
(1995) 06 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 11049 and 12938 of 1990

M/s. Walchandnagar Industries Ltd., Pune

APPELLANT

Vs

State of Andhra Pradesh and others

RESPONDENT

Date of Decision : 14-06-1995

Acts Referred:

Arbitration Act, 1940 — Section 14, 14(1), 14(2), 17, 20

Citation : AIR 1996 AP 167

Hon'ble Judges : Dasaratha Rama Reddy, J

Bench : Single Bench

Advocate : Y. Sivarama Sastry, for the Appellant; Govt. Pleader for Arbitration and M Chandrasekhara Rao, for the Respondent

Judgement

1. As both the writ petitions raise common points, they are disposed of by a common judgment.

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2. The petitioner entered into agreement with the second respondent on 23-2-1983 for sale of cement manufacturing machinery. Clause 12(2) of the agreement provided for referring any dispute, that may arise under it, to arbitration. As certain disputes arose, the petitioner nominated Justice Rege, retired Judge of High Court of Bombay, as arbitrator, while the second respondent appointed late Justice Krishna Rao, as arbitrator. Justice G. Venkat Rana Sastry was appointed as O.S. No. 2 off 988, in the Court of Additional Chief Judge (Temporary), Hyderabad, as Umpire. The arbitrators gave unanimous award on 2-2-1987 granting petitioner Rs. 17,74,858/- together with interest of Rs. 3,05,006/- but did not give reasons. The petitioner filed O.S. No. 249 of 1987, later renumbered u/s 14(2) of the Arbitration Act (for short "the Act") to make the award rule of the Court. The second respondent filed O.P. No. 387 of 1987, later renumbered as O.P. No. 41 of 1988, u/s 30 of the Act to set aside the award. The Court below pronounced ex parte judgment on 8-11-1988. LA. No. 453 of 1988 filed by the second respondent to set aside the ex parte decree was

allowed on 1-2-1989 and C.R.P. No. 1043 of 1989 filed against the same by the petitioner was dismissed by this Court on 24-11-1989. When the matter was thus sent back to the City Civil Court and was pending there, A. P. Amendment Act 1 of 1990 adding provisos to Sections 14(1) and 17 of the Act came into force with effect from 19-2-1990. Based on this amendment, the Civil Court on 3-7-1990 remanded the matter to the arbitrators to give reasons for the award. But Justice Krishna Rao, arbitrator, nominated by second respondent refused to act as arbitrator and in his place Sri K. Jagannatha Rao, Advocate, was appointed as arbitrator on 26-7-1990. At this stage, the petitioner has filed W.P. No. 11049 of 1990 questioning the vires of proviso to Section 14 and 1st proviso to Section 17 introduced by Act I of 1990 and obtained stay of all further proceedings.

3. Sri Y. Siva Rama Sastry, learned counsel for the petitioner, submits that the amendment making all awards passed without giving reasons as invalid without making any classification of agreements is arbitrary and that in any event as proviso to Section 14 is not retrospective, the 1st proviso to Section 17 cannot be applied to the award passed prior to 19-2-1990. I shall take up first the alternative contention of Sri Y. Siva Rama Sastry. To appreciate the contention of Sri Y. Siva Rama Sastry, it is necessary to refer to the objects and reasons of the amendment, proviso to Section 14 and 1st proviso to Section 17 of the Act. They read as follows;

"Statement of Objects and Reasons

1. The provisions of the Arbitration Act, 1940 are not specific that the award shall give reasons. In the absence of a reasoned award, the parties affected by it remain unaware of how the arbitrators reached their decision. The process is also susceptible of gross abuse affording little or no legal remedy to the parties. The present trend of law in United Kingdom and other countries is towards passing a reasoned award. Accordingly, the Government considered it desirable to amend the provisions of the Arbitration Act, 1940 to enjoin upon the Arbitrators to adduce reasons in the awards passed by them.

2. It is accordingly decided to amend Sections 14 and 17 of the Arbitration Act, 1940:--

....."

Proviso to Section 14(1)

"Provided that the arbitrators or umpire shall give reasons for any award made under this section and no award shall be valid unless reasons therefore are given as aforesaid."

