

(2009) 06 AP CK 0058

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 1133 of 2000 and C.R.P. No. 2632 of 2009

BHEL

APPELLANT

Vs

P.K. Gopinathan, V. Rajagopal Reddy, Manager Stores, BHEL
and Senior Stores Officer, K.V. Krishnamurthy, BHEL

Bharat Heavy Electrical Limited Vs P.K. Gopinathan and V.
Rajagopal Reddy

RESPONDENT

Date of Decision : 25-06-2009

Acts Referred:

Arbitration Act, 1940 — Section 15, 16, 17, 30, 31

Citation : (2009) 6 ALT 26

Hon'ble Judges : B. Seshasayana Reddy, J; B. Prakash Rao, J

Bench : Division Bench

Advocate : S.V. Bhat, for the Appellant; L. Prabhakar Reddy, for Respondent No. 1, V. Preeti Reddy and Not necessary vide C.T. for Respondent Nos. 3 and 4, for the Respondent

Judgement

1. The Civil Miscellaneous Appeal and the Civil Revision Petition arise out of the common judgment dated 29-10-1999 passed in O.P. No. 43 of 1993 and O.S. No. 241 of 1993 on the file of Senior Civil Judge, Sangareddy, whereby and where under the learned Senior Civil Judge made the award dated 31.7.1993 passed by the arbitrator as a rule of court while dismissing O.P. No. 43 of 1993 filed u/s 30 of Indian Arbitration Act to set aside the award passed by the arbitrator.

2. In order to appreciate the controversy raised in the present proceedings, the relevant facts may be stated, in brief:

Bharat Heavy Electricals Limited, Ramachandrapuram (hereinafter referred to as the employer) issued tender notice bearing No. SSO/MW/79 for the work of breaking cast iron scrap and loading the same into dumper. In response thereto, P. Gopinathan (hereinafter referred to as the claimant) offered his tender. His tender came to be accepted by the employer, which ultimately resulted in

execution of the agreement bearing No. SSO/FDY/79, dated 5.5.1979. Under the said agreement, the claimant was to execute the work of breaking cast iron scrap and loading the same into bumper in the premises of the employer. The quantity of work stipulated was 1,000 MT. The claimant was to be paid @ Rs. 68/- per MT of the completed work. The period stipulated was from 1.4.1979 to 31.3.1980 or completion of the total quantity of 1,000 MT, whichever is earlier. On 05.02.1980 at about 10.00 A.M. the employer found the labour engaged by the claimant collecting iron rods from the yard stock and showing them as day's work for the purpose of weighment. The employer issued notice to the claimant on 07.02.1980 calling for his explanation as to why the contract should not be terminated. The claimant issued reply on 15.02.1980 and ultimately, the employer terminated the contract on 11.03.1980. The claimant sought for reference to the arbitrator for settlement of the disputes arose in respect of the execution of the work contract. There being no response from the employer, the claimant filed O.P. No. 44 of 1981 on the file of the Subordinate Judge, Medak at Sangareddy. The said O.P. came to be allowed on 9.3.1983. Sri A.R.N. Rao was appointed as sole arbitrator. The said arbitrator could not complete the arbitration and therefore in his place Sri V. Rajagopal Reddy was appointed as arbitrator. The claimant filed claim statement claiming various amounts under 8 heads as detailed hereunder:

I. To set aside the Cancellation Order dated 11.03.1980 and to allow the Claimant to complete the balance work.

II.a. Towards loss of Profit at 30% Rs. 5,691/- the Contract amounting to: b. Losses suffered by the Claimant Rs. 1,10,260/-

III. Loss suffered by Claimant Rs. 60,000/- for the period 13.02.1980 to 01.06.1983 amounting to:

IV. Loss of tools and equipments Rs. 48,566/- amounting to: b. Hire Purchase charges Rs. 1,18,700/- amounting to Rs. 1,18,700/- on tools alleged to have left behind in the company with interest @ 18% P.A. for the period 13.02.1980 to 01.06.1983.

