

(1951) 07 MAD CK 0016

In the Madras High Court

Case No : Civil Revision Petition No. 821 of 1949

C. Abboy Reddiar

APPELLANT

Vs

Collector of Chingleput at Saidapet and Others

RESPONDENT

Date of Decision : 20-07-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Defence of India Act, 1939 — Section 19

Citation : AIR 1952 Mad 45 : (1952) ILR (Mad) 719 : (1951) 64 LW 848 :
(1951) 2 MLJ 402(1)

Hon'ble Judges : Chandra Reddi, J

Bench : Single Bench

Advocate : V. Seshadri and K.S. Ramamurthy, for the Appellant; Srinivasan, for Govt. Pleader and M.C. Rajagopalan, for the Respondent

Final Decision : Dismissed

Judgement

Chandra Reddi, J.—A preliminary point is raised by the learned counsel for the respondent that no revision can be entertained by this Court

against the order of the arbitrator appointed u/s 19(2), Defence of India Act, on the ground that the arbitrator is appointed to act merely as a

"persona designata", and therefore not as a Court subordinate to the High Court within the meaning of Section 115, Civil P.C. In reply to this it is

argued by the learned counsel for the petitioner that the arbitrator in this case is chosen to act not in his private capacity but in his capacity as a

District Judge and. therefore a Court coming within the purview of Section 115, C.P.C.

2. In order to understand this preliminary objection it is necessary to set out a few material facts. Certain lands in the village of Palavanthan-gal,

Chingleput district, belonging to the petitioner were acquired by the Government

under the provisions of the Defence of India Act and the Requisitioned Land (Continuance of Powers) Act, 1947. As the claimants were not agreeable to accept the amount of compensation offered by the Collector Sri P. N. Ramaswami, I.C.S., who happened to be the District Judge, Chingleput, then was appointed arbitrator in G. O. No. 223 (Revenue Department), dated 28-1-1949 in pursuance of the provisions of Section 19, Defence of India Act. A preliminary objection was raised on behalf of the petitioners before the arbitrator that the constitution of the arbitration was incompetent there being no valid acquisition within the meaning of Section 5, Requisitioned Land (Continuance of Powers) Act, 1947, and as such he could not proceed with the enquiry as regards the amount of compensation to be paid to the claimants. The learned arbitrator overruled the objection observing that "on the limited records filed" he was "unable to hold that there was no acquisition or that the constitution of the arbitration was incompetent" and that even assuming that there was no such valid acquisition the matter had to be agitated in the appropriate forum by appropriate proceedings. Against this order the present revision petition is filed.

3. The question for consideration is whether the arbitrator appointed under the provisions of the Defence of India Act is selected to act as a "persona designata", that is to say, in his private capacity or to act as a Court. I will have to examine this question with reference to the relevant provisions of the Defence of India Act and the rules made thereunder and in the light of the decided cases.

4. Section 19 (1) of the Defence of India Act enacts that :

Where u/s 19-A or under any rule made under this Act, any action is taken of the nature described in Sub-section (2) of Section 299,

Government of India Act, 1935, there shall be paid compensation, the amount of which shall be determined in the manner, and in accordance with

the principles, hereinafter set out, that is to say:

(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(b) Where no such agreement can be reached, the Central Government shall appoint as arbitrator a person qualified under Sub-section (3) of

Section 220 of the above-mentioned Act for appointment as a Judge of a High

Court.....

(e) The arbitrator in making his award shall have regard to (i) the provisions of Subsection (1) of Section 23 of the Land Acquisition Act, 1894, so

far as the same can be made applicable; and (ii) whether the acquisition is of a permanent or temporary character;

(1) An appeal shall lie to the High Court against an award of an arbitrator except in cases where the amount thereof does not exceed an amount

prescribed in this behalf by rule made by the Central Government;

(g) Save as provided in this section and in any rules made thereunder, nothing in any law for the time being in force shall apply to arbitrations under

this section.