1st Proviso to Section 17

"Provided that where an award pending in the Court at the commencement of the Arbitration (Amendment) Act, 1990 or an award filed in the Court, thereafter does not contain reasons therefore as required by the proviso

to sub-section (1) of Section 14 the Court shall not proceed to pronounce the judgment according to the award, but shall remit the award to the arbitrators or the umpire forgiving reasons therefore as required by the said proviso and thereupon the arbitrators or umpire shall, within thirty days from" the date of remittance of the award to them by the Court give reasons for the award and file the same in the Court."

4. The question whether an award is vitiated by failure to give reasons has been considered by the 5 Judge Bench of Supreme Court in AIR 1990 1426 (SC) where, after reviewing entire case law. it was held that failure to give reasons in the award does not constitute violation of principles of natural justice and that the award cannot be set aside on that ground unless parties have contemplated in the agreement that the award should contain reasons. The Supreme Court held as follows (Paras 33 to 37):

"The question which arises for consideration in these cases is whether it is appropriate for this Court to take the view that any award passed under the Act, that is, the Arbitration Act, 1940 is liable to be remitted or set aside solely on the ground that the arbitrator has not given reasons thus virtually introducing by a judicial verdict an amendment to the Act when it has not been the law for nearly 7/8 decades. The people in India as in other parts of the world such as England, U.S.A. and Australia have become accustomed to the system of settlement of disputes by private arbitration and have accepted awards made against them as binding even though no reasons have been given in support of the awards a long time. They have attached more importance to the element of finality of the awards than their legality. Of course, when reasons are given in support of the awards and those reasons disclose any error apparent on the face of the record people have not refrained from questioning such awards before the Courts. It is not as if that people are without any remedy at all in cases where they find that it is in their interest to require the arbitrator to give reasons for the award. In cases where reasons are required, it is open to the parties to the dispute to introduce a term either in the arbitration agreement or in the deed of submission requiring the arbitrators to give reasons in support of the awards. When the parties to the dispute insist upon reasons being given, the arbitrator is, as already observed earlier, under an obligation to give reasons. But there may be many arbitrations in which parties to the dispute may not relish the disclosure of the reasons for the awards. In the circumstances and particularly having regard to the various reasons given by the Indian Law Commission for not recommending to the Government to introduce an amendment in the Act requiring the arbitrators to give reasons for their awards we feel that it may not be appropriate to take the view that all awards which do not contain reasons should either be remitted or set aside. A decision on the question argued before us involves a question of legislative policy which should be left to the decision of Parliament. It is a well known rule of construction that if a certain interpretation has been uniformly put upon the meaning of a statute and transactions such as dealings in property and making of contracts have taken place on the basis of

that interpretation, the Court will not put a different interpretation upon it which will materially affect those transactions. We may refer here to the decision of the Court of Appeal rendered by Lord Evershed M.R. in *Brownsea Haven Properties v. Poole Corpn.* (1958) Ch 574 in which it is observed thus:

"There is well established authority for the view that a decision of long standing, on the basis of which many persons will in the course of time have arranged their affairs should not lightly be disturbed by a superior Court not strictly bound itself by the decision."

Courts should be slow in taking decisions of which will have the effect of shaking rights and titles which have been founded through a long time upon the conviction that a particular interpretation of law is the legal and proper one and is one which will not be departed from.

It is no doubt true that in the decisions pertaining to Administrative Law, this Court in some cases has observed that the giving of reasons in an administrative decision is a rule of natural justice by an extension of the prevailing rule. It would be in the interest "of the world of commerce that the said rule is confined to the area to Administrative Law. We do appreciate the contention urged on behalf of the parties who contend that it would be made obligatory on the part of the arbitrator to give reasons for the award, that there is no justification to leave the small area covered by the law of arbitration out of the general rule that the decision of every judicial and quasi-judicial body should be supported by reasons. But at the same time it has to be borne in mind that what applies generally to settlement of disputes by authorities governed by public law need not be extended to all cases arising under private law such as these arising under the law of arbitration which is intended for settlement of private disputes. As stated elsewhere in the course of this judgment if the parties to the dispute feel that reasons should be given by the arbitrators for the awards it is within their power to insist upon such reasons being given at the time when they enter into arbitration agreement or sign the deed of submission. It is significant that although nearly a decade ago the Indian Law Commission submitted its report on the law of arbitration specifically mentioning therein that there was no necessity to amend the law of arbitration requiring the arbitrators to give reasons, Parliament has not chosen to take any step in the direction of the amendment of the law of arbitration. Even after the passing of the English Arbitration Act, 1979 unless a Court requires the arbitrator to give reasons for the award (vide sub-sections (5) and (6) of Section 1 of the English Arbitration Act, 1979), an award is not liable to be set aside merely on the ground that no reasons have been given in support of it.