V. Advance paid to 27 workers Rs. 16,318/- who have kept idle: b. Wages paid to 26 workers for Rs. 23,400/- the period 13.02.1980 to 14.03.1980 amounting to:

VI.a. For payment of remuneration Rs. 9,333/- for 137.66 MT work, which could not be done by the Claimant due to cancellation amounting to: b. Interest on Claim

VI.a amounting to: Rs. 5,999/- VII. Mental agony and damages therefore: Rs. 25,000/- b. Towards expenses incurred Rs. 15,000/- by Claimant as on date of filing of Claim Statement amounting to:

3. The employer filed counter before the arbitrator resisting the claims made by the claimant under various heads. It is stated in the counter that the agreement

executed between the parties is in respect of work contract and not labour contract. Therefore, the claimant was entitled to the value of the work, which he executed as on the date of termination of the contract. It is further stated in the counter that the claimant included certain items, which are allegedly in respect of the three contracts bearing Nos. CEF/39/79-80, CEF/40/79-80 and CEF/41/79-80, which are in no way connected with the contract in respect of which appointment of arbitrator has been sought for in O.P. No. 44 of 1981. The employer also contended in the counter that the labour engaged by the claimant resorted to collecting pieces already broken by the Department and showing them as day's work for the purpose of weighment which fact was admitted by the claimant in his letter dated 29.02.1980 and that the claimant refused to collect the tools which were brought to the factory premises and therefore, he was not entitled to claim any amount either towards the value of the tools and plants or hire charges.

4. The claimant filed rejoinder to the counter of the employer and thereafter the employer also filed additional counter.

5. The claimant and the employer adduced evidence, ocular and documentary, before the Arbitrator to substantiate their respective contentions.

6. On appreciation of the evidence brought on record and on hearing the counsel appearing for the parties, the arbitrator held that the termination of contract is not legal and thereby proceeded to allow the claim No. II.a, Claim No. III, Claim No. IV.a, Claim No. IV.b partly, Claim No. V, Claim No. VI.a and Claim No. VII.b, totaling to Rs. 2,37,720.60 ps, while disallowing Claim No. II.b, Claim No. VI.b, Claim No. VII.a, by award dated 31.07.1993. The arbitrator also awarded 18% interest on the said amount of Rs. 2,37,720.60 ps. from 14.5.83 till the date of payment or till the decree, whichever is earlier. A further sum of Rs. 10,000/- was granted towards costs. The employer filed O.P. No. 43 of 1993 on the file of the Senior Civil Judge at Sangareddy u/s 30 of the Arbitration Act, 1940, to set aside the award passed by the Arbitrator. Whereas, the claimant filed O.S. No. 241 of 1993 on the file of the Senior Civil Judge at Sanga Reddy under Sections 15, 16, 17, 30 and 31 of the Arbitration Act, 1940 to make the award as rule of court. Both the parties filed memo before the learned Senior Civil Judge to club the suit and the O.P. and to pass common judgment. The learned Senior Civil Judge allowed the memo on 05.03.1997 and clubbed both the proceedings. Except marking award as Ex.C1, neither party chose to adduce any evidence before the learned Senior Civil Judge at Sangareddy. On hearing the counsel appearing for the parties and on considering the material brought on record, the learned Senior Civil Judge found that the employer failed to make out any ground to set aside the Award dated 31.07.1993 and thereby proceeded to decree the suit being O.S. No. 241 of 1993 filed by the claimant making the award as rule of court, while dismissing the O.P. No. 43 of 1993 filed by the employer, by a common judgment dated 29.10.1999. Hence, the employer filed C.M.A. No. 1133 of 2000 against the judgment and decree passed in O.S. No. 241 of 1993 and

C.M.A. No. 1152 of 2000 against the judgment passed in O.P. No. 43 of 1993. Whiles, the employer filed CMAMP No. 1866 of 2006 to convert the CMA No. 1152 of 2000 into CRP. The said petition is allowed on 04.06.2009 and consequently, CMA No. 1152 of 2000 has been converted as CRP No. 2632 of 2009.

