
(1986) 11 OHC CK 0029

In the Orissa High Court

Case No : Miscellaneous Appeal No. 499 of 1982

State of Orissa and Others

APPELLANT

Vs

Sri Khemohand Agarwala

RESPONDENT

Date of Decision : 10-11-1986

Acts Referred:

Arbitration Act, 1940 — Section 30, 33, 39

Citation : (1987) 63 CLT 4

Hon'ble Judges : D.P. Mohapatra, J

Bench : Single Bench

Advocate : D.P. Sahoo, for the Appellant; R.K. Rath and B.K. Nayak, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—In this appeal u/s 39(vi) of the Arbitration Act, the Appellants seek to assail the order of the Subordinate Judge, Bhubaneswar refusing to set aside the award passed by the Arbitrator.

2. The Respondent, a contractor, was entrusted with the work "Excavation of One Main canal from R.D. 15.636 K.M. to 19.376 K.M." under agreement No. 19-F-2- of 1977-78 of Bolangir Irrigation Division. The agreement was entered into between the Respondent and the Executive Engineer Bolangir Irrigation Division Appellant No. 3, On behalf of the State Government. Some disputes relating to the aforesaid work having arisen between the parties, Shri G.S. Patnaik, a District Judge, who was then the Chairman of the Arbitration Tribunal, was appointed as Arbitrator for adjudication of the disputes between the parties. Before the said Arbitrator the Respondent filed statement of claims, claiming Rs. 13,41,613.00 under 20 different statement of claim. Appellant No. 3 in his written statement denied each item of claim laid by the Respondent. The Arbitrator passed an unreasoned award allowing the claims of the Respondent to the extent of Rs. 7,13,000.00. The award is quoted hereunder.

AWARD.

After perusal of the statement of claim of the claimant, counter statement and documents filed by the parties and after careful consideration of the arguments advanced by the learned Advocates for both the parties I have come to the following conclusion.

Order

The claimant is entitled to receive a sum of Rs. 7,13,000/- (Rupees seven lakhs and thirteen thousand) only with interest " 6% per annum from the date of award till the date of actual payment or decree which ever is earlier.

After the award was received in the court of the Subordinate Judge, Bhubaneswar, the Respondent filed the application to make it rule of the court while the Appellants filed objection under Sections 30 and 33 of the Arbitration Act and prayed to the court to set aside the award.

3. The Subordinate Judge on consideration of the petitions filed by the parties refused to set aside the award. The said order is impugned in this appeal. As it appears from the discussions in the impugned order, the main grounds on which the court below based his decision are that the Arbitrator has passed an unreasoned, single sentence award making no reference to any particular document or evidence therein and that the Arbitrator has, mentioned in the award that he passed the same after perusal of the statement of claims and counter claims and after consideration of the documents filed by the parties and the arguments advanced by counsel for both the parties. On these grounds the court repelled the contention raised on behalf of the Appellants that the award is based on no evidence and is vitiated due to misconduct of the Arbitrator.

4. The learned Standing counsel appearing for the Appellants has contended before me that the award of the Arbitrator is based on no evidence and on a bare perusal of the written statements filed by the parties and the materials on record it would be clear that no reasonable person with slight experience of judicial or quasi judicial matters would come to the conclusion arrived at by the Arbitrator. The learned Counsel for the Respondent on the other hand has supported the impugned order on the oft repeated principle of limited scope for interference by court with an unreasoned award.

5. It is no doubt true that scope for interference by court with the award passed by an Arbitrator, a Judge nominated by choice of parties, is extremely limited. It is neither permissible for the court to sit in appeal over the award on merit nor is it permissible for the court to substitute its views in place of those of the Arbitrator. The question is within these recognised limitations of its jurisdiction what is the function of the court while considering the prayer of confirming the award and the objections under Sections 30 and 33 of the Arbitration Act? Is the court a mere rubber stamp to give the award a status of a decree or it has a corrective role relating to it? This matter has been engaging attention of different

courts from time to time. On the basis of the decisions, some principles which have emerged may be enumerated:

(a) If the award is based on no evidence, it is open to the court to interfere with it.

(b) If the award is perverse and the court comes to the conclusion that no reasonable person would have come to the conclusion arrived at by the Arbitrator, then it is open to the court set aside the award.

(c) If the Arbitrator has misconducted himself in committing an irregularity, procedural or otherwise, then too the court can interfere with the award. It has been clarified by the courts that misconduct does not mean a moral turpitude or anything of that kind. The word is used in a technical sense denoting "Irregularity". It takes within its sweep a variety of grounds on which an award may be set aside on grounds of public policy.

(d) If the Arbitrator has failed to comply with the principle of natural justice the award is available to be interfered with by the court.

To notice some of the decisions, K.P. Poulose v. State of Kerala and Anr. AIR 1978 S.C. 1259, The Board of Trustees, Paradeep Port Trust v. Radio Foundation Engineering Ltd. and Ors. 45(1978) C.L.T. 106, State of Orissa and Others Vs. Gangaram Chhapolia and Another, , The General Manager Kalinga Iron Works (Spun Pipe Plant) Vs. B. Rajkumar Patra, and The Fertilizer Corporation of India Ltd. Vs. Bharat Painters, .

