

(1982) 02 CAL CK 0049
In the Calcutta High Court
Case No : Appeal No. 44 of 1982

Hindusthan Steel Works Construction Ltd.	APPELLANT
Vs	
G. Sreenivasulu Reddy and Co.	RESPONDENT

Date of Decision : 15-02-1982

Acts Referred:

Arbitration Act, 1940 — Section 11, 12, 39, 4, 5

Citation : AIR 1982 Cal 301

Hon'ble Judges : Ramendra Mohan Datta, J;C.K. Banerji, J

Bench : Division Bench

Judgement

Ramendra Mohan Datta, J.—This interlocutory application has now come up before us, inter alia, for stay of the operation of the judgment and order dated Jan. 12, 1982 passed by Deb J. The application before the learned Judge was for leave to revoke the authority of the respondent No. 2 who had been acting as the umpire in the pending arbitration proceedings arising out of the arbitration agreement dated Dec. 31, 1973. The prayer in the alternative is for removal of the umpire and for the appointment of a fit and proper person as the umpire and to continue the proceedings. There are other prayers, inter alia, for stay of the arbitration proceedings and for an injunction restraining the respondents Nos. 1 and 2 from proceeding with the arbitration proceedings. The learned Judge passed the ad interim order restraining the umpire from proceeding with the arbitration reference until further orders. At the final hearing, however, the learned Judge dismissed the application making cost in the arbitration proceedings. He also extended the time to make the award till 15th March, 1982 and directed the respondent No. 2 to give reasonable opportunity to both the parties of being heard before making his award.

2. When the matter was moved before us for interim orders, we passed an order, inter alia, restraining the Umpire from proceeding with the arbitration reference until the disposal of this application.

3. The facts shortly are, that both the appellant and the respondent appointed

their respective arbitrators who after making the appointment of the Umpire differed amongst themselves leaving the matter to be decided by the Umpire one S. Rama Chandran. Before the said arbitrators statements and counter-statements were filed sometime in October and November 1980, Documents were also filed before them round about such time. In May 1981 the umpire S. Ramachandran entered upon the reference and directed the parties to submit their respective documents and papers. A meeting was sought to be fixed on 29th May, 1981 but due to the inconvenience of the appellant the same was adjourned and thereafter it was fixed on 7th to 9th June. 1981. The appellant then requested the umpire to fix the last week of June for inspection of site. On 8th June, 1981 the umpire visited the site in the presence of the representatives of both the parties but on that date the case was not discussed. Thereafter the umpire fixed 27th to 30th June, 1981 for meetings to be held -at Calcutta giving liberty to the parties to file further statements or documents, if so desired. The appellant again prayed for extension of time to submit further paper by a fortnight. The umpire thereupon gave liberty to the appellant to produce all papers and documents on the date of hearing. On July 4, 1981 the meeting was held at Calcutta in which the parties virtually agreed that the statements and documents already filed by them before the arbitrators would be held to be good for hearing before the umpire. Time to make the award was extended by consent up to Aug. 31. 1981. On July 25/26, 1981 meetings took place in which the appellant opened its case and made submissions and filed counter-statements and other papers which were filed before the arbitrators. Thereafter on July 26, 1981 the umpire for the second time visited the site and on 23rd, 24th and 25th Aug. 1981 meetings were fixed for hearing as Calcutta. Directions were given that books, papers and documents intended to be relied on must be produced and oral evidence, if any, should be made available at the hearing.

4. On 23rd Aug. 1981 the meeting was held when the appellant made further submissions and tendered a counter claim. The umpire directed that further documents, if any, were to be submitted on or before 7th Sept. 1981. The umpire thereupon expressed his gratitude to the parties and their lawyers for the co operation and fine exposition of the case on behalf of their clients. According to the umpire and the respondent the hearing was concluded on that date.

5. On Sept. 3, 1981 the appellant intimated the umpire that the minutes of the meeting supplied by him did not reflect all the points argued by the counsel. It was further informed that as the minutes did not give the correct picture due to various typographical errors a fresh meeting should be held for necessary correction thereof. On Sept. 4, 1981 the respondent No. 1 filed its counter statement and also filed documents as per leave given by the umpire in the meeting held on Aug. 23rd, 1981, By its letter dated Sept. 9, 1981 the respondent No. 1 required the umpire to make his award by Sept. 30, 1981 being the last extended date mutually agreed by and between the parties. The respondent, inter alia, wrote;

"You asked certain information from H. S. C, L. and ourselves. While we had sent our documents vide letter dated 4-9-1981, we find H. S. C. L. is delaying the matter in sending the required information/documents. We request you to stick to the date mutually agreed at the Calcutta meeting without any further extension."

