
(1988) 03 AHC CK 0026
In the Allahabad High Court
Case No : F.A.F.O. No. 381 of 1986

Abhai Singh

APPELLANT

Vs

Sanjay Singh and Others

RESPONDENT

Date of Decision : 30-03-1988

Acts Referred:

Arbitration Act, 1940 — Section 30
Contract Act, 1872 — Section 23
Partnership Act, 1932 — Section 12

Citation : AIR 1989 All 214

Hon'ble Judges : S.R. Bhargava, J;K.P. Singh, J

Bench : Division Bench

Advocate : Bharti Sapru, for the Appellant; Wajahat Hussain Khan, for the Respondent

Judgement

K.P. Singh, J.—Necessary facts involved in the present litigation are as follows :

Shri Sanjay Singh and Smt. Krishna Kumari filed an application u/s 20 of the Arbitration Act against Shri Abhay Singh and Smt. Indu Bala in the Court of Civil Judge, Dehradun. The aforesaid application was decided by Shri Virendra Singh, 2nd Additional Civil Judge, Dehradun, through his judgment dated 10-3-1986. Against the judgment dated 10-3-86, Abhay Singh and another preferred an appeal numbered as 267 of 1986 in this court. It appears that the parties did not agree to the appointment of arbitrator as indicated in the order dated 10-3-1986. The court appointed Shri Jitendra Kumar, Advocate, Dehradun, as arbitrator through his order dated 4-4-1986. Against the order dated 4-4-1986 Shri Abhai Singh filed an appeal in this court which was numbered as 381 of 1986. The aforesaid appeal was allowed in part by a bench of this court on 17-12-1986. Per direction of this court Mr. Justice J. M. L. Sinha (Retd.) was appointed as arbitrator in place of aforesaid Shri Jitendra Kumar, Advocate, Dehradun. Parties to the present litigation appeared before the Arbitrator appointed by this court and the learned Arbitrator has given an Award dealing with the claims of the parties. The aforesaid Arbitrator has filed the Award in this court. Shri Sanjay

Singh and another have prayed for making the Award a rule of the Court whereas Shri Abhay Singh and others have challenged that portion of the Award whereby they have been restrained from taking instructions from and rendering accounts to any individual or body of individuals except the partnership Firm which goes by the name of Col. Browns Cambridge School and they have also been enjoined from permitting N. S. Educational Society to run the School and make use of the movable or immovable properties of the Partnership Firm.

2. The parties in the present litigation are the partners of the Firm known by the name of Col. Browns Cambridge School. Col. Browns Cambridge School was run by the Firm. It appears that the State Government as well as the council of Anglo Indian Schools threatened the Firm to disaffiliate the School if the School was not run by a society registered under the Societies Registration Act. The parties in the present litigation agreed to the need of formation of a society but they fell out on the question of the constituents of the Society. According to Sanjay Singh and another the constituents of the Society were such that they could not have their say at any point, therefore, they made a different proposal which was not acceptable to Abhay Singh and others and the latter got a society registered under the name of N. S. Educational Society on 23-2-1978 and Abhay Singh and others (defendants in the objection u/s 20 of the Arbitration Act) passed on the management of the School and its properties to the Society without consent of Sanjay Singh and another (Plaintiffs in the application u/s 20 of the Arbitration Act). Thus the difference arose between the parties leading to the present litigation.

3. Shri Sudhir Chandra Agarwal, a senior advocate of this Court, has challenged the Award on behalf of Abhay Singh and another on the following grounds:

According to the learned counsel, the learned Arbitrator has committed an error on the face of the record in granting relief of injunction to Sanjay Singh and another in the facts and circumstances of the present case. According to the learned counsel, injunction against Abhay Singh and others could not be granted in law as well as on the findings recorded by the learned Arbitrator himself.

Second ground raised on behalf of the objector to the Award is that the learned Arbitrator has recorded contradictory findings, therefore, that part of the Award is bad whereby injunction has been issued against Abhay Singh and others.

Third ground of attack against the Award is that the action of Abhay Singh in handing over management to the Society was fully protected by the provisions of Section 21 of the Indian Partnership Act.

Fourth ground attacking the Award is that the Award does not settle the dispute between the parties and the parties are relegated to another litigation, therefore, the Award issuing an injunction against the objectors is bad in law.

Fifth attack upon the Award is on the ground that the learned Arbitrator has omitted to consider material evidence stressed by the learned counsel for the

objectors, therefore, the Award suffers from an error on the face of the record and deserves to be set aside qua the relief of injunction granted to the plaintiffs in the application u/s 20 of the Arbitration Act.

