
(1970) 11 SC CK 0009
In the Supreme Court Of India
Case No : Civil Appeal No. 138 of 1967

Haji Hafiz Tanwar Ahmed	Vs	APPELLANT
Union of India (UOI)		RESPONDENT

Date of Decision : 24-11-1970

Acts Referred:

Arbitration Act, 1940 — Section 20(4)
Defence of India Act, 1939 — Section 19

Citation : AIR 1971 SC 512 : AIR 1970 SC 512 : (1970) 3 SCC 284

Hon'ble Judges : P. Jaganmohan Reddy, J;J. M. Shelat, J;C. A. Vaidyalingam, J

Bench : Full Bench

Advocate : A.K. Sen and D.N. Mukharjee, for the Appellant; B.R.L. Lyengar Ram Punjani, for the Respondent

Final Decision : dismissed

Judgement

J.M. Shelat, J.—This appeal, by special leave, arises out of a writ petition filed by the appellant under Article 227 of the Constitution in the High Court of Calcutta for quashing an Arbitrator's award for compensation in respect of certain premises belonging to him which were requisitioned for the period between March 1942 to November 1947 under Rule 75-A of the Defence of India Rules, 1939. The award granted compensation to the appellant at the rate of Rs. 475/- per month for the said period during which the premises remained under requisition as against the appellant's claim for Rs. 6 lacs and odd.

2. Certain disputes having arisen as early as 1944, the appellant entered into an agreement, dated January 27, 1944, with the Governor- General in Council. Under Clause (1) of the said agreement the appellant agreed to accept Rs. 475/- per month "for the said property in full settle merit of the construction for structure" from March 15, 1942 till the Government remained in possession and the derequisitioning thereof continued. Clause (5) of the said agreement provided for arbitration by an arbitrator to be appointed by Government in case of any dispute or difference arising out of or concerning the said requisitioned

property. It further provided that such arbitration would be governed by the Arbitration Act, 1940.

3. It is not disputed that although the said agreement was signed by the appellant it was not executed by any one on behalf of the Governor-General in Council or the Government of West Bengal which had requisitioned the said property on behalf of the Central Government. Even so, the Government paid and the appellant received Rs. 475/- as monthly compensation. According to the appellant, he accepted the compensation at the rate of Rs. 475/- per month under protest. According to him, that was the rent he used to receive from his tenant for one of the buildings and the compensation for other structures and premises had not been taken into account.

4. The said property was derequisitioned with effect from November 28, 1947. In 1948, the appellant filed an application u/s 20(1) of the Arbitration Act in the Court of the 5th Subordinate Judge, Alipore, which was numbered as Suit No. 169 of 1948, requiring the Government of West Bengal to appoint an arbitrator as provided under Clause (5) of the said agreement. The parties to the said application were the appellant (the plaintiff) and the Province of Bengal, but not the Governor-General in Council. A number of contentions were raised on behalf of the Province of Bengal including waiver, estoppel and acquiescence, but no question was at that time raised that the said agreement was not valid and binding as it had not been signed by any one on behalf of the Government of West Bengal or the Governor-General in Council. By its order dated September 13, 1949 the Court allowed the said suit No. 169 of 1948 and ordered that the said agreement be filed by the Government of West Bengal. In passing the said order the learned Judge observed that the monthly compensation of Rs. 475/- mentioned in Clause (1) of the said agreement was in respect of the structures standing on the said property only and that no compensation had been agreed upon in respect of the lands, tanks, loss of fishery rights and other rights, and therefore, disputes regarding compensation in respect of them had arisen which required arbitration as provided by Clause (5) of the said agreement. The learned Judge set out the items of differences to be decided by the arbitrator to be appointed in terms of Clause (5) of the said agreement.

5. Although the said order required the arbitrator to submit his award by September 11, 1950, no steps were taken to proceed with the arbitration until February 9, 1955 when the Government of West Bengal, in exercise of the power conferred by Section 6 of the Requisitioned Land (Continuance of Powers) Act (XVII of 1947), Section 6 of the General Clauses Act, 1987 and Government of India, Defence Department Notification No. 1365-OR 42, dated September 19, 1942, appointed one D. N. Chakravarty, Additional District Judge, 24-Parganas as the Arbitrator. The said Chakravarty not having been able to complete the arbitration, the Government of West Bengal, by its order dated September 19, 1955, appointed his successor, one G. S. Chatterji as the Arbitrator.