By his letter dated Sept. 10, 1981 written to the appellant the umpire, inter alia, intimated that the minutes were dictated in the presence of all the parties and no objections were raised at that time. The umpire informed that no meeting was necessary to be held merely to correct the minutes and stated that the hearing had already been closed. The umpire, inter alia, wrote:

".....It may be that there are few typographical errors, I see no reason for fixing a meeting merely to correct the minutes. It was expressly understood that the hearings are closed and parties were, merely given liberty to submit any documents which they want, before 7-9-1981. *** ** However, you are granted further time till 20-9-1981 for filing documents if any. No further time will be granted. You may also send me the corrections required to be made in the minutes of last meeting.

As I am committed to issue the award on or before 30-9-81 I request you to send me the documents required immediately."

On Sept. 17, 1981 the appellant filed two documents and requested the umpire to grant six weeks time to file its rejoinder of the counter-statement of the respondent No. 1. The appellant requested the umpire for giving a hearing. The appellant wrote:

"We pray to you for affording us an opportunity to substantiate our counter claim after submission of our rejoinder and/hold hearing for such purposes. Furthermore, we pray to you for offering us opportunity to make our submissions to the various documents filed by the claimants by their letter dated 4-9-81."

Thereafter on Sept. 21, 1981 by telex the umpire informed the appellant that the statements, if any, should reach the umpire before Sept. 27, 1981 and liberty was given to the appellant to indicate all its points in such statements. The umpire also intimated that the case was fully argued on all counts and was closed by counsel of the appellant at the Calcutta sitting. It was intimated that no further meeting was required. By its letter dated Sept. 22/24, 1981 the appellant wrote to the umpire:

"We further state and submit that there is no commitment to issue the award on or before 30-9-1981 and in the event of our prayer as made in our previous correspondence are not granted we will suffer irreparable loss and prejudice."

On Sept. 24, 1981 the appellant prayed for six weeks" time to file its rejoinder intimating that such time was required in view of the preoccupation of counsel and due to the intervening Puja holidays,

6. It will be noticed from the aforesaid events that had happened that the respondent No. 1 made it clear that the award be made within the last extended time and if it was not so done they would not consent to any further extension. There was no corresponding assurance from the appellant that they would (not ?) apply for extension of time from court. All that was said was that there was so commitment on the part of the umpire to issue the award on or before Sept. 30, 1981, That was too vague to be acted upon. The umpire did appreciate that unless the award was made within the extended time that is, Sept. 30, 1981 he would become functus officio and unless there were impelling reasons so to do it was his discretion to consider whether the making of the award would be postponed further or not. It appears that the umpire had before him the following considerations, (a) that if another hearing would have to be given that would mean an enormous expenditure with which both the parties would be saddled; (b) At the last sitting, at his desire, the parties were asked to send some documents to him; (c) According to the umpire the mistakes complained of in the minutes of the last meeting could be corrected without holding a meeting if the details of such correction were made known to him. The appellant did not co-operate in that respect; (d) Under the circumstances, the parties could as well submit their written submissions before him which would obviate the necessity of a hearing particularly when no oral evidence was to be adduced. In any event, the allegations about the mistakes in the minutes being without any particulars whatsoever and the proceedings having been closed as minuted by the umpire and the expenses involved in holding another meeting being enormous and time consuming, he could reasonably think that such a meeting would be unnecessary and written submissions could make it up. In any event, it is within the knowledge of the umpire as to on what basis he gave his directions but from the facts as, placed before us it can safely be concluded that a reasonable man placed in the position of an umpire under the circumstances has acted reasonably and honestly.

7. Mr. Gupta contends that the umpire is guilty of legal misconduct because he did not give hearing as asked for regarding the various documents filed by the claimants by their letter dated Sept. 4, 1981. The umpire should also have given a hearing so that the appellant might have an opportunity to substantiate its counter claim after submissions of its rejoinder. The legal misconduct was committed when the umpire refused to give a hearing on the fresh documents filed by the respondent No. 1 and it was no ground to say that the court below by its order had directed the umpire to give a hearing as asked for. In other words, by refusing to give a hearing he committed legal misconduct and thereby made himself liable to be removed or his authority being revoked.

8. As stated hereinabove on Sept. 24, 1981 in spite of the urgency of the matter and knowing full well that the time available to the umpire was to expire on Sept. 30, 1981, the appellant asked for six weeks' time to file its rejoinder and put forward the plea of the intervening long holidays for taking such a long time.

9. On the next day i.e., on Sept. 25, 1981 the appellant moved this court orally and obtained an ad interim order restraining the umpire from making the award. The umpire was immediately informed about it but no step was taken to file the petition before the vacation Bench. Instead, the appellant waited till No. 3, 1981 when the court reopened and filed its written application for which it gave an undertaking to court on Sept. 25, 1981.

