
(1963) 04 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 66 of 1961

Sowaran Singh

APPELLANT

Vs

Municipal Committee, Pathankot and Another

RESPONDENT

Date of Decision : 08-04-1963

Acts Referred:

Arbitration Act, 1940 — Section 28, 28(1), 30, 34
Arbitration Rules, 1940 — Rule 3

Citation : AIR 1963 P&H 427 : (1963) 2 ILR (P&H) 320

Hon'ble Judges : Shamsheer Bahadur, J

Bench : Single Bench

Advocate : D.R. Manchanda and K.L. Kapur, for the Appellant; V.C. Mahajan, for the Respondent

Final Decision : Allowed

Judgement

Shamsheer Bhadur, J.—This is an appeal from the order of the Senior Subordinate Judge, Gurdaspur, granting a decree in accordance "with the award of the Arbitrator for Rs. 582.75 nP. out of the aggregate claim laid by the appellant for a sum of Rs. 14,732.75 nP., against the respondent Committee.

2. The claim of Swaran Singh appellant was made in pursuance of a contract made by him with the respondent Municipal Committee, Pathankot, for the construction at sewage works. The Superintending Engineer, II Public Health Circle Patiala, was appointed an Arbitrator under an agreement of the parties. The reference to arbitration was made on 24th of November, 1959, and the award, which was sought to be made a rule of the Court was made on 5th of July, 1960.

3. The Arbitrator accepted the claim of the appellant only for a sum of Rs. 582.75 nP. Aggrieved by the order of the Senior Subordinate Judge, passing a decree in accordance with the award, the contractor has come to this Court in appeal.

4. It is urged by Mr. Daulal Ram Manchanda, the [earned counsel for the

appellant, that the arbitrator did not send a notice to the Municipal Committee itself. It appears that the Executive Engineer conducted proceedings before the Arbitrator on behalf of the Municipal Committee which had authorised him so to act on its behalf. The Municipal Committee which might have had a valid objection never made a grievance of it and it appears that even the appellant did not think much of this matter till the stage of arguments. No such point was ever raised before the Senior Subordinate Judge and I have no hesitation at all in rejecting this ground of attack against the award.

5. It is next contended by Mr. Manchanda that the Arbitrator in giving his findings with regard to the various items of the claim did not discuss in detail the reasons for his conclusion. When the parties choose a domestic tribunal for settlement of their disputes the Arbitrator is not bound to give reasons for the award. It is not denied that full opportunity was given by the Arbitrator to the parties to present their respective points of view and evidence was adduced before him. The award cannot be impugned on the ground that the Arbitrator did not give detailed reasons for his conclusion.

6. The third ground of attack against the award is, however, substantial. The award which has been made a rule of the Court was made admittedly four months after the Arbitrator had entered into reference. Paragraph 3 of the First Schedule to the Arbitration Act, 1940, says that "the Arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow." Sub-section (1) of Section 28 of the Act is to this effect:

"The Court may, if it thinks fit, whether time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award."

The submission of Mr. Manchanda is that the arbitrator must either submit his award within four months of his entering on the reference or the Court should be moved to allow extension of time. That this provision of law is mandatory admits of no doubt. Reference may be made to the supreme Court authority of *Hari Shankar Lal Vs. Shambhunath Prasad and Others*, . Mr. Justice Subba Rao, in delivering the majority judgment observed at p. 80 that

"Rule 3 of the First Schedule to the Act is couched in a mandatory form and it imposes a duty on the arbitrators to make their award within one or other of the three alternative periods mentioned therein."

What appears to have been done in this case is that the representatives of the Municipal committee assented to the Arbitrator proceeding with the reference after the statutory period of four months had expired. This clearly does not fall within any of the three methods which it is obligatory for an Arbitrator to adopt. The language of paragraph 3 of the First Schedule and Section 28 of the Arbitration Act makes it clear that the Court alone has to be moved for enlarging

the time for making the award. This conclusion stems from the mandatory provision of Rule 3 and the machinery provided in Section 28 for a motion to the Court. It may also be observed that the marginal heading of Section 28 is "power to Court only to enlarge time for making award." It is clearly envisaged in this section by the legislature that the parties cannot by consent confer jurisdiction on an Arbitrator to proceed with the reference after the expiry of four months and "Court only" has the power to enlarge the time.

