed out the scope and

ambit of section 30 of the Act. In State of Rajasthan vs Puri Construction Co. Ltd. and Another (1994) 6 SCC 485 after referring to decisions of this Court as well as English cases. The Court observed as follows:

> "On the scope and ambit of the power of interference by the court with an award made by an arbitrator in a valid reference to arbitration, various decisions have been made from time to time by Law Courts of India including this court and also by the Privy Council and the English Courts. Both the parties have referred to such decisions in support of their respective contentions. The factual contentions of the respective parties are proposed to be scrutinised and then the facts are proposed to be tested within the conspectus of judicial decisions governing the issues involved. This Court again observed in paras 26-28 as follows :- "The arbitrator is the final arbiter fr the disputes between the parties and it is not open to challenge the award on the ground that the arbitrator has drawn his own conclusion or has failed to appreciate the facts. In Sudarsan Trading Co. Vs. Govt. of Kerala it has been held by this Court that there is a distinction between disputed as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be conflict as to the power of the arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. (exphasis supplied) Where a particular amount was liable to be paid is a decision within the competency of the arbitrator. By purporting to construe the contract the court cannot take upon itself the burden of saying that this was contrary to the only correct view, the award cannot be examined by the court. Where the reasons have been given by the arbitrator in making the award the court cannot examine the reasonableness of the own forum, the deciding forum must be conceded the power of appraisement of evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the takes of being a judge on the evidence before the arbitrator.
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> In Municipal Corporation India vs. Jagan Nath Ashok Kumar, it has been held by this Court that appraisement of evidence by the arbitrator is ordinarily never a matter which the court questions and considers. It may be possible that on the same evidence the court may arrive at a different conclusion that the one arrived at by the arbitrator but that by itself is not ground for setting aside the award. It has also been held in the said decision that it is difficult to give and exact definition of the ward 'reasonable'. Reason varies in its conclusions according to the idiosyncrasies of the individual and the time and circumstances in which he thinks. In cases not covered by authority the verdict of 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 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. There fore, where reasons germane and relevant for the arbitrator to hold in the manner he did, have been indicated, it cannot be said that the reasons are unreasonable.
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> In this case, claims before the arbitrators arise from the contract between the parties. It is well settled that if a question of law is referred to arbitrator and the arbitrator comes to a conclusion, it is not open to challenge the award on the ground that an alternative view of law is possible. In this connection, reference may be made to the decisions of this Court in Alopi Parshad and Sons Ltd. vs. Union of India and Kapoor Nilokheri coop. Dairy Farm Society. In Indian Oil Corpn. Ltd. vs. Indian Carbon Ltd., this Court has held that the court does notsit in appeal over the award and review the reasons. The Court can set aside the award only it is apparent from the award that there is no evidence to support the conclusions or if the award is based upon any legal proposition which is erroneous."

In Hindustan Construction Co. Ltd. vs. Governor of Orissa and other (1995) 3 SCC 8 this Court observed on the scope of interference by the court as follows:-

> "It is well known that the Court while considering the question whether the award should be set aside does not examine the question as and appellate court. While exercising the said power. The court cannot reappreciate all the materials on the record for the purpose of recording a finding whether in the facts and circumstances of a particular case the award in question could have been made. Such award can be set aside on any of the grounds specified in Section 30 of the Act.

Bearing in mind, the principles laid down by this Court in the above aid cases. If we took into disposal of the matter by the High Court, it would be evident that the High Court has substituted its own view in place of the Arbitrator's view as if its was dealing with an appeal. That is exactly what is forbidden by the decisions of this Court therefore, we have no hesitation to set aside the judgment of the High Court on this issue.

Learned counsel for the appellant also submitted that the High Court went wrong in awarding interest only from 14.6.1984 on the ground that the notice demanding the amount was issued on that date only an therefore, the appellant was not entitled to any interest prior to that date. According to the learned counsel. Section 3(1)(b) or the interest Act 1978 in unequivocal terms specifies that interest would be available from the date mentioned in the demand notice and notice and without noticing that provision that High Court has wrongly given interest from the date of the notice.

On the question of interest we think the learned counsel for the appellant is right in placing reliance on Section 3(1)(b) of the Interest act. The appellant Company had issued notice on 14.6.1984 demanding payment of the specified amount and interest on the specified amount at the rate of 21%

per annum from 1.4.1983 till payment. Section 3(1)(b) of the Interest Act. 1978 reads as follow :-

> "3. Power of court to allow interest. - (1) In any proceedings for the recovery of any debt or damages or in any proceeding in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate on exceeding the current rate of interest, for the whole or part of the following period, that is to say,----
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> (a) .....
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> (b) If the proceedings do not relate to any such debt, then, from date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings :"

In view of this, the learned counsel appearing for the respondent company could not support the order of the High Court in awarding interest from the date of notice, namely, 14.6.1984 and not from the date mentioned in the notice viz. 1.4.1983.

In the result, we set aside the judgment of the High Court had restore the Award of the Arbitrator. therefore will be no order to costs.