
(1982) 04 OHC CK 0024

In the Orissa High Court

Case No : Civil Revision No. 310 of 1981 and M.A. No. 139 of 1981

State of Orissa and Others

APPELLANT

Vs

Patel Engineering Company Ltd.
 Secretary to
Government of Orissa, Irrigation and Power Department and
Others Vs Patel Engineering Company Ltd. and Others

RESPONDENT

Date of Decision : 16-04-1982

Acts Referred:

Arbitration Act, 1940 — Section 28, 29, 30, 33

Citation : (1982) 54 CLT 6

Hon'ble Judges : N.K. Das, J

Bench : Single Bench

Advocate : Advocate General and Addl. Standing, for the Appellant; G. Rath, R.K. Rath, N.C. Panigrahi and B.K. Nayak, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Das, J.—All the three cases arise out of one arbitration proceeding in connection with an F-2 contract. Civil Revision No. 310 of 1981 arises out of Misc. Case No. 155 of 1979 of the Court of the Subordinate Judge, Bhubaneswar. This revision is filed against the order passed by the Subordinate Judge allowing extension of time u/s 28 of the Arbitration Act after submission of the award by the arbitrators. Miscellaneous Appeal No. 139 of 1981 and Miscellaneous Appeal No. 141 of 1981 arise out of orders passed in Misc. Case Nos. 267 of 1979 and 274 of 1979 respectively. Misc. Case No. 267 of 1979 was filed u/s 30 read with Section 33 of the Arbitration Act on 18-6-1979 by the Appellants in Miscellaneous Appeal No. 139 of 1981 before receipt of the award in Court. Misc. Case No. 274 of 1979 was filed on 21-7-1979 after the notice of filing of the award was received by the State Government from Court.

2. The Chief Construction Engineer, Orissa (Rengali Project) was nominated by the State Government and a retired Chief Engineer was nominated by the contractor as joint arbitrators. The arbitrators entered into reference on

23-9-1979, appointed an umpire and called upon the parties to file their claims and counter claims. As hearing could not be completed, time for making the award was extended which expired on 31-3-1979. The arbitrators informed both the parties by letter dated 28-3-1979 that on account of pre-occupation of the Chief Engineer nominated by the State Government, the award could not be made ready by 31-3-1979 and the parties were required to take steps for enlargement of time till 30-4-1979. The contractor agreed, but the State Government did not agree for extension of time. The contractor, thereafter filed an application in Court on 7-4-1979 for extension of time u/s 28 of the Arbitration Act. The State Government through the Executive Engineer appeared on 19-4-1979 and wanted time to file objection. In the meanwhile, the arbitrators made their award on 30-4-1979 and sent the same to the Court in due course.

Misc. Case u/s 28 of the Arbitration Act and the two other Misc. Cases raising objection to the award were heard analogously and by order dated 7-3-1981 the learned Subordinate Judge allowed the application for extension of time u/s 28 of the Arbitration Act, dismissed the two objections raised by the State Government and confirmed the award. He also allowed interest u/s 29 of the Act from the date of the decree till realisation.

3. The following circumstances appear from the materials available on record. After prolonged hearing, the case had been adjourned to 19th to 21st of January, 1979 for hearing at Bhubaneswar. On 19th, the contractor produced some documents before the arbitrators. On 20th, the arbitrators, in accordance with the earlier order of the Subordinate Judge, rejecting the claim of privilege for production of documents, passed an order rejecting the objection taken by the State to the production of the documents called for earlier by the contractor. But no documents were produced by the State Government and the hearing was closed on 20th of January, 1979. Three days thereafter, namely on 23rd of January, an application was filed by the State Government raising objection for having not been given time to make their objection on the documents filed by the contractor. By order dated 4th February, 1979, the arbitrators decided to have final sitting at Hyderabad on 17th and 18th of February, 1979 to enable the State Government to make their submission. But the State Government again asked for time and, accordingly, final hearing was adjourned to 3rd and 4th of March, 1979 at Hyderabad. Since the Department of Government again asked for time, hearing was again adjourned to 10th and 11th of March, 1979 at Bhubaneswar. The Department still did not appear and an application was sent on 8-3-1979 stating that no further hearing was necessary as that would be prejudicial to the interest of the State Government. Since, opportunity was given by the arbitrators, but the same was not availed of, hearing was closed on 15-3-1979.