10. In the written application the appellant took the plea of bias and of legal misconduct. The learned Judge after considering the facts in details found that there was no case on the question of bias. From the prima facie point of view we take the same view. The learned Judge has noted that the allegation of dishonesty in the petition was not pressed. The learned Judge, however, was of the view that in so far as the plea of legal misconduct was concerned the umpire did not get any opportunity to consider whether he should allow the aforesaid prayers of the appellant and held that, accordingly, no ground had been made out for his removal. In that view of the matter the learned Judge by dismissing the application gave two directions in the matter. The time to make and publish the award was extended till March 15, 1982 and the umpire was directed to give a reasonable opportunity to both the parties of being heard before making the award.

11. In so far as the last direction was concerned Mr. Gupta contends that the learned Judge had no power to give such direction to the umpire and as such he acted without and/or in excess of jurisdiction. That being so, it became an appealable order under Clause 15 of the Letters Patent and the appeal is maintainable.

12. We have noted from the cause title in the petition of the lower court that this application was made under Sections 4, 5, 11 and 12 of the Arbitration Act. 1940 and as such Section 39 read with Sch. II thereof would apply and no appeal would lie from the order made in such an application. The order of dismissal and the direction for extension of time to make and publish the award were clearly under the said Act Regarding the second direction of the learned Judge to the umpire to give a hearing, we are of the view that even assuming the same to have been passed without and/ or in excess of jurisdiction yet that part of the order is severable and cannot vitiate the whole order so as to make the whole order without jurisdiction and as such appealable. Mr. Gupta has cited the case of Rawatmal Bhairudan Vs. The Rajputana Trading Co. (Pvt.) Ltd., and Rebat Ranjan Chakravarti Vs. Suranjan Chakravarti and Others, but in our opinion, such cases are distinguishable and have no application to the facts of this case. Mr. Bhabra argues that the part of the direction to the umpire should come u/s 41(b) of the Arbitration Act. We do not think that such an argument is tenable. We should observe that the memorandum of appeal should have indicated the nature of the application made before the trial court indicating thereby that the application was made under those provisions.

13. In so far as the first direction is concerned we are of the view that the

extension of time to make and publish the award is an order under the Arbitration Act and as such incidental to the main order and no appeal lies there from. Accordingly, the same does not affect the legality of the order but from a prima facie point of view, in our opinion, possibly the learned judge exceeded his jurisdiction in giving direction to the umpire as to the conduct of the proceedings before him and to that extent Mr. Gupta's argument that it is without jurisdiction appears to be sound. It seems that it is within the domain of the umpire to decide the question himself and to take upon himself the responsibility of deciding whether or not any further opportunity should be given in pursuance of the letter dated Sept. 24, 1981 and that the court is incompetent to give any direction to him to act in a particular manner. The appellant has made the prayer before the umpire and he has to allow it or to refuse it himself. After such decision if any party would challenge the same then the question would arise whether he has committed any legal misconduct or not and the court would be competent to decide that question.

14. It would seem that this part of the order is definitely severable from the main order. The learned Judge has clearly found that the case of bias has not been established and has recorded that the allegation of dishonesty was not pressed. In effect he has held also that the case of legal misconduct was not sustainable as the umpire could have changed his mind upon receipt of that letter dated Sept. 24, 1981.

15. Mr. Gupta contends that the umpire has already committed legal misconduct and, accordingly, in what manner he would act after receiving the letter dated Sept. 24, 1981 would be another question and that would not affect his past conduct. In the facts of this case it would seem, from a prima facie point of view, that this contention may not hold good. Mr. Gupta's client could have come up before the court before writing the letter dated Sept. 24, 1981 but having written that letter his client would be held to have sought for another opportunity from the umpire in getting its grievances redressed. We are of the opinion that although that part of the order might have been without jurisdiction but the same did not create any prejudice so far as the appellant is concerned.

16. Taking into consideration the fact that the umpire is free to decide the question himself without being guided by the court we stay that part of the order which directs the umpire "to give a reasonable opportunity to both the parties of being heard before making his award". Accordingly, we make it clear that in spite of such stay the umpire would be free to decide the question himself and would be at liberty to cancel the notice which he gave pursuant to such direction of the court below and would be free to decide whether or not any fresh opportunity should be given to the parties and as to his own course of action. Save as aforesaid the rest of the order of the court below will remain in force. There will be a Partial order for stay as aforesaid. All interim orders are vacated. Costs will be costs in the appeal. The umpire and all parties to act on a signed copy of the minutes.

17. We put it on record that various case laws have been cited at the bar and arguments have been advanced at length and as such we have gone into the details of the facts herein to give our reasons but inasmuch as the principles are well established we did not discuss the various case laws cited before us at this interlocutory stage

C.K. Banerji, J.

I agree.