
(2006) 01 CHH CK 0036

In the Chhattisgarh High Court

Case No : Misc. Appeal No's. 823 and 846 of 1998

State of Madhya Pradesh and Others

APPELLANT

Vs

Narendra Barmani

RESPONDENT

Date of Decision : 12-01-2006

Acts Referred:

Arbitration Act, 1940 — Section 17, 20, 30, 33, 39

Citation : (2006) 2 MPHT 102

Hon'ble Judges : Vijay Kumar Shrivastava, J

Bench : Division Bench

Advocate : J.D. Bajpai, for the Appellant; H.S. Patel, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shrivastava, J.—Both these appeals have been directed against the judgment and decree dated 10-1-1998 passed by District Judge, Jagdalpur by which award passed by Conservator of Forest, Kanker on 27-3-1996 has been made Rule of the Court.

2. For disposal of these appeals, facts material in brief compass are that respondent/plaintiff entered into agreements with the appellants for transportation of wood logs and executed two written agreements which contain arbitral clause. Respondent/plaintiff failed to transport the wood in conformity with the promise of the contract, therefore, for breach of contract, contracts awarded to him have been cancelled and Rs. 15,202/- and Rs. 29,348/- have been confiscated. Respondent/plaintiff filed an application u/s 8 read with Section 20 of the Arbitration Act, 1940 (for short "the Act"). Learned District Judge after calling the agreement and providing opportunity to both the parties referred the dispute to the Conservator of Forest Kanker to decide the matter as an arbitrator.

3. Arbitrator after affording due hearing to the parties draw an award dated 27-3-1996 and send the same along with other papers to the District Judge. The Conservator of Forest Kanker in that award although confirm the imposition of

fine, i.e., Rs. 500/- and 300/-, but held that the confiscation of Rs. 15,202/- and Rs. 29,348/- by Divisional Forest Officer is not in accordance with law, therefore, the amount is liable to be returned to the contractor. No one challenged the award u/s 30 of the Act. The District Judge returned the award to draw the same on stamp, but instead of drawing the award on stamp fresh award dated 5-6-1996 has been sent to the Court. Respondent/plaintiff raised objection over the subsequent award.

4. Learned District Judge after elaborate discussion, held that the award dated 27-3-1996 was returned to the arbitrator only for affixing necessary stamps. No fresh award by his successor can be passed. Therefore, subsequent award dated 5- 6-1996 has no legal force and the award dated 27-3-1996 passed by the arbitrator alone is required to be made Rule of the Court, has passed the impugned judgment and decree in terms of the valid award.

5. For setting aside any award, grounds have been mentioned in Section 30 of the Act and on those grounds written application is required to be filed u/s 33 of the Act. The award dated 27-3-1996 has not been challenged by any of the parties in accordance with Sections 30 and 33 of the Act. Thereafter, without any referral, fresh award dated 5-6-1996 which has been passed by the Conservator of Forest Ranker has no force in the eye of law.

6. Section 17 of the Act reads as below:

Judgment in terms of award :-- Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with the award.

7. Award dated 27-3-1996 was not set aside and subsequent award dated 5-6-1996 was without jurisdiction. Therefore, District Judge Bastar has no other way except to pronounce the judgment in accordance with the award and to pass decree according to it; which learned District Judge did; that too after due consideration of all the facts and material on record. From the perusal of record it is also apparent that the Conservator of Forest Kanker after affording proper opportunity to the parties and due appreciation of evidence on record, passed the award on 27-3-1996. Under these circumstances neither the impugned judgment and decree suffers from any infirmity nor comes within the ambit of Section 39 or 17 of the Act for interference.

8. No other question has been raised during the argument by the parties.

9. In the result, both the appeals filed by the appellants are liable to be dismissed and therefore, they are dismissed accordingly.

10. Taking into consideration facts of the case, both the parties are directed to bear their own costs.