6. It appears that these appointments were made not under the Arbitration Act,

1940, but u/s 19 of the Defence of India Act, 1939. That being so, the Arbitrator was not bound by the terms of the said order of the Court and the questions which the Court had framed for adjudication by the Arbitrator or the date fixed for making the award. The arbitration case was registered by the said Chakravarty as Arbitration Case No. 5 of 1955. When the said Chatterji took it over, he continued the said arbitration proceedings under the said number, namely, No. 5 of 1955.

7. During the pendency of the said arbitration proceedings before the said Chatterji, the Government of West Bengal applied on December 6, 1955 for amendment of its written statement filed on July 12, 1955. By that amendment it submitted that the appellant's claim was unenforceable as (a) the said agreement, dated January 27, 1944 was not executed by the Governor-General in Council or any one on his behalf, and (b) the Governor-General in Council was not a party to the said Suit No. 169 of 1948, nor to the instant reference. On December 23, 1955, the said Chatterji allowed the said amendment application.

8. The said Chatterji also could not conclude the arbitration. Consequently, the Government of West Bengal, by its order dated December 16, 1957, appointed one G. Kumar as the Arbitrator. It is important to bear in mind that the said order did not mention or refer to Section 19 of the Defence of India Act, but on the other hand recited the said agreement dated January 27, 1944, the said Suit No. 169 of 1948 and the said order passed therein by the learned Subordinate Judge, Alipore.

9. The said G. Kumar started the arbitration proceedings afresh on December 19, 1955 substituting the Union of India in place of the State of West Bengal and also registered them under a new number, namely. No. 280 of 1957, and issued notices both u/s 20 of the Arbitration Act and Section 19 of the Defence of India Act. The parties also filed their statements afresh, adopting the statements filed by them previously, the Union of India adopting the statement filed earlier by the State of West Bengal. The said G. Kumar also did not complete the arbitration and thereupon the Governor of West Bengal successively appointed N. G. Ganguli, P. M. Lahiri and lastly, W. Basu Mazumdar as arbitrators on January 2, 1958, January 21, 1959 and November 10, 1960 respectively. It was the last named arbitrator who ultimately completed the arbitration and whose award, dated March 18, 1961 has been challenged in the present proceedings.

10. We may note that all the arbitrators appointed after the said G. Kumar continued the arbitration proceedings under the number given to them by him, namely, No. 280 of 1957. As in the case of the said G. Kumar, Ganguli and Lahiri, the order dated November 10, 1960 appointing the said W. Basu Mazumdar was passed in the name of Governor of West Bengal and recited the derequisitioning and the derequisitioning of the said property, the said agreement dated January 27, 1944 and its principal terms, the said Suit No. 169 of 1948 and the said order passed therein by the Subordinate Judge, Alipore. No reference whatsoever was made therein of Section 19 of the Defence of India Act or any other

provision thereof. Thus, it is clear that whereas the first two appointments of the said Chakravarty and Chatterji were made u/s 19 of the Defence of India Act, the rest of the orders, it would appear, were issued u/s 20(4) of the Arbitration Act and in pursuance of the order passed in the said Suit. No 169 of 1948.

