

(1987) 07 BOM CK 0044
In the Bombay High Court
Case No : A.P. No. 4 of 1987

Indian Oil Corporation Ltd.

APPELLANT

Vs

India Carbon Ltd.

RESPONDENT

Date of Decision : 22-07-1987

Acts Referred:

Arbitration Act, 1940 — Section 30
Industrial Disputes Act, 1947 — Section 10A

Citation : (1987) MhLj 858

Hon'ble Judges : Sujata Manohar, J

Bench : Single Bench

Advocate : A. Mody with M.D. Sisodia instructed by M/s. Mulla and Mulla and Craigie Blunt and Caroe, for the Appellant; A.M. Setalwad with H.K. Mishra and S.P. Sarkar instructed by M/s. Crawford Bayley and Co., for the Respondent

Final Decision : Dismissed

Judgement

Mrs. Sujata Manohar, J.—This is a petition to challenge an interim award dated 21st August 1986 given by the Sole Arbitrator appointed by the parties, Mr. A. K. Sarkar. The Petitioner, Indian Oil Corporation own and operate refineries, inter alia, at Gauhati and Barauni, both of which manufacture various petroleum products including raw petroleum coke. Under an agreement dated 23rd June 1961 entered into between the petitioner and the predecessor in title of the respondents the petitioners agreed to sell to the predecessors in title of the respondents raw petroleum coke on terms and conditions contained therein. There were several subsequent agreements also between the parties which operated until the petitioners terminated their agreements with the respondents on or about 11th July 1983 with effect from 31st August 1983. In connection with these contracts there were various proceedings between the parties in this court as well as in the court of the District Judge at Gauhati.

2. In May 1984 when the proceedings were pending before the Supreme Court certain terms and conditions were arrived at between the parties relating to the

disputes between them which were recorded in the minutes in terms of the agreement. The Supreme Court passed the order by consent of parties on 24th May 1984.

3. Under the consent terms it was provided inter alia, that the claim of the Indian Oil Corporation (a) for interest on stocks said to have been held in the Gauhati Refinery from 1-10-1982 onwards and (b) its claim for expenses of shifting the coke from 1-10-1981 upto 31-8-1983 will be referred to arbitration of a retired Judge of the Supreme Court of India mutually acceptable to the parties. As a result, under an agreement dated 11th December 1984 between the parties the above two claims were referred to the Sole Arbitration of A. K. Sarkar a retired Judge of the Supreme Court of India.

4. The learned Arbitrator has given an interim award dated 21st August 1986 on certain issues which were by consent of the parties decided as preliminary issues. The issues which were decided as preliminary issues were :

i) Is the claimant entitled to charge any interest on unlifted stock of Raw petroleum coke in view of its letter dated 18th October 1982.

ii) Is the claimant entitled to any shifting charges in view of its letter dated 18th October 1982?

5. The learned Arbitrator in the recitals to the award has set out the contents of this letter of 18th October 1982. He has also set out that it is not in dispute between the parties that since the letter of 18th October 1982 the petitioner had not delivered or offered to deliver any petroleum coke to the respondents. In his award he has held that the letter of 18th October 1982 is no bar to Indian Oil Corporation's claim for shifting charges and interest in respect of the period from 1st October 1982 to 17th October 1982. He has further held that "Because of the said letter which had admittedly been acted upon by the Indian Oil Corporation Limited which had not delivered any coke to Indian Carbon Ltd. or made any offer to do so the Indian Oil Corporation Ltd. is not entitled to the interest claimed in respect of the period from 18th October, 1982 onwards not to shifting charges in respect of any shifting done on or after 18th October, 1982."

6. This award has been challenged on the ground that since the award does not give any reasons and is not a speaking award it is bad in law. No other ground was urged before me. In support of his contention Mr. A. N. Mody learned counsel for the petitioners, relied upon observations of the Supreme Court in the case of The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, . In that case a decision of the Collector of Customs was challenged. The Supreme Court observed that "where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons".