There is also a provision in Section 19 enabling the Central Government to make rules for the purpose of carrying into effect the provisions of the

Act. The Central Government seems to have delegated its rule making powers to the various Provincial Government. By virtue of this delegation

the Government of Madras made rules. The rules relevant for the purpose of this enquiry are Rules 10 and 11 of the Defence of India (Payment of

Compensation and Arbitration), Rules 1943, anirare set out hereunder;

10 (1) The arbitrator shall, not later than three weeks "from the date of receipt of the records from the Provincial Government fix a day or days

for hearing the claims and shall give notice thereof to the person or persons interested and to the Collector, at least five clear days before such

hearing.

(2) On the day or days so fixed the arbitrator shall proceed to enquire into the case, shall take such evidence as may be adduced on behalf of the

claimants and on behalf of fee Provincial or Central Government as the case may be, and shall make an award of the amount of compenation

which in his opinion should be allowed for the property and of the apportionment of the said compensation among all persons known to be

interested in the property.

(3) The arbitrator may adjourn his sitting, if he finds it necessary to do so, taut the case shall be disposed of as expeditiously as possible. 11. Every

award under Rule 10 shall be in writing signed by the arbitrator and shall specify the grounds of the award.

5. None of the provisions extracted above seems to indicate that, a person appointed under Subsection (b) of Section 19 acts as a Court. On the contrary all the provisions seem to point in the opposite direction. For instance, Sub-section (g) specifically provides that the arbitrator shall be solely guided by the provision of that section and the rules made thereunder and nothing in any law for the time being in force will be applicable to proceedings before him. This means the applicability of even the provisions of the CPC is, excluded.

6. The main basis of the contention of Mr. Ramamurthi, counsel for the petitioner, is the provision for an appeal against the award of the arbitrator contained in Section 19 of the Act. But I am not able to agree with the contention of Mr. Ramamurthi that the conferring of the right of appeal to the High Court on an aggrieved party against" the award of a tribunal would convert the tribunal into a Court. For one thing this right seems to be a restricted one. Secondly, it looks to me that this provision by itself would not indicate that the arbitrator was meant to act as a Court. An answer to the argument of Mr. Ramamurthi is contained in a ruling of the Privy Council in "Shell Co. of Australia v. Federal Commissioners of Taxation", 1931 AC 275. The observations of their Lordships "at pages 296 and 297" are pertinent:

The authorities are clear to show that there are tribunals with many of the trappings of the Court, which, nevertheless, are not Courts in the strict sense of exercising judicial power. It is conceded in the present case that the Commissioner himself exercised no judicial power. The exercise of such power in connection with an assessment commenced, it was said, with the Board of Review, which was in truth a Court." In that connection, it may be useful to enumerate some negative propositions on this subject: (1) A tribunal is not necessarily a Court in this strict sense because it gives a final decision. (2) Nor because it hears witnesses on oath. (3) Nor because two or more contending parties appear before it between whom it has to decide. (4) Nor because it gives decisions which affect the rights of subjects. (5) Nor because there is an appeal to a Court. (6) Nor because it is a body to which a matter is referred by another body." It is manifest from this decision that a tribunal would not be construed to be a Court merely because a right of appeal is provided against its award.

7. Reliance was placed by Mr. Ramamurthi on a Full Bench decision of the Patna High Court in "Mt. Durgi v. Goalln" 20 Pat 373 in aid of his

argument. In that case it is laid down that a Commissioner appointed under the Workmen's Compensation Act, 1923, is a Court. There certain

tests are laid down for deciding whether a tribunal is or is not a Court and one of the several tests propounded is the right of appeal to a Court

against the decision of the tribunal. It is observed by Fazl Ali, J., who delivered the judgment on behalf of the Full Bench:

Again the fact that an appeal has been provided to the High Court from certain orders of the Commissioner confirm the view that in passing those

orders the Commissioner is acting as a Court and, not in any other capacity." There the learned Judge came to the conclusion that the

Commissioner under the Workmen's Compensation Act was a Court on a construction of the relevant provisions of the Workmen's

Compensation Act supplemented by certain rules to be read as part of that Act. I must say that that decision is not of much assistance in deciding

the question before me because neither the provisions of Section 19 of the Defence of India Act nor the rules framed under the section contained

any provision similar to those to be construed in the Pataa case, the learned Judges do not seem to have laid down anywhere In that ruling that the

provisions regarding the right of appeal is the sole and or main criterion. It is only one of the several considerations. I should, therefore, think that

the argument based on the right of appeal granted to a party against the award of the arbitrator cannot be accepted.