4. Shri S. S. Bhatnagar, a senior advocate of this court, has supported the Award and has tried to refute the contentions raised on behalf of the objectors. According to him the Award does not suffer from any error of law on the face of the record. The Arbitrator has not recorded any inconsistent findings as suggested by the learned counsel for the objectors to the Award. Therefore, the Award is good in law and it should be made a rule of the Court. It has also been submitted by the learned counsel that if this court differs from the views expressed by the learned Arbitrator, it would be no ground for interfering with the Award which has been given by the Arbitrator chosen by the parties to the litigation.

5. The main argument of the learned counsel for the objectors to the Award before us is that learned Arbitrator has recorded contradictory findings, therefore, the Award is liable to be set aside in so far as it has granted relief of injunction against the objectors. In this connection our attention has been drawn to the observations made at pages 315, 327 and 342 of the paper book. It has been emphasized that according to the learned Arbitrator, N. S. Educational Society was formed by the defendants due to threats of disaffiliating the School from the State Government as well as Anglo Indian Schools (see pages 315-16). The aforesaid Society according to the Arbitrator is an independent entity and is managing the affairs of the school since 1979 and it is not a cloak. Therefore, the Arbitrator did not grant the relief of accounting claimed by Sanjay Singh and another but while granting the relief of injunction against Abhay Singh, the learned Arbitrator failed to realise that the injunction would interfere with the functioning of the Society which is stranger to the proceedings, therefore the Award should be quashed. It has also been emphasized that the learned Arbitrator has found that the above-mentioned Society was managing the affairs of the School but while granting relief of injunction against Abhay Singh he has characterised the possession of the Society as "abstract", therefore, contradictory findings have been recorded by the Arbitrator. On the contradictory findings the objectors claim that the Award granting injunction against them need be quashed. Our attention was invited to para 5 of the ruling reported in K.P. Poulose Vs. State of Kerala and Another, , wherein their Lordships of the Supreme Court have made the following observations : --

"We now come to the award. Although the Arbitrator has held that the jetting, however, is not an authorised extra covered by the agreement", he has made the following significant observation which is inconsistent with his conclusion that the contractor has no right for extra payment for the jetting."

"....."

"If the above is the conclusion of the Arbitrator, rejection of the claim on the

ground that "jetting, however, is not an authorised extra covered by the agreement" cannot be anything but rationally inconsistent. The award, therefore, suffers from a manifest error apparent ex facie."

6. Relying upon the above observation and after pointing out inconsistent findings in the Award, the learned counsel for the objectors has emphasized that the learned Arbitrator patently erred in issuing injunction against the objectors. In our opinion, the findings recorded by the learned Arbitrator though appear somewhat contradictory but if they are read between the lines it would appear that in issuing injunction against the objectors the learned Arbitrator has not adopted contradictory approach. True, while refusing the relief of accounting to Sanjay Singh and another, the learned Arbitrator has accepted the existence of the above-mentioned Society as an independent entity but while granting the relief of injunction to Sanjay Singh and another, the learned Arbitrator has only restrained the partners Abhay Singh and another and has not issued any injunction against the Society. It is a different thing that when injunction is issued against the partners, the above-mentioned Society might be indirectly affected but as no injunction has been granted to Sanjay Singh and another against the Society, therefore, the learned Arbitrator cannot be termed as guilty of contradictory and inconsistent approach to the problem before him. In Halsbury's Laws of England, Fourth Edition, IIInd Volume, in Para 622, at page 330, it has been indicated as to what constitutes misconduct and one of the grounds is if the

award is inconsistent. We have already indicated that in issuing injunction against the objectors to the Award, the approach of the learned Arbitrator cannot be termed as inconsistent, therefore, we are of the opinion that the learned Arbitrator is not guilty of any misconduct contemplated by law in issuing injunction against the objectors and the Award cannot be termed as bad in law having some inconsistent observations. For the sake of argument, even if it is accepted that there are some inconsistent reasonings in the Award, they are not such as would amount to misconduct on the part of the Arbitrator. In the facts and circumstances of the present case we are unable to accept the contention of the learned counsel for the objectors that the award insofar as it has issued injunction against the objectors should be set aside on the ground of its containing contrary findings. Thus the second ground of attack on behalf of the objectors against the Award fails.