7. In another decision of the Supreme Court in the case of Rohtas Industries Ltd.

and Another Vs. Rohtas Industries Staff Union and Others, which was in connection with an award u/s 10A of the Industrial Disputes Act the Supreme Court observed that there was a need for a speaking order where considerable numbers are affected in their substantial rights. It held the award as equivalent to the decision of a statutory tribunal, since it was u/s 10A of the said Act. In such a situation a speaking order may well be a facet of natural justice or fair procedure.

8. Neither of these cases dealt with the award of an arbitrator appointed by consent of parties under the provisions of the Arbitration Act. In the case of Dewan Singh Vs. Champat Singh and Others, the Supreme Court held that normally it is an implied term of the arbitration agreement that the arbitrators must decide the dispute in accordance with the ordinary law and they cannot decide disputes on the basis of their personal knowledge. It went on to observe that the proceedings before the arbitrators are quasi-judicial proceedings and they must be conducted in accordance with the principles of natural justice. Mr. Mody strongly relied upon these observations of the Supreme Court and submitted that the Arbitrator as a quasi-judicial authority must act in accordance with the principles of natural justice. He must therefore give reasons for his award. Now, there can be no doubt that an arbitrator must act in accordance with the principles of natural justice. But whether this entails that an arbitrator must give reasons for his award or not is a moot point when the arbitrator is appointed by consent of the parties and thus has the confidence of both the parties in deciding the disputes which are placed before him. The parties here agree to abide by the decision of the arbitrator chosen by them. There is no appeal from his decision. Hence an arbitrator's award is in a very different category from the decision of an administrative or quasi-judicial authority.

9. All these decisions of the Supreme Court were considered by a Division Bench of this Court in the case of Rashtriya Chemicals and Fertilizers Limited Vs. Mohindersingh and Co. and Another, . The Division Bench which decided this case made a distinction between the decisions under administrative law and decisions under the Arbitration Act. It has held that there is nothing in the Arbitration Act and the law as it stands which makes it obligatory on an arbitrator, whether he is given summary powers or not, to adjudicate each claim separately or to give a reasoned award unless the parties expressly require him to do so.

10. The Division Bench has referred to the various Supreme Court authorities which are relied upon by Mr. Mody and has distinguished these authorities on the ground that these are in connection with the decisions given by administrative authorities. It has held, "Administrative law does not supplant the law of arbitration. The former makes it obligatory that a reasoned order be given the latter does not." It said that the arbitrator appointed by the parties does not stand on the same footing as a statutory authority with judicial powers whose functions are entirely different from those of an arbitrator qua the parties appointing him. A statutory authority cannot be equated with an arbitrator. The

former exercises power and passes orders over which the aggrieved party is entitled to come by way of appeal and thereby invite the court's interference and the exercise of the Court's supervisory jurisdiction over such statutory authority. To do so the Court must have a reasoned order so as to ascertain by what process of thought and reasoning the tribunal came to its finding. The Court exercises no such power over an arbitrator. His award cannot be made the subject-matter of an appeal. His award is sacrosanct. It can be set aside only on the limited grounds set out in Section 30 of the Arbitration Act. The court also held that giving a non-speaking award is not a violation of the principles of natural justice. It is the procedure which the arbitrator adopts at the hearing which must not violate the principles of natural justice.

11. In view of this decision of our High Court which is binding on me, the matter is concluded as far as the proceedings before me are concerned. There is no requirement under the provisions of the Arbitration Act under which an arbitrator must give a speaking or a reasoned order. Therefore assuming that the award is not a speaking award it is not vitiated on that count.

12. In the award, especially in the second paragraph of the award, the learned arbitrator has given some reasons for the conclusion which he has arrived at. It is undoubtedly not an elaborately reasoned award setting out all the reasons which prompted the learned arbitrator to arrive at the conclusion he did reach, but it appears to me as at least a "speaking" award. I, however, need not examine this aspect since, even if it is not a speaking order, it is not bad in law.

The petition is therefore dismissed with costs.