

(1985) 06 OHC CK 0005

In the Orissa High Court

Case No : Miscellaneous Appeal No. 53 of 1980

Orient Paper Mills Limited

APPELLANT

Vs

The State of Orissa and Another

RESPONDENT

Date of Decision : 24-06-1985

Acts Referred:

Arbitration Act, 1940 — Section 20, 33, 39
Orissa Forest Contract Rules, 1966 — Rule 19, 21

Citation : (1985) 60 CLT 240

Hon'ble Judges : G.B. Patnaik, J

Bench : Single Bench

Advocate : Govind Das, Jagannath Das and K.K Jena, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—This is an appeal u/s 39 of the Arbitration Act against the order of the Subordinate Judge, Bhubaneswar in Miscellaneous Case No. 52 of 1979 by which order the learned Subordinate Judge has rejected the objection filed to the award and has made the award a rule of the Court.

2. The Appellant M/s. Orient Paper Mills Limited, Brajarajnagar, had entered into an agreement with the State of Orissa through its forest authorities for collection of bamboo which is a raw material used for the manufacture of paper in the factory premises of the Appellant. The Divisional Forest Officer, Ghumusur North Division, required the Appellant by his letters dated 4-11-1974 and 7-11-1974 to maintain some registers including the conversion register and the Appellant objected to the maintenance of the same on the ground that the agreement between the parties did not oblige the Company to maintain such registers. It has also been pleaded by the Appellant that it is practically impossible for any lessee to maintain such registers giving the pre-felling condition of the area in question. The Appellant thereafter moved the State Government for a direction to the Divisional Forest Officer to withdraw the impugned letters, but the State

Government also declined the request of the Appellant. Thus a dispute arose in respect of the agreement in question and since the agreement contained an arbitration clause, the parties invoked the said arbitration clause. The named arbitrator under the agreement was the Secretary to Government of Orissa, Law Department. The dispute that was referred to the arbitrator which has been quoted in paragraph 3 of the impugned order of the Subordinate Judge is:

Whether the keeping of conversion registers by the lessee for the purpose of clump numbering and enumeration as prescribed by the Divisional Forest Officers, Sambalpur, Ghumsur North and Sundergarh Divisions vide their letters No. 4707 dated 4-11-1974, 5401 dated 7-11-1974 and 575/4F, dated 27-1-1975 respectively, is in consonance with Rules 19 and 21 of the Orissa Forest Contract Rules, 1966?

The learned arbitrator having answered the reference and passing an award in the affirmative, the Appellant filed an objection u/s 33 of the Arbitration Act before the Subordinate Judge, Bhubaneswar, and the learned Subordinate Judge having rejected the same, the present appeal has been preferred.

3. The learned Subordinate Judge has come to hold that the award is a non-reasoned award and the clauses of the agreement mentioned in the award are not incorporated into the award and, therefore, the Court has no right to refer to those clauses and examine the correctness of the conclusion of the learned arbitrator. Having held thus, the learned subordinate Judge has ultimately concluded that there is no error apparent on the face of the award and, therefore, within the limited scope permissible for a Court to interfere with an award, it is not possible for him to interfere with the same. Accordingly, the order of rejection was passed and the award was made a rule of the court.

4. Mr. Govind Das, the learned Counsel for the Appellant, has contended that the parties to the dispute having resolved as to what the dispute is and having referred the same in a particular form for the decision of the arbitrator, the arbitrator is bound under law to answer the reference following the mandate given by the parties in the terms of reference and since in the present case the arbitrator had exceeded his jurisdiction in looking into some other documents which was not the intention of the parties to the dispute, the arbitrator committed serious error and the award is rendered void on this score. The learned Subordinate Judge has committed an error in not examining this aspect of the Appellant's contention and in rejecting the objection filed u/s 33 of the Arbitration Act, merely on the ground that the award is a non-reasoned award and, therefore, the Court has no jurisdiction to interfere with the same. The learned Government Advocate appearing for the State, however, contends that this was not a reference u/s 20 of the Arbitration Act and, therefore, the Arbitrator does not exceed his jurisdiction by referring to documents which might not have been intended to be referred to by the parties to the dispute and, therefore, the award in the present case cannot be said to be one without jurisdiction. The rival contentions require careful examination.