7. Heard learned Counsel appearing for the parties.

8. Learned Counsel appearing for the employer submits that the arbitrator having observed that the claimant included certain amounts in respect of the agreements, which are not subject matter for reference in O.P. No. 44 of 1981, committed serious error in granting compensation for immovability of labour in respect of the agreements, which are not subject matter of the arbitration. He would also submit that the arbitrator as well as the civil court failed to note that the claimant could claim either value of the tools and plants or hire charges and not both and thereby committed serious error in allowing claim No. IV.a, relating to value of the tools and plants and Claim No. IV.b, relating to hire charges. In a way he submits that these claims are mutually exclusive and they are not supplementary to each other and once the value of the tools and plants is allowed, awarding hire charges is impermissible. He would also contend that the amount claimed by the claimant under Claim Nos. III, V.a, and V.b, overlap with each other and once the arbitrator allows Claim No. III, grant of any amount under Claim No. V.a, and Claim No. V.b, is impermissible. During the course of arguments, learned Counsel referred the award extensively to convince as to how the arbitrator mis-conducted himself in granting two amounts for the self-same claim. In support of his submissions, reliance has been placed on the following decisions:

- 1) Premier Fabricators, Allahabad Vs. Heavy Engineering Corpn. Ltd., Ranchi, ;
- 2) Steel Authority of India Limited Vs. J.C. Budharaja, Government and Mining Contractor,
- 3) Associated Engineering Co. Vs. Government of Andhra Pradesh and another,
- 4) Dandasi Sahu Vs. State of Orissa,
- 5) Kuldip Kumar Suri Vs. Delhi Development Authority,
- 6) K.P. Poulose Vs. State of Kerala and Another,
- 7) Government of A.P. v. P.V. Subbanaidu 1990 (1) ALT 54 : 1989 (2) APLJ 362
- 8) Karsandas H. Thacker Vs. The Saran Engineering Co. Ltd.,
- 9) Alopi Parshad and Sons Ltd. Vs. Union of India (UOI), .

9. Learned Counsel appearing for the claimant contended that the scope of this Court to interfere with the findings recorded by the arbitrator as approved by the civil court is very narrow and the award of the arbitrator being a well-reasoned award and the same being confirmed by the civil court, it is beyond the

jurisdiction of this Court in exercising powers u/s 39 of the Arbitration Act to interfere with the findings recorded by the arbitrator as approved by the civil court. In support of his submissions, reliance has been placed on the following decisions:

1) Numaligarh Refinery Ltd. Vs. Daelim Industrial Company Ltd.,

2) Bharat Coking Coal Ltd. Vs. L.K. Ahuja, .

10. Before dwelling deep into the rival contentions of the parties, we deem it appropriate to note the basic facts of the case and they are:

i) The work entrusted to the claimant is a work contract and not a labour contract;

ii) The total quantity of the work which claimant was required to execute was 1000 MT of iron scrap;

iii) The rate fixed for each MT was Rs. 68/-;

iv) The total value of the work is Rs. 68,000/-;

v) The claimant claims to have completed the work to the extent of 721 MT;

vi) The left over work is 279 MT;

vii) The period of contract is from 1.4.79 to 31.3.1980 or completion of 1000 MT work whichever is earlier;

viii) The contract came to be cancelled on 11.3.1980.

11. We do not want to burden the judgment by referring to the proposition of law laid down by the Apex Court in the decisions referred to by the parties with regard to scope of interference with the award in an enquiry on an application filed u/s 30 of Indian Arbitration Act, 1940. It is suffice to refer the proposition of law laid down by the Supreme Court in Food Corporation of India v. Chandu Constructions 2007 AIR SCW 2782, wherein it has been held that the arbitrator being a creature of the agreement between the parties has to operate within four corners of the agreement and if he ignores the specific terms of the contract, it would be a question of jurisdictional error on the face of the award, falling within the ambit of legal misconduct which could be corrected by the Court.

12. The jurisdiction of the Court to set aside the award is limited. One of the grounds stipulated in Sec.30 of the Arbitration Act, 1940 on which the Court can interfere with the award is whether the arbitrator has misconducted himself or the proceedings. The word misconduct has neither been defined in the Act nor is it possible for the Court to exhaustively define it or to enumerate the line of cases in which also interference either could or could not be made. Nevertheless, the word misconduct in Section 30(a) of the Act does not necessarily comprehend or include misconduct or fraudulent or improper conduct or moral lapse, but does comprehend and include actions on the part of the arbitrator,

which on the face of the award, are opposed to all rational and reasonable principles resulting in excessive award or unjust result. In *Bharat Cooking Coal Ltd. v. Annapurna Constructions* 2003 AIR SCW 4146, the Supreme Court held that the arbitrator cannot act arbitrarily, irrationally, capriciously or independent of the contract and instead the role of the arbitrator is to arbitrate within the terms of contract.