7. As regards the first contention of the learned counsel for the objectors that no injunction could be granted against the objectors in law as well as on the findings recorded by the Arbitrator, we think that the contention has no force. The objectors being partners of the Firm to run the School could not appoint the abovementioned Society for management of the School without consent of all the partners. The learned Arbitrator has considered the contentions raised on behalf of the objectors and after relying upon the various provisions of the Partnership Act, he has arrived at the conclusion that Abhay Singh objector could not entrust

the management of the School and its properties to the abovementioned Society. To our minds, cogent reasons have been given by the Arbitrator at pages 316 to 319 of the paper book and we agree with the reasonings of the learned Arbitrator in his conclusion that the objector Abhay Singh could not deprive the Firm of its only business, i.e., running the School.

8. During the course of argument the learned counsel for the objectors had vehemently criticised the following observations of the Arbitrator :

"The learned counsel for the defendants have referred to me Section 21 and urged that since the School was under threat of disaffiliation, it was a case of emergency and hence Abhay Singh could entrust, the management of the School and its properties to the Society. This argument is misconceived."

9. According to the learned counsel the reasoning in the Award given by the Arbitrator for issuing injunction is absurd and misconceived. We think that the criticism of the learned counsel for the objectors is wholly incorrect and unjustified. The Firm was running the School and all the partners of the Firm had a share in the profit but because of the management having been given to the abovementioned Society, the plaintiffs in proceedings u/s 20 of the Arbitration Act would get only rental value of the properties belonging to the Firm. Therefore, they have no say in the management of the School and the Firm has really been deprived of its business and the Firm is getting only a fixed amount by way of rental value for the properties belonging to it. Therefore, we are unable to agree with the criticism levelled by the learned counsel for the objectors regarding the conduct of the learned Arbitrator which was not properly appreciated by the learned counsel for the objectors. Since we have agreed with the reasonings of the learned Arbitrator contained in the Award at pages 316 to 319 of the paper book, we think that the injunction against the objectors was rightly issued by the learned Arbitrator in the facts and circumstances of the present case.

10. As regards the third ground of attack, "it is proper to quote the provisions of Section 21 of the Partnership Act which reads as below : --

"A partner has authority in an emergency to do all such acts for the purpose of protecting the Firm from loss as would be done by a person of ordinary prudence in his own acts acting in similar circumstances and such acts -bind the Firm."

11. The learned counsel for the objectors has emphasized before us that the objectors were justified in getting the above Society registered and handing over the management to the Society because the School was likely to be disaffiliated, therefore, the action on the part of the objector Abhay Singh would be fully protected by the above provision of Section 21 of the Partnership Act. We think that the action of a partner must be in the interest of the Firm's business. If the business of the Firm undergoes a change a partner cannot be permitted to do a thing without the consent of other partners as is contemplated by the provisions of Section 12(c) of the Partnership Act. During the course of argument the

learned counsel for the objectors was suggesting that the amount credited to the account of the Firm can be suitably increased if this court orders. We think that the suggestion itself indicates that the Firm is not getting the amount which it could have got if it was running the School and the management had not been given to the abovementioned Society. In our opinion, Abhay Singh, the objector, cannot justify his action by taking shelter behind the provisions of Section 21 of the Partnership Act. Since the firm is not getting the share in the profit earned in running the School, it has lost its business and it cannot be said by any stretch of imagination that the partner has protected the Firm from the loss. In the facts and circumstances of the case we think that the objector Abhay Singh's conduct in getting the School run by the Society cannot be binding upon the other partners of the Firm. Therefore, the contention raised on behalf of the objectors taking shelter behind Section 21 of the Partnership Act also fails.

12. As regards the fourth ground of attack that the Arbitrator has not decided the disputes between the parties and the parties are asked to go to civil court for requisite relief, we think that on the facts placed before the Arbitrator he has rightly decided, the claims of the parties. The partners Sanjay Singh and another have not challenged the award for getting the relief of accounting and that part of the Award has also been accepted by the objectors to the Award. We think that the contention of the learned counsel for the objectors on this score is not tenable. Our attention has been drawn to the ruling reported in AIR 1952 AH 802, *Mst. Ishwar Devi v. Chhedu*, wherein a learned single Judge of this Court has pointed out that if the Award defeats the very purpose of arbitration by throwing the parties back to the very position from which they wanted to escape, the defect in the Award is a vital one and goes to the root of the Award and, therefore, the Award can be termed as otherwise invalid. The aforesaid ruling has no application to the facts and circumstances of the present case. In the present case, the Arbitrator has not granted the relief of accounting to Sanjay Singh and another who have not attacked the Award and that part of the Award is good according to the learned counsel for the objectors before us. Therefore, we think that the objectors cannot derive any benefit out of the ruling referred to above.