It is true that in two cases one decided by the High Court of Delhi and another decided by the High Court of Orissa there are some observations to the effect that it would be in the interests of justice if the arbitrators are required to give reasons for their awards because in recent years the moral standards of arbitrators are going down. But generally this Court and all the High Courts have

taken the view that merely because the reasons are not given an award is not liable to be remitted or set aside except where the arbitration agreement or the deed of submission, or an order made by the Court such as the one u/s 20 or Section 21 or Section 34 of the Act or the statute governing the arbitration requires that the arbitrator or umpire should give reasons for the award. The arbitrators or umpire have passed the awards which are involved in cases before us relying on the law declared by this Court that the awards could not be questioned merely on the ground that they have not given reasons. At the same time it cannot also be said that all the awards are contrary to law and justice. In this situation it would be wholly unjust to pass an order either remitting or setting aside the awards, merely on the ground that no reasons are given in them, except where the arbitration agreement or the deed of submission or an order made by the Court such as the one u/s 20 or Section 21 or Section 34 of the Act or the statute governing the arbitration required that the arbitrator or the umpire should give reasons for the award.

There is, however, one aspect of non-speaking awards in non-statutory arbitrations to which Government and Governmental authorities are parties that compel attention. The trappings of a body which discharges judicial functions and requires to act in accordance with law with their concomitant obligations for reasoned decisions are not attracted to a private adjudication of the nature of arbitration as the latter, as we have noticed earlier, is not supposed to exert the State's sovereign judicial power. But arbitral awards in disputes to which the State and its instrumentalities are parties affect public interest and the manner or the manner in which Government and its instrumentalities allow their interest to be affected by such arbitral adjudications involve larger questions of policy and public interest. Government and its instrumentalities cannot simply allow large financial interests of the State to be prejudicially affected by non-reviewable -- except in the limited way allowed by the Statute -- non-speaking arbitral awards. Indeed, this branch of the system of dispute resolution has, of late, acquired a certain degree of notoriety by the manner in which "in many cases the financial interests of Government have come to suffer by awards which have raised eyebrows by doubts as to their rectitude and propriety. It will not be justifiable for Governments or their instrumentalities to enter into arbitration agreements which do not expressly stipulate the rendering of reasoned and speaking awards, Governments and their instrumentalities should as a matter of policy and public interest -- if not as a compulsion of law -- ensure that wherever they enter into agreements for resolution of disputes by resort to private arbitrations, the requirement of speaking awards is expressly stipulated and ensured. It is for Governments and their instrumentalities to ensure in future this requirement as a matter of policy in the larger public interest. Any lapse in that behalf might lend itself to and perhaps justify, the legitimate criticism that Government failed to provide against possible prejudice to public interest."

The Supreme Court further summarised as follows at para 38 :

"Having given our careful and anxious consideration to the contentions urged by the parties we feel that law should be allowed to remain as it is until the competent legislature amends the law. In the result we hold that an award passed under the Arbitration Act is not liable to be remitted or set aside merely on the ground that no reasons have been given in its support except where the arbitration agreement or the deed of submission or an order made by the Court such as the one u/s 20 or Section 21 or Section 34 of the Act or the statute governing the arbitration requires that the arbitrator or the umpire should give reasons for the award. These cases will now go back to the Division Bench for disposal in accordance with law and the view expressed by us in this decision."

In view of this pronouncement of the 5 Judge Bench, the decision in Food Corporation of India and Another Vs. Great Eastern Shipping Co. Ltd., rendered by two Judges Bench, cited by Sri M. Chandra Sekhara Rao, to the effect that unreasoned award is bad does not help him.

5. It is significant to note that Proviso to Section 14(1) is not given retrospective effect, while 1st Proviso to Section 17 invalidates any award pending in the Court at the commencement of the Act i.e., 19-2-1990, or any award filed in the Court subsequently and which does not contain reasons and directs that such awards must be remitted to the arbitrators. There is apparant conflict between the two provisos.