4. As one of the arbitrators, namely, the Chief Engineer nominated by the State Government was busy from the second week of March in connection with year-

ending programmes, the award could not be delivered within a fortnight, i.e. before 31-3-1979 and the same was delivered on 30-4-1979. The State Government contends that the award passed after 31-3-1979 is no award in the eye of law as the time had already expired.

5. Section 28 of the Arbitration Act provides that the Court may enlarge time for making the award irrespective of whether the time for making the award has expired or not and whether the award has been made or not. The Supreme Court had to decide a question of the present nature in *Hari Shankar Lal Vs. Shambhunath Prasad and Others*, . It was contended in that case that after the expiry of the statutory period of four months the arbitrators become functus officio. The Supreme Court held that after the expiry of four months, the arbitrators become functus officio, unless the period is extended by Court u/s 28 of the Act; such period may also be extended by the Court, though the award has been actually made. This High Court had to decide a case of the like nature in *Narsing Das Hiralal Ltd. and Another Vs. Bisandayal Satyanarain Firm*, . The Madhya Pradesh High Court had also decided in the same way in *Sheoramprasad Ram Narayanlal Bania Vs. Gopalprasad Parmeshwardayal Shukla and Others*, . A Full Bench of the Patna High Court in *Bokaro and Ramgur Ltd. Vs. Dr. Prasun Kumar Banerjee*, , has held that in terms of Section 28 of the Arbitration Act, the Court is competent to enlarge time even after the making of the award.

6. Section 28 of the Arbitration Act clearly provides that even after the filing of the award, the Court can extend time. In instant case, the Court had extend time and within the extended period the award has been filed by the arbitrators. From the narration of facts as above, it would appear that the arbitrators are not guilty of any laches or delay in submission of the award, inasmuch as hearing had been fixed to 17th and 18th of February, 1979 to enable the State Government to make its submission, if any. Several adjournments were taken by the State Government till 10th of March and finally the hearing was closed on 15-3-1979. when by an application dated 8-3-1979 it was intimated by the State Government that further hearing was not necessary. The award was thereafter made final on 30-4-1979. Reliance has been placed by the State Government on decision reported in *Hindusthan Steel Ltd. v. Amarnath Sharma* AIR 1971 Ori 288. That was a case in which three years had elapsed when the award was filed and the award was in favour of a party who was all along in the habit of being negligent and guilty of dilatory tactics. But in that decision it has been held that the Court has power to extend time u/s 28 of the Act. The only rider that has been found in that case is that the Court cannot utilise the power arbitrarily. But in the instant case, that question does not arise. The period expired on 31-3-1979. Shortly, thereafter, an application was made to extend the time for one month only and the Court extended the time for one month. Moreover, the delay in making the award was due to the State Government. It appears that the State Government wanted that the hearing of the proceeding was to be taken up again, but although thereafter it took several adjournments, ultimately intimated that no more argument was necessary. Thus, the laches were on the part of the

State Government and the arbitrators were not to blame.

7. The next contention of the State Government is that the award is liable to be set aside on account of bias on the part of the arbitrators. It is contended that after the close of hearing the case was reopened by the arbitrators without indicating on what further points hearing was necessary. It should be remembered that on 19th of January, 1979 the contractor filed some documents before the arbitrators. Hearing was closed on 20th January, 1979. Three days thereafter, a petition was filed by the State Government that it had not been heard on the documents held by the contractors. A letter was also written by the arbitrators on 4th of February intimating the parties that in view of the petition of the State Government dated 23-1-1979, hearing was fixed to 17th and 18th of February to enable the Department of the Government to make final submission. There is nothing to show that the Department was taken by surprise. It was clearly intimated in the letter dated 4-2-1979 that on the request of the Department of the State Government hearing was again fixed to 17th and 18th of February. It is further contended that though the privilege matter was argued in July, 1978, the arbitrators did not pass any order till 20th January, 1979. The undisputed fact is that after the privilege matter was heard by the arbitrators, the Department moved the Subordinate Judge, Bhubaneswar for direction on the plea of privilege raised by the Department, but the Court rejected the same. According to the decision of the Court, the arbitrators also rejected the claim of privilege for production of some documents on 20th January, 1979. In spite of such rejection, the Department did not produce any document. The arbitrators reminded the Executive Engineer by letter dated 10-3-1979 to produce the documents as ordered earlier. But it was not responded to. The Department defaulted to produce the documents as called for. Therefore, it was not entailed to raise the plea of bias against the arbitrators. From the aforesaid facts it is clearly established that no bias can be attributed to the arbitrators. The Department has challenged the award on several grounds. The award is a non-speaking award. Neither the agreement nor any document has been made a part of the award. The award also does not refer to the agreement of any other document. As the award is a non-speaking one, the different grounds of attack raised by the State Government in regard to award on different claim items and correctness of the same on merit are not tenable. The award has not made any reference to agreement in respect of any particular claim and no reasons have been stated in the award. The Department has raised questions about the arbitrators' allowing same claims relating to escalation of price, increased payment on account of increase in the costs of working due to delay in allotment of foreign exchange and increase in the rate of concrete lining consequent upon prolongation of the execution of the excavation and claim for extra lead on dumping of rock excavated from the tunnel. A cursory glance at the award would show that no reasons have been assigned and no papers have been made a part of the award. The arbitrators have jurisdiction to pass a non-speaking award.