11. Such a conclusion appears to be borne out by an application made on behalf of the Union of India on February 8, 1961 before the said W. Basu Mazumdar. It appears, the appellant contended that it was necessary to obtain an order from the Sub ordinate Judge, Alipore for extension of time for making the award as the order of that Court in Suit No. 169 of 1948 had fixed time within which the award had to be made, i. e., by September 11, 1950. Counsel for the Union of India, no doubt, argued that no such order was necessary as the said order of the Court at Alipore was not binding on the Union of India as the Union of India was not a party to that suit. It is true that the Arbitrator accepted the submission made on behalf of the Union and passed an order to the effect that there was no necessity for obtaining an order for extension of time. It is significant however, that counsel for the Union of India did not argue that an order for extension of time was unnecessary because the arbitration proceedings were under the Defence of India Act and not u/s 20 of the Arbitration Act, nor did the arbitrator so rule in his said order, nor did he rule that his appointment was u/s 19 of the Defence of India Act, and therefore, the order of the learned Subordinate Judge fixing the time for making the award was not binding on him. It is true that Section 19 of the Defence of India Act was referred to by counsel for the Union of India, but that was done with a view to assert that if the award was made u/s 19 which provided for payment of compensation, the award would not have to be filed before the Alipore Court as under the rules framed by the Government on March 30, 1943 the award would by itself operate as a decree. What is important is that it was never contended at that time that the arbitrator was appointed u/s 19 of the Defence of India Act and not u/s 20(4) of the Arbitration Act, and therefore, the Alipore Court's order was not binding on the arbitrator or that that Court had no jurisdiction to fix the time for making the award or extending it. Besides, if the appointment of the said G. Kumar, and following him that, of the said Ganguli, Lahiri and Mazumdar, had been made under the Defence of India Act, 1939, or understood to be so, as were the appointments of the first two arbitrators, namely, Chakravarty and Chatterji, there was no need for the said G. Kumar, to start the arbitration proceedings afresh, register a new-number to the proceedings, namely No. 280 of 1957 (which number was continued by his successors, including the present Arbitrator, W. Basu Mazumdar) and for the parties to file afresh their claims and counter-statements. Furthermore, in para 13 of the writ petition the appellant expressly averred that the appointments beginning from that of the said G. Kumar and ending with that of the present arbitrator, the said Mazumdar, were all made under the Arbitration Act pursuant to the said order passed in Suit No. 169 of 1948. Neither the Union of India nor the State of West Bengal contradicted or denied the said averments. Indeed, neither of them filed any counter-affidavit at all.

12. In these circumstances, the contention of counsel for the appellant is that the appointment of W. Basu Mazumdar was u/s 20(4) of the Arbitration Act and not u/s 19 of the Defence of India Act, 1939. That being so, the argument proceeded, no such appointment u/s 20(4) could be made as, on the contention raised by the Union of India and the State of West Bengal, the said agreement dated January 27, 1944 was not valid and binding as it was never executed by or on behalf of the Governor-General in Council or the Province of West Bengal, and that therefore, the said award was without jurisdiction.

13. This very contention was raised by the appellant before the High Court. But the High Court rejected it relying on a Memorandum, No. LA/VIII/5'6 of 1941-42, dated November 18, 1960, by the office of the Land Acquisition Collector, Alipore in which it was stated that the reference to arbitration was u/s 19 of the Defence of India Act. The High Court concluded that in view of this Memorandum

it cannot be said that Shri Basu Mazumdar was not appointed an Arbitrator under the Defence of India Act. Therefore, the argument of Mr. Sen Gupta that the impugned order was passed without jurisdiction cannot be accepted.

14. But the appointment of the said Basu Mazumdar as the arbitrator was surely not made by or under the said Memorandum. That was done by the Government Order bearing No. 16516 Reqn., dated November 10, 1960. That order, as already stated, recited the said agreement dated January 27, 1944, the said Suit No. 169 of 1948 and the said order passed therein by the learned Subordinate Judge, Alipore. There was no reference in the order of appointment passed in the name of the Governor to Section 19 of the Defence of India Act, 1939 or to any other provision thereof, nor did it have any reference to any notification under which the Governor of West Bengal had been authorised to appoint an arbitrator on behalf of the Union of India in arbitration proceedings against it. Obviously, the order of appointment was, like the previous three orders appointing the said G. Kumar, Ganguli and Lahiri, under the Arbitration Act pursuant to the said order of the Court of the Subordinate Judge, Alipore in Suit No. 169 of 1948 on the footing of the said agreement which, according to the case of the Union of India and the State of West Bengal, was never executed by or on behalf of either of them.