6. The two provisos can be reconciled by interpreting the 1st proviso to Section 17 as referring to awards passed in respect of agreements which contain a stipulation that reasons must be given in the award. Such awards will be invalid even dehors proviso to Section 14(1) as per the decision of the Supreme Court in AIR 1990 1426 (SC) . Then the question arises why the Legislature has intervened to declare that they are invalid, which are even otherwise invalid. The reason is obvious. The Legislature wanted to give effect to the settled position of law as decided by the Supreme Court in Bungo Steel Furniture Pvt. Ltd. Vs. Union of India (UOI), and referred to in AIR 1990 1426 (SC) (hat awards which do not give reasons required to be given as per the agreement are invalid. The Legislature has also declared that in such circumstances, the Court has no option but to remit the matter to arbitrators. Before amendment, it was-open to Court either to remit or to decide the matter itself on merits. If the intention is otherwise, the Legislature would have given retrospective effect to proviso to Section 14 also, which would have resulted in setting aside number of awards and remitting back to arbitrators. The Legislature obviously wanted to avoid this.

7. The matter can be looked at from another angle. Suppose the parties entered into agreement before commencement of the amendment without making any stipulation that reasons must be given in the award, as all the provisions of the Act apply to awards by virtue of Section 47 of (he Act and as the Act, as it then stood, did not require the arbitrator to give any reasons for the award, any award passed before 19-2-1990 without giving reasons will not be invalid as per the decision of the Supreme Court in AIR 1990 1426 (SC) since the parties did

not contemplate that reasons should be given. The first proviso to Section 17 does not apply to such award. On the other hand, if the award has not been passed by 19-2-1990, proviso to Section 14(1) will govern the award and if reasons are not given, it will be invalid as per proviso to Section 14(1) even though the parties did not contemplate reasoned award. Consequently, u/s 17, the Court has no option but to remit the matter to the arbitrator. Now, let us take another example where parties have stipulated in the agreement entered into before 19-2-1990 that reasons must be given in the award. Even de hors proviso to Section 14(1), any award passed before 19-2-1990 without giving reasons will be invalid and the Court earlier may either remit the matter to the arbitrator for giving reasons in support of the award or itself pass order on merits. But the first proviso to Section 17 now leaves no discretion to the Court which has to send back the matter to the arbitrator to give reasons in support of the award. As regards agreements entered into after the amendment, even in the absence of any stipulation between the parties about the necessity to give reasoned awards, as the Act governs the award by virtue of Section 47, the award must comply with proviso to Section 14(1) and give reasons and if any unreasoned award is passed, the Court has to set aside the same and remit to arbitrator under first proviso to Section 17. Thus the intention of the Legislature is to give effect to the intention of the parties in respect of awards passed prior to 19-2-1990 and to make the passing of reasoned awards after 19-2-1990 irrespective of intention of the parties.

8. By this harmonious construction of the two provisos, no prejudice is caused to the Parties, and at the same time, it will not result in setting aside numerous awards passed prior to 19-2-1990. No doubt, the first proviso to Section 17 is not happily worded. The expression "as required by proviso to subsection (1) of Section 14" gives rise to difficulty and ambiguity. The draftsman must have used these words by way of description of the awards, which requires reasons to be given. As already seen, even awards passed before amendment had to contain reasons if the agreement contemplates reasons to be given. On the other hand, if this expression is extended to cover all awards, it will amount to giving retrospective effect to proviso to Section 14(1), which the Legislature itself did not give.

9. Mr. M. Chandrasekhara Rao, learned counsel for the respondents, has contended that the first proviso to Section 17 applies to all awards pending at the commencement of the Amendment Act or awards filed in Courts subsequently but does not apply to awards made rule of the Court before commencement of the Act and relied on the decisions in *The Superintending Engineer Vs. Gayatri Engineers Company, Engineers and Contractors, , State of Andhra Pradesh and Another Vs. P. Lakshmu Reddy, , Jajodia (Overseas) Pvt. Ltd. Vs. Industrial Development Corporation of Orissa Ltd., and Goa, Daman and Diu Housing Board Vs. Ramakant V.P. Darvotkar, . In Superintending Engineer v. Gayatri Engineers Company (supra)*, a division Bench of this Court consisting of Justice Amareswari and Justice P.L.N. Sarma held that the 1st proviso to Section