13. In *Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd.*, the Supreme Court held that if the award is contrary to the substantive provisions of law or the provisions of the Act or against the terms of contract, it would be patently illegal which could be interfered u/s 34 of Indian Arbitration Act, 1996. However, such failure of procedure should be patent affecting the rights of the parties. In *Union of India (UOI) and Others Vs. Satyanarayana Construction Co. and Another*, a Division Bench of our High Court held that passing of award ignoring the material and relevant documents throwing light on the controversy to have a just and fair decision vitiates the award as it amounts to misconduct on the part of the arbitrator.

14. While interpreting Section 30 of the Indian Arbitration Act, 1940 the Courts have laid stress on limitation of exercise of jurisdiction for setting aside or interfering with an award in umpteen number of cases. Some of the well recognized grounds on which interference is permissible are:

- i) Violation of principles of natural justice;
- ii) An error apparent on the face of the record;
- iii) The arbitrator has ignored or deliberately violated a clause in the agreement prohibiting the dispute of the nature entertained;
- iv) The award on the face of it based on a proposition of law, which is erroneous.

If the arbitrator has mis-conducted himself of the proceedings, then the impugned award is certainly liable to be set aside. If the award is contrary to the substantive propositions of law or the provisions of the Act or against the terms of the contract, it would be patently illegal which could be interfered u/s 30 of the Arbitration Act, 1940.

15. The claimant contended before the arbitrator that cancellation of agreement dated 5.5.1970 is not legal and proper. The arbitrator referred the correspondence that went on between the claimant and the employer and inferred that the claimant never admitted the alleged theft of small pieces of cast iron crafts by the labour engaged by him. Indeed the arbitrator referred Ex.P.4 reply dated 15.2.1980 to the letter dated 14.2.1980 issued by the employer.

16. Learned Counsel appearing for the claimant tried to pursued us to come to a different conclusion than that of the arbitrator on the issue of validity of cancellation of the agreement dated 5.5.1970. The arbitrator recorded cogent and convincing reasons for holding the termination of contract is not legal and

proper. We are not inclined to interfere with the findings recorded by the arbitrator as confirmed by the trial court on the issue of cancellation of agreement.

17. The claimant claimed Rs. 5,691.60 towards loss of profit. Once the termination of agreement is held to be not legal the claimant is entitled for the amounts claimed by him towards loss of profit. Therefore, we are not inclined to interfere with the amount granted under claim No. 11(a) by the arbitrator as confirmed by the trial Court.

18. Claim No. III relates to compensation for immobility quantified at Rs. 60,000/-. The principal grievance of the employer is that the claimant mixed up the other three agreements which are not subject matter of the arbitration and therefore the amount awarded as compensation for immovability of labour is liable to be set aside. At this juncture, it is trite to refer the relevant portion of the claim statement filed before the arbitrator, which reads as under:

The claimant was tied down to the work until the agreement ran their full course. The date of expiry of the agreement No. SSO/Fdy/79/2199 was 31.3.1980. If the claimant was free to go elsewhere without being tied down to the works under the agreement, he would have earned atleast Rs. 1500/- per month, so the claimant may be awarded an amount of Rs. 60,000/- at the rate of Rs. 1500/- per month for the period from 13.2.1980 to 1.6.1983 (Latest expiry date as per the other agreements) towards the immobility caused by the respondents.

The employer specifically pleaded in the additional counter affidavit filed before the arbitrator that the disputes in respect of other agreements cannot be subject matter of arbitration. The plea of the employer before the arbitrator reads as under:

With reference to claim No. 3 it is submitted that there is no such claim under law that compensation for immobility and false claim has been made by the claimant and the claimant is put to strict proof of the same. Even assuming that this claim is genuine one under law of contracts if any breach is committed a party is entitled to claim damages but he is not entitled to claim any compensation on the ground of immobility. At no point of time this claimant was tied down to work under the agreement. If there is any breach either parties are entitled to claim damages which is settled law. On presumptions and on vague allegations the claimant cannot claim any amount much less Rs. 1,500/- per month as alleged by him as such he is not entitled to claim compensation at the rate of Rs. 1,500/- per month from 13.2.80 to 1.6.83 which comes to Rs. 60,000/-. The claim made by the claimant is unknown under law of contracts, damages and compensation. It is for the claimant to prove how he is entitled for the same nor claimant has been bonded labour, which has been tied down to work as alleged by him. The contracts entered by the claimant is works contract and not labour contract as such only for the work executed he is entitled to claim. It is also pertinent to submit at this stage that wherever he has committed

the breach and has done the non-satisfactory work the respondent completed the work departmentally stopping our company's work for which this contractor himself has to reimburse the loss.