8. It is well settled that reasons may not be assigned by the arbitrators and a

lump award can be given by the arbitrators. In *Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd.* 1967 S.C.D. 937, it has been held that the arbitrator could give a lump sum award. He is not bound to give a separate award for each claim. His award on both fact and law is final. There is no appeal from his verdict. The Court cannot review his award and correct any mistake in his adjudication, unless an objection to the legality of the award is apparent on the face of it. In that case, the arbitrator gave no reasons for the award and the Supreme Court held as follows:

We do not find in the award any legal proposition which is the basis of the award, far less a legal proposition which is erroneous. It is not possible to say from the award that the arbitrator was under a misconception of law.

The same view was also expressed by the Supreme Court in *N. Chellappan Vs. Secretary, Kerala State Electricity Board and Another*, . It was held in that case that the umpire as sole arbitrator was not bound to give a reasoned award and if in passing the award, he makes a mistake of law or of fact, that is no ground for challenging the validity of the award. It is only when an erroneous proposition of law is stated in the award and which is the basis of the award can the award be set aside or remitted on the ground of error of law apparent on the face of the record. Following the decision of the Privy Council in *Champsey Bhara & Co. v. Jivraj Baloo Co. Ltd.* AIR 1923 P.C. 66 the Supreme Court in a series of cases has clearly laid down that unless an argument or any document is incorporated into the award or appended thereto, the Court has no jurisdiction to look into any other paper not forming part of the award to test its correctness. In *Allen Berry & Co. v. Union of India* 1971 S.C.D. 125, it has been held that mere general reference to the contract in the award is not to be held as incorporating it. The principle of reading contracts or other documents into the award is not to be encouraged or extended. The rule thus is that as the parties choose their own arbitrator to be the judge in the dispute between them, they cannot, when the award is good on the face of it, object to the decision either upon the law or the facts. Therefore, even when an arbitrator commits a mistake either in law or in fact in determining the matters referred to him, but such mistake does not appear on the face of the award or in a document appended to or incorporated in it so as to form part of it, the award will neither be remitted nor set aside notwithstanding the mistake. In view of the aforesaid dictum by the Supreme Court fresh objections raised by the State Government are not tenable.

9. The arbitrators have awarded interest only from the date of the award till the date of the decree. In, *Union of India v. Bungo Steel Furniture Pvt. Ltd.* 1961 S.C.D. 142, it has been held that the arbitrator has jurisdiction to award interest from the date of award till the date of decree. Therefore, grant of interest is in accordance with law. The Subordinate Judge has awarded interest at 12 per cent from the date of decree and this is supported by Section 29 of the Arbitration Act.

10. Reliance has been placed by the State Government in the case reported in *Alopi Parshad and Sons Ltd. Vs. Union of India (UOI)*, . That was a case of

reasoned award given and referred to in the body of the award and the findings were based on reference to contract. The facts and circumstances are completely different arising out of that case from the facts of the present case. Therefore, the decision is of no help to the instant case.

11. In the result, all these cases have no merit. The Civil Revision as well as the Miscellaneous Appeals are dismissed, but there will be no order as to costs.