8. I may now refer to some of the decided cases which are of great assistance in the determination of this question. In "Lakshmanan Chettiar v.

Kannappar", 50 Mad 121 it was held by a Full Bench of our Court that the Chief Judge of the Presidency Small Causes Court at Madras, in

deciding a revision petition preferred to him under Rule 4 of the rules framed by the Governor in Council under the Madras City Municipal Act,

does not function as a Court for purposes of Section 115, Civil P. C., but acts only as a persona designata." At page 127 it is stated,

Looking at the Municipal Act, it is clear that the draftsman of that Act was quite alive to the distinction between the Court of Small Causes (vide

Section 59) and the Chief Judge of that Court (vide Section 54.). It is difficult to resist the inference that when the Chief Judge is referred to in the

Act he was meant to act as a "persona designata" and not as representing the Court." Another decision cited to me by Mr. Srinivasan, appearing

on behalf of the Government Pleader, is that of the Pull Bench in "Abdul Sattar v. Special Deputy Collector, Vizagapatam" 47 Mad 357 where it is

laid down that the order of the Collector refusing to make a reference u/s 18 of the Land Acquisition Act cannot be called in revision in the High

Court as he was not acting as a Court or as a Court subordinate to the High Court within the meaning of Section 115, Civil P.C., though he was

acting judicially.

9. In support of his contention that the arbitrator was a Court, Mr. Ramamurthi placed reliance on the ruling in "Parthasarathi Naidu v. Kotes-

wararao" 47 Mad 369. What was decided there was that a District or Subordinate Judge In deciding an election petition presented under the rules

issued by the Local Government under the Local Boards Act was acting not merely as a "persona designata" but as a Court exercising original civil

jurisdiction. This decision does not really help the petitioner. The Full Bench construed the expression "Judge" in the relevant provisions of law as a

Court in the light of Rule 12 (2) of the rules for election which refers to an election or other competent Court, and, of Rule 4 (3) of the rules for the

conduct of enquiries, which gives power to the District or Subordinate Judge In certain cases to direct any Court subordinate to him to hold the

enquiry. This case cannot furnish any analogy to the present case. I have to decide the case before me with reference to the relevant provisions of

law-bearing on the subject. In such cases what we have to see is whether the tribunal has been invested with the powers of the Court or otherwise.

Applying this test, the only reasonable inference that can be drawn is that it is only as a "persona designata" that the arbitrator u/s 19 is appointed.

10. In this context I may refer to three decisions of this Court placed before me by Mr. Srinivasan. In M. Abdul Wahid Sahib Vs. Dewanjee

Abdul Khader Sahib, , yahya Ali, J., laid down that the District and Subordinate Judge appointed u/s 12 of the Madras Buildings (Lease and Rent,

Control) Act (XV of 1946) to hear appeals against the orders of the Bent Controllers Act as "persona designata" and not as Courts. This was

forwed by Cark, J., in "Chmnaiah Tnevar v. Badsna 1946 1 M.L.J. 314. To the same effect is the decision of Mack, J., in S. Rajam Ayyar Vs.

Pavanambal, . Lastly, I may refer to the decision of the Bombay High Court in "Hirji Virji Jangbari Vs. The Government of Bombay, which

decided that the arbitrator u/s 19 of the Defence of India Act is not a Court and hence an award made by him is not an order within the meaning of

8. 8 of the Court-Fees Act.

11. it is not necessary for me to refer to other decisions cited by the learned counsel for the petitioner as they do "not have much relevancy to the

question before me. In the light of these authorities and on a construction of the relevant provisions of the law it is difficult to resist the conclusion

that the arbitrator is appointed as a "persona designate" and not as a Court against whose decision a petition in revision lies to the High Court, u/s

115, Civil Procedure Code. It follows that a revision petition against the order of the arbitrator is not competent. In this view of the matter, it is

unnecessary for me to go into the merits of the case, i.e., the question whether the arbitrator could entertain an objection as regards the validity of

the reference. In these circumstances the civil revision petition is dismissed with costs.