I am not unmindful of the rule of construction that the headings pre-fixed to section or sets of sections in statutes cannot control the plain words of statutes but they can certainly explain an ambiguity in words if it exists. As stated in Maxwell on Interpretation of Statutes (1962 edition) at page 49,

"While the Court is entitled to look at the headings in an Act of Parliament to resolve any doubt they may have as to ambiguous words, the law is quite clear that you cannot use such headings to give a different effect to clear words in the section, where there cannot be any doubt as to their ordinary meaning."

Now, the heading of Section 28 makes clear beyond doubt what is already expressed so plainly in the section itself. Thus, the heading is not in any way against the tenor and phraseology of Section 28, rather it clarified that the enlargement of time can be obtained only by a motion to Court.

7. The learned counsel for the appellant has brought to my notice two Division Bench authorities in support of his proposition which to my mind flows clearly from the language of the statute itself. *Kamta Pd. Nigam Vs. Ram Dayal and Others*, is a Division Bench authority of Bind Bashi Prasad and Mushtaq Ahmad JJ. of the Allahabad High Court, where it was held that an award by the arbitrators has to be made within the fixed time unless the time has been extended by Court u/s 28. It cannot be pleaded that the party raising an objection is estopped by conduct from challenging the award on this ground as there is no estoppel against statute. It may be that the representative of the Municipal Committee did not object or tacitly agreed to the Arbitrator, proceeding with the reference after the statutory period of four months had expired. This would not, however, confer jurisdiction on the Arbitrator on the simple ground that there can be no estoppel against statute.

This Bench decision of the Allahabad High Court was followed in a Division Bench judgment of the Patna High Court of Sinha and Dayal JJ. In *Lakhmir Singh Vs. Union of India (UOI) and Another*, . In the case before the Patna High Court the Arbitrator entered into reference on 8th of January, 1947, and it was on 27th of June, 1947 that the award was made. Four months expired on 8th of May, 1947, and on 9th of May 1947, the claim of the plaintiff was permitted to be amended before the arbitrator. It was held by the Division Bench that on a simple calculation the award was beyond four months of the arbitrator entering on the reference and was, therefore, clearly hit by paragraph 3 of Schedule 1. The plaintiff was not estopped by his own conduct from challenging it as there was no

estoppel against the statute. On behalf of the respondent reliance 19 placed on an earlier Division Bench judgment of the Patna High Court in which the provisions with regard to arbitration were somewhat different in language but it is submitted that in effect they were not much different from what is now contained in the Indian Arbitration Act.

In that case of *Patto Kumari saheba v. Upendra Nath Ghosh* 50 Ind Cas 52: (AIR 1919 Pat 93), it was held by the Bench of Atkinson and Das JJ. that where parties attend and recognise that the arbitrator has jurisdiction to continue the arbitration, even though the time for making the award has expired, they are estopped by their conduct from seeking to impugn the award on the ground that it was invalid by reason of being filed out of time, the decision in this case was based primarily on some old English decisions and the principle of law was stated thus at p. 56: (of Ind Cas) : Cat p. 97 of AIR) :

"If the law in this country is to be administered on the basis of equity and good conscience, then certainly I say it is not equity, nor is it in keeping with good conscience, that a party to an arbitration proceeding should invite a Court of arbitrators to do a certain act for his benefit and advantage; and when he has gained such benefit and advantage, but failed to secure final success in the proceeding itself, that such person should be permitted to repudiate the award of the arbitrators solely and only on the ground that because the arbitrators conceded to him the benefit he sought, and of which he availed himself; that thus their award is so vitiated by such transparent illegality as to coerce a Civil Court to set aside the award so made." As has been made clear by the learned Judges, they considered themselves bound in administering the law of arbitration to be governed by the principles of equity and good conscience. It is not legitimate to extend the beneficent rule of equity enunciated in this authority to determine a matter which has been so clearly and unequivocally provided for in the statute itself. The scope for administering the law on basis of equity and good conscience cannot be extended in the present instance where the statute has made a clear provision for the Court to be moved when extension of time is sought for. There can be no conferment of jurisdiction by consent where none exists and the authority of a party's representative cannot be enlarged to waive the rule which has been laid down by the statute itself.

8. In this view of the matter, I consider that the award of the Arbitrator must be set aside and I would accordingly allow this appeal and set aside the award as there is divided success of the parties with regard to the points raised in this appeal, I would make no order as to costs.