17 applies only to awards pending at the commencement of the Act or awards filed in Courts subsequently, but not to awards made rule of the Court before the commencement of the Amendment and which are subject matter of appeals or revisions. To the similar effect is the decision of the Division Bench consisting of Justice G. Radhakrishna Rao and Justice P. Ramakrishnam Raju in State of A. P. v. P. Lakhshmu Reddi (supra). These decisions do not help the respondent as the question that arises in this case has neither been raised nor decided in those cases. In Jajodia (Overseas) Pvt. Ltd. v. Industrial Devlp. Corpn. of Orissa Ltd. (supra), the question was what is meant by reasoned award. Setting out conclusions on issues without discussing the reasons for such conclusion was held to be not reasoned or speaking award. This decision also is not of any assistance to the respondent. Similarly, the decision in Goa, Daman and Diu Housing Board Vs. Ramakant V.P. Darvotkar, interpreting Section 16 of the Act is not relevant for the purpose of this writ petition.

10. To sum up, unreasoned awards affected by the amendment can be classified as follows :--

If reasons are stipulated in agreement

If reasons are not stipulated in agreement

Before 19-2-1990 After 19-2-1990 Before 19-2-1990 After 19-2-1990

Passed and filed in the Court before 19-2-1990

Invalid with consequential result of either remitting the matter to Arbitrator or decision by the Court itself on merits

Invalid with the consequential result of remitting the matter to Arbitrator

Valid

Valid Not affected by the amendment

Passed before amendment but filed after 19-2-1990

Not applicable -do- Not applicable -do-

passed and filed in the Court after 19-2-1990

Not applicable -do- Not applicable

Invalid irrespective of agreement with the consequential result of remitting the matter to Arbitrator

11. In the instant case, as it is the admitted case of the parties that the agreement did not provide for reasons in the award; applying the above principles, I hold that the award passed on 2-2-1987, before commencement of the amendment Act i.e., 19-2-1990, is valid even though reasons were not given and neither proviso to Section 14(1) nor first proviso to Section M applies to such award. In view of this, I need not go into the question of vires of two provisos.

No other point is urged by the learned counsel for the petitioner. Accordingly, the writ petition is allowed.

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12. The petitioner entered into agreement with the 2nd respondent on 20-7-1981 for supply of cement manufacturing machinery. Clause 11(2) of the agreement provided for referring any dispute, that may arise under it, to arbitration. As certain disputes arose, the petitioner nominated Justice M. S. Apte, a retired Judge of High Court of Bombay, as arbitrator, while the second respondent appointed Sri Y. Ratnakar, Advocate, as arbitrator, Justice V. D. Tuljapurkar, a retired Judge of the Supreme Court was appointed as Umpire. As there was disagreement between the two arbitrators, the matter was referred for determination by the Umpire who passed award on 22-12-1989 granting petitioner Rs.4,08,084/- together with interest of Rs. 2,82,000/- but did not give reasons. The petitioner Company filed O.S. No. 99 of 1990 before the IV Additional Judge, City Civil Court, Hyderabad, under Section 14(2) of the Act for making the award Rule of the Court. When the matter was pending in the Civil Court, A. P. Amendment Act 1 of 1990 adding provisos to Sections 14(1) and 17 of the Act came into force with effect from 19-2-1990. Apprehending that in pursuance of proviso to Section 14(1) and 1st proviso to Section 17, the third respondent would remit the award to the Umpire for furnishing reasons, the petitioner has filed this writ petition questioning the vires of proviso to Section 14(1) and 1st proviso to Section 17 introduced by Act 1 of 1990 and obtained stay of all further proceedings.

13. Sri Y. Siva Rama Sastry, learned counsel for the petitioner, raised the same contentions as urged in W.P. No. 11049 of 1990.

14. As already held by me, award passed before commencement of the amendment Act i.e., 19-2-1990, is valid even though reasons are not given, if the agreement did not provide for reasons in award. It is the admitted case of the parties that the agreement did not provide for reasons in the award. Thus, in the instant case neither proviso to Section 14(1) nor first proviso to Section 17 applies. In view of this, I need not go into the question of vires of two provisos. Accordingly, this writ petition also has to be allowed.

15. In the result, both the writ petitions are allowed and the Additional Chief Judge, Hyderabad and IV Additional Judge, City Civil Court, Hyderabad, are directed to proceed with O.S. No. 2 of 1988 & O.P. No.41 of 1988 and O.S. No.99 of 1990 respectively and dispose them of in accordance with the provisions of Arbitration Act without reference to the Amendment Act 1 of 1990. No costs.

16. Petitions allowed.