6. The Subordinate courts should bear in mind that the legislature has vested jurisdiction in them to set aside the award u/s 30 of the Act and to determine the questions relating to existence or validity of arbitration agreement or an award or the effect of either, u/s 33 of the Act, with a definite purpose. It is not as if the court is simply to put its stamp of approval on every award, however substantial the objection to the award may be, merely on the ground that the Arbitrator being a tribunal of the parties choosing, they cannot complain about any action of the Arbitrators. This principle assumes greater importance in cases of unreasoned awards passed by the Arbitrators which is so common these days. It is well settled that the award cannot be held to be vitiated for want of reasons given by the Arbitrator for allowing or rejecting the claims of the parties. In case of such an award the task of the courts I though difficult still remains to see that no miscarriage of justice is done under the garb of an unreasoned and cryptic award which merely narrates that on careful consideration of the claims of the parties, the materials produced by them and the contentions raised by counsel appearing for them a lump sum amount is awarded. The position relating to the court's jurisdiction to interfere with the award passed by the Arbitrator does not alter due to the unreasoned character of the award.

7. In the present case the main ground on which the award was assailed by the Appellants before the court below was that it was based on no evidence. The

reply by the court below to this submission, as it appears from the impugned order, was that since the Arbitrator has stated in the cryptic award that he has considered all materials on record, therefore it has to be assumed that the award is based on evidence. In my view this is patently erroneous. When a contention that" the award is based on no evidence is raised before the court, it is incumbent for the court to be satisfied that there is some material to support the award. Of course it is not for the court to assess the materials or to judge sufficiency of the materials. Even this basic duty of the court seems to have been abrogated on the plea that it is an unreasoned award. Accepting the view taken by the trial court would lead to the absurd position that an unreasoned award can never be challenged on the ground of being supported by no evidence. In course of hearing I called upon the learned Counsel for the Respondent to point out from the lower court records any material from which prima facie an impression can be created that the sum awarded by the Arbitrator was based on evidence. Despite adjournments having been granted the learned Counsel was not able to point out any such material. It is pertinent to note here that before the Arbitrator the parties led no oral evidence. Most of the documentary evidence was filed on behalf of the Appellants. The evidence on behalf of the Respondent comprises of some correspondence filed with his claim statement, I made it clear to the learned Counsel for the Respondent that he could point out from the records filed by the Appellants if any support could be had to the award therefrom. He was unable to pick up any such material also.

8. Coming to the proceeding before the Arbitrator, as noticed earlier, the Arbitrator was a senior District Judge who was then posted as the Chairman of the Arbitration Tribunal. From the order sheet which is available on record, it appears that some documents were filed on behalf of the Appellants (Defendants before the Arbitrator). No document excepting the correspondence with the claim statement was filed on behalf of the Respondent during the proceeding before the Arbitrator. After close of the hearing, it appears from the order sheet, the Arbitrator made a spot inspection for better understanding of the case. He has not made any note of his spot inspection. There is nothing on record to indicate that the Arbitrator has applied his mind to the claims and if so the basis on which he allowed the claims of the Respondent to the extent indicated in the award. This is an unsatisfactory way of adjudication of disputes especially when substantial amount was being claimed by the Respondent (Rs. 13,41,613.00) and each and every item of claim of the Respondent was being denied by the other side, If an award passed on such procedure is held to be immune from challenge as the court below appears to have held it would, in my opinion, lead to miscarriage of justice. The Subordinate Judge therefore, clearly erred in confirming the award of the Arbitrator.

9. In view of the analysis, in the foregoing paragraphs, the judgment of the Subordinate Judge, Bhubaneswar in O.S. No. 64 of 1982-1 and the award dated 19-2-1982 of the Arbitrator are set aside. Since the dispute between the parties still subsists the matter has to be remitted back to the Arbitrator for fresh

disposal in the light of the observations made in this judgment after giving the parties reasonable opportunity to adduce evidence in support of their case. As noticed earlier. Shri G.S. Patnaik, a District Judge, who was then the Chairman of the Arbitration Tribunal was appointed as the sole Arbitrator in this case. As he has ceased to hold the post and has also retired from Government service, it would neither be proper nor can be convenient to remit the matter to him. In such circumstances, in my view, the best interest of the parties can be served if the matter is remitted to Shri V.V.R. Sharma at present Chairman, Arbitration Tribunal. Accordingly the claims raised by the Respondent are referred to Shri V.V.R. Sharma, District Judge and Chairman of the Arbitration Tribunal for adjudication. The Arbitrator is directed to issue notice to the parties and he shall submit his decision within a period of four months from the date of receipt of the records by him. The Subordinate Judge, Bhubaneswar would take necessary steps to send the records to the Arbitrator without delay.

10. The Miscellaneous Appeal is accordingly allowed and the cross objection is dismissed. There will be no order for costs. The lower court records be returned forthwith.