5. The existence of a difference or dispute is an essential condition for the arbitrator's jurisdiction; if there is no dispute there can be no right to demand arbitration. One must, therefore, be satisfied that there is some real point or difference which requires to be submitted to arbitration. A dispute implies an assertion of a right by one party and a reputation thereof by another. There must be a point of difference or dispute between the parties for the decision of the arbitrator. Any question on which the parties join issue is a dispute, which is analogous to a cause or action in a suit before a civil court.

6. The dispute which arose in the present case and required adjudication of the arbitrator is whether the requirement of keeping or conversion register by the lessee for the purpose of clump numbering and enumeration is in consonance with Rules 19 and 21 or the Orissa Forest Contract Rules, 1966. The parties to the dispute, therefore, were *ad idem* on this issue, which was the subject matter for adjudication before the learned arbitrator. But in answering the dispute the learned arbitrator took recourse to Clause 14 of the agreement and answered the dispute in affirmative. The contention of the learned Counsel for the Appellant is based upon this reference by the arbitrator to Clause 14 of the agreement. According to Mr. Das the learned Counsel, an arbitrator acting on a written submission must confine himself to the terms of the submission and if he exceeds the same then the award is vitiated. This submission of the learned Counsel gets support from the Full Bench decision of the Calcutta High Court in the case of *Ramanath Agarwalla Vs. Goenka and Co. and Others*, . The learned Judges of the Calcutta High Court quoted the observations of Parke, B. from the famous case of *Smith v. Goff* (1845) 153 E.R. 475 to the effect.

...If you had intended it (examination of witnesses on oath) to be imperative on them (arbitrators), you should have held the order of reference framed accordingly, and have stated therein, that the arbitrators shall examine the witnesses on oath.

and noticed the author's view in Halsbury's Laws of England, 3rd- Edition, Vol. 2, page 35, Article 80, to the following effect:

In the conduct of arbitration proceedings, it is well-settled, the arbitrator or umpire must conform to any directions which may be contained in the agreement of reference itself.

The learned Judges of the Calcutta High Court then referred to the decision of the Supreme Court in the case of *Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others*, , and ultimately held:

In our case, the Arbitrator's jurisdiction was limited to looking into the books of account of two commercial concerns and finding out the amounts due by one party to the other. The Arbitrators have made their award without looking into any books. They have, therefore, exceeded their jurisdiction and the award is invalid....

The learned Counsel for the Appellant also placed reliance on the decision of the Supreme Court in the case of Gobardhan Das Vs. Lachhmi Ram and Others, , wherein the Supreme Court observed:

We are in agreement with the High Court that the agreement for reference to arbitration should be liberally construed by the court so as to lean in favour of upholding the award given by arbitrators, but that is no ground for sustaining the award where the arbitrators have clearly misdirected themselves and have exceeded the scope of their authority....

(Underlining is mine)

Applying the principles of the aforesaid cases to the facts of the present case and the dispute referred to the arbitrator as quoted in paragraph 3 of the order of the Subordinate Judge, I am of the opinion that the learned arbitrator exceeded his jurisdiction in referring to Clause 14 of the lease agreement in answering the reference and, therefore the award is vitiated on that score.

7. In the result, therefore, I would set aside the award of the arbitrator dated 16-12-1978 and the order of the Subordinate Judge dated 21-12-1979 and remit the matter to the arbitrator, namely, the Secretary to Government, Law Department, for re-disposal of the dispute in accordance with law.

This appeal is accordingly allowed, but in the circumstances, there would be no order for costs.