13. During the course of argument our attention was drawn to the ruling reported in *Smt. Dulari Devi Vs. Rajendra Prakash and Others*, and it has been emphasized that when an arbitrator gives direction in his award touching the persons who are not parties before the arbitrator, the arbitrator judicially misconducts and the award suffers from error on the face of the record. In the present case, we have indicated above that the Arbitrator by issuing injunction against the objectors has not made any directions against the Society. Since the Society was not before the Arbitrator, therefore, he has taken precaution to issue injunction against the objectors who are only partners of the Firm and actually managing the affairs of the Society. The objectors are active managers and representatives of the Society as well as they are the partners of the Firm. Therefore, they were rightly enjoined by the Arbitrator in the facts and circumstances of the present case.

14. With regard to the fifth ground of attack by the learned counsel for the objectors, it is to be noted that the learned counsel for the objectors has emphasized that the papers relating to exemption from acquisition of the land under Urban Land Ceiling Act as well as papers relating to Income Tax Department regarding assessment of the income of the Partnership Firm and the vesting of the management of Col. Browns Cambridge School with N. S. Educational Society have not been taken into account by the Arbitrator, therefore, the Award is bad in law for not considering the material evidence. Our attention has been drawn to the ruling reported in K.P. Poullose Vs. State of Kerala and Another, , wherein their Lordships of the Supreme Court have indicated in para. 6 of their judgment that if an Arbitrator arrives at a decision by ignoring very material documents which throw abundant light on the controversy to help a just and fair decision, he misconducts himself. We do not think that when the learned Arbitrator did not refer to the documents concerning exemption of land under the Urban Land Ceiling Act or the documents of Income Tax Department, he has misconducted himself in any manner. The document regarding exemption of land is in favour of the Firm and the documents concerning Income Tax Department only show that the amount given by the Society to the Firm was taxed in the name of the Firm and the existence of the above mentioned Society has been accepted as an independent entity by the Department concerned. The learned Arbitrator has also indicated that the Society is an independent entity while refusing the relief of accounting to Sanjay Singh and another. The exemption of land belonging to the School under the provisions of the Urban Land Ceiling Act has no bearing upon the dispute decided by the learned Arbitrator. Moreover, the application for exemption was moved by the Firm and the relief has been granted to the Firm regarding the exemption of the land. Therefore, no capital can be made out by the learned counsel for the objectors in this regard.

15. During the course of argument it has been emphasized before us that the interest of public has crept in, therefore, the Award granting injunction against the objectors should be set aside. According to the learned counsel for the objectors the School is running very well and a large number of students are being benefited and their guardians have confidence in the management by the Society, therefore, the Award should be quashed so far as it relates to the injunction against the objectors. In this connection our attention has been drawn to Halsbury's Laws of England, Fourth Edition, Volume II, at page 330 and it has been emphasized that the Arbitrator would be guilty of misconduct if he makes an Award which on grounds of public policy ought not to be enforced. According to the learned counsel for the objectors the students are getting benefit and their guardians will be disturbed if the injunction order against the objectors is enforced, therefore, the Award should be held as bad in law. We are not impressed by the argument of the learned counsel for the objectors in this regard. If better feelings do not prevail amongst the partners of the Firm, the aggrieved partner can seek dissolution of the Firm and the running of the School

and the interest of the students and their guardians would be put in jeopardy. Even if injunction against the objectors is not issued, the aggrieved partner will be compelled to file suit for redress of his grievances and in that event the interest of the students and their guardians would be disturbed. Even according to the objectors when the Firm received threats of disaffiliation, the business was likely to come to an end. Therefore, we do not think it proper to characterise the award as bad in law on the ground of public policy in the facts and circumstances of the present case. In our opinion, the injunction issued against the objectors is justified. The objectors had acted illegally in handing over the management of the School to the abovementioned Society and have thereby given a cause of action to the aggrieved partner. Illegal act on behalf of the objectors cannot be upheld on the ground of public policy as the interest of students and that of their guardians have crept in.

16. A large number of authorities have been cited before us to demonstrate that a separable part of the Award can be quashed and what are the grounds for attacking the Award but those authorities need not be dealt with by us as we have no quibble to the dictum of law laid down therein.

17. For the foregoing discussion, we are unable to sustain the objections to the Award. Therefore, there will be judgment in terms of the Award and a decree shall follow accordingly. We pronounce the judgment in terms of the Award and make the award a rule of the Court. A decree should also follow. Parties are directed to bear their own costs.