19. At this juncture, we deem it appropriate to note the period of the contract as mentioned in the agreement dated 5.5.1979 and it is for a period of one year commencing from 1.4.1979 to 31.3.1980 or till the completion of total quantity of 1000 MT of work, whichever is earlier. There was no obligation on the part of either the employer or the claimant to stick to the terms of agreement after 31.3.1980. The amount claimed by the claimant as compensation is for the period 13.2.1980 to 1.6.1983. Apparently, the amount claimed by him does not relate to the agreement, which is subject matter of the arbitration. The said amount is referable to other agreements, which are not subject matter of arbitration. Therefore, the arbitrator exceeded his jurisdiction in granting Rs. 60,000/- as compensation as claimed by the claimant under claim No. III. Thus, we disallow the amount awarded by the arbitrator as confirmed by the trial Court under claim No. III.

20. Claim No. 4 relates to value of tools and plant which are allegedly kept in the premises of the employer. The learned arbitrator allowed Rs. 48,566/- towards the value of tools and plants and also Rs. 59,350/- towards hire charges. Learned Counsel appearing for the employer contended that these two claims are exclusive to each other and that they are not supplementary to each other. Once value of tools and plants is allowed, the question of granting hire charges does not arise. It is also contended that there is no consistency in the pleadings of the claimant with regard to the value of tools and plants, which are allegedly kept in the premises of the employer. He refers to the notice dated 28.5.1980 issued by the claimant wherein he stated that value of tools locked in the premises of employer as Rs. 20,000/-. He also refers to the legal notice issued by the employer on 9.9.1981 wherein the value of the tools allegedly detained in the premises of employer as Rs. 29,250/-. The learned arbitrator did not chose to refer the documents which are placed before him to ascertain the value of tools allegedly detained in the premises of the employer. Therefore, we are in no doubt to conclude that the learned arbitrator awarded Rs. 48,566/- towards the value of the tools contrary to the material placed on record. Therefore, we are inclined to reduce the amount of Rs. 48,566/- to Rs. 29,250/- towards the value of the tools allegedly detained in the premises of the employer. Once the value is given, the question of allowing hire charges for the self same tools and plant does not arise. Therefore, we disallow Rs. 59,350/- awarded by the arbitrator as confirmed by trial court towards hire charges while reducing the value of tools and plant from Rs. 48,566/- to Rs. 29,250/-.

21. Claim No. V(a) relates to advance made to the workers. Claim No. V(b) relates to wages paid to 26 workers for 30 days. Once Claim No. 4(b) is allowed whatever advance amount paid to the worker shall stand adjusted. The learned arbitrator has thoroughly misread the claims made by the claimant under Claim

Nos. V(a) and (b) and thereby committed error in granting amounts under both the heads. Therefore, we disallow Rs. 16,318/- awarded by the arbitrator and as confirmed by the trial Court under Claim No. V(a).

22. Thus, the total amount disallowed comes to Rs. 1,54,984/-(Rs.60,000 + 59,350 + 19316 + 16318). Accordingly, the amount allowed by the arbitrator as confirmed by the trial Court is modified and the same is reduced from Rs. 2,37,720.69 to Rs. 82,736.69.

23. Learned Counsel appearing for the employer submits that the rate of interest allowed is excessive and therefore the same is to be reduced accordingly. There is depletion in the rate of interest of the financial institutions like Banks etc. The Supreme Court has taken note of substantial reduction of interest rate in *Krishna Bhagya Jaya Nigam Limited v. G. Harischandra Reddy* (2007) 2 SCC 729 and reduced the rate of interest awarded by the arbitrator to 9 (nine) percent per annum. Accordingly, the award amount of Rs. 82,736.69 shall carry interest @ 9% per annum from 14.5.1983 till the date of payment.

24. Accordingly, the Civil Miscellaneous Appeal and the Civil Revision Petition are allowed to the extent indicated above. No costs.