15. It is clear that at the time of the appointment of the said Basu Mazumdar as arbitrator the Land Acquisition Department (Requisition Branch) of the Government of West Bengal and the Land Acquisition Collector, Alipore were acting at cross purposes, the former thinking that the appointment had to be made under the Arbitration Act, 1940 pursuant to 16 the said order in Suit No. 169 of 1948 17. and the latter thinking that the order of appointment was made u/s 19 of the Defence of India Act, 1939. But if the said appointment was under the Defence of India Act, surely the order of appointment would have said so, as it did when the first two arbitrators, viz., the said Chakravarti and Chatterji, were appointed.

16. Mr. Iyengar, appearing for the Union of India, candidly conceded that he was not in a position to support the judgment of the High Court on the basis of the said Memorandum of the Land Acquisition Collector. He, however, urged that even if the order of appointment u/s 20(4) of the Arbitration Act were to be found in valid, as the Union of India was not a party to the said Suit No. 169 of 1943 and the said agreement dated January 27, 1944 was not executed by any one on behalf of either of the two Governments, the appointment should still be upheld if the power of appointment were to be found under the Defence of India Act, 1939. He argued that the fact that the said G. Kumar substituted the Union of India as a party in place of the State of West Bengal and started the arbitration proceedings afresh giving a new number to them indicated that he was consciously acting u/s 19 of the Defence of India Act and breaking away from the Arbitration Act. The fact that he issued notices u/s 19 of the Defence of India Act was another fact showing that he was acting under the Defence of India Act.

17. The difficulty which, however, faces us is that the appointment orders, right from the order of appointment of the said G. Kumar to that of the present arbitrator, were all made and continued to be made u/s 20(4) of the Arbitration Act and none of them referred to Section 19 of the Defence of India Act. The said G. Kumar substituted the Union of India and issued notices u/s 19 of the Defence of India Act because the liability to pay compensation arose u/s 19. The order-sheet of the arbitration proceedings shows that as early as February 8, 1961 the appellant had pointed out that an order for extending the time for making the award from the Court of the Fifth Subordinate Judge, Alipore, who had passed the order in Suit No. 169 of 1948 u/s 20 of the Arbitration Act, was necessary. As stated earlier, he was overruled on the ground that that order was not binding on the arbitrator as the Union of India was not a party to the said suit. On being overruled, the appellant appeared before the Arbitrator under protest and his doing so was recorded. At that time at least a fresh order of appointment u/s 19 of the Defence of India Act could have been made. Instead, the Arbitrator went on with the arbitration proceedings under the order of his appointment in pursuance of the said order in Suit No. 169 of 1948. Once the said G. Kumar, on an application by the Government of West Bengal, had substituted the Union of India as the opposite party in the arbitration proceedings before him, a fresh order under the Defence of India Act ought to have been passed. In any event, when his successors, including the said Basu Mazumdar were appointed, orders of their appointments could have been passed under the Defence of India Act. Surprisingly, all those orders uniformly recited the said agreement, the said Suit No. 169 of 1948 and the order passed therein under the Arbitration Act. When all these orders were so passed, it is difficult for us to uphold them as if they were passed under the Defence of India Act. Apart from that difficulty, there is such a vast difference between the amount awarded and the claim made by the appellant, (into the merits of which we do not enter) that it would be hardly fair or just to stretch the language of the several orders of appointment of arbitrators

and treat them as having been made u/s 19 of the Defence of India Act. Reluctant as we are, in view of the long time that has elapsed, we are compelled, in the circumstances and for the reasons earlier set out, to accept the contentions of Mr. Sen and order that the award was without jurisdiction as the appointment of the said W. Basu Mazumdar as the arbitrator was u/s 20(4) of the Arbitration Act, which did not apply and it was made in pursuance of the said order passed in Suit No. 169 of 1948 to which the Union of India was not a party and the said agreement, on the basis of which the said order was passed, was never executed by either of the two Governments. The delay in the appellant's recovering compensation due to him has primarily arisen because of the lapse of time between the time when the property was derequisitioned in 1947 and the time when the impugned award was at last made.

18. The consequence is that the High Court's order is set aside and the appeal is allowed with costs.