

(1982) 09 OHC CK 0020
In the Orissa High Court
Case No : Misc. Appeal No. 309 of 1982

State of Orissa

APPELLANT

Vs

Kirtan Charan Mohanty

RESPONDENT

Date of Decision : 22-09-1982

Acts Referred:

Arbitration Act, 1940 — Section 30, 39

Citation : AIR 1983 Ori 170

Hon'ble Judges : R.C. Patnaik, J

Bench : Single Bench

Advocate : R.K. Rath and B.K. Nayak, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Patnaik, J.—This is an appeal against the decision of the learned Subordinate Judge, Bhubaneswar entering judgment of the award. The respondent entered into an agreement No. 17 F-2 of 1978-79 for execution of the work, namely, "Protection to Scoured Bank of Kani Right near village Brahmacharipatna". Disputes having arisen between the parties, one Sri Bamadev Mohapatra, Superintending Engineer was appointed as Arbitrator to adjudicate the disputes, He was subsequently removed and Sri P. C. De, a retired District Judge was appointed as Arbitrator. He passed the award for Rs. 2,25,047/- with 10 per cent interest, on the said amount from 30-5-1979 till the date of payment or decree whichever was earlier. He disallowed the counter-claims made by the appellant.

2. The award did not furnish any reasons and the learned Subordinate Judge negated all the objections there-to raised by the appellant and entered judgment on the award. He directed that interest awarded by the Arbitrator would run till the date of the decree. No future interest from the date of decree was awarded by the judgment.

3. In appeal, the learned Standing Counsel for the appellant urged that the

award of the Arbitrator was based upon no evidence. The respondent had not laid any material before the Arbitrator in support of the claims and the only material that was furnished was on behalf of the appellant, namely by production of measurement book to show that the respondent had no substance in his claims. The materials that were furnished by the appellant related to the counter-claims.

4. The award is a no-reason award which is of late much in vogue. However, to a challenge on the ground of perversity a bald award without reasons would not be invulnerable. Perversity, of course, has to be established. Where there is no evidence before the Arbitrator, in support of the award, it would be an untenable argument that there being no reasons, the award--good or bad, right or wrong, the Arbitrator being a tribunal of the choice of parties--is immune from challenge. Law is well settled that perversity vitiates a decision. This general principle has application, be the adjudication by Court, Tribunal or Arbitrator. The sanctity attached to the decision of an Arbitrator is defiled by perversity.

5. My view gets support from a Bench decision of the Calcutta High Court in the case of *Nrisingha Maitra Vs. Shyam Sundar Chattopadhyay and Others*, . It has been observed that if there is no evidence at all before the Arbitrator, the award can be assailed as being erroneous on the face of it.

In *Chhogmal Bawatmal v. Sankalchand G. Shah* 53 CWN 828, a Division Bench consisting of Harries, C. J. and Chatterjee, J. held:--

"An award can be set aside on the ground of error of law when it is manifest on the face of the award. It is, however, open to the Court to look into the relevant statements filed before the arbitration tribunal. If the Court is satisfied that the arbitrators were guilty of misconduct, then the Court should set aside their award. The expression "Legal misconduct" is an ambiguous term. It means and includes some honest though erroneous breach of duty causing a miscarriage of justice. If there has been a mishandling of the arbitration proceedings or serious neglect of duty on the part of persons vested with judicial authority to determine the right and liabilities of parties which is likely to lead to substantial miscarriage of justice, then the Court is justified in setting aside the award."

Their Lordships observed that to decide an issue of fact without any evidence or material before the Arbitrators is serious dereliction of duty and proceeded to observe:--

"Ordinarily the Court will not review the arbitrators' conclusions or findings provided they act within the authority and according to the principles of justice and behave fairly to both the parties. But the discretionary power of Arbitrators in the conduct of proceedings is never absolute and their decision would have to be reviewed by the Court and their award set aside if it appears that in the course which they have pursued they have acted in a manner in which no person vested with judicial authority could possibly act. It is impossible for any arbitrator to hold in favour of extension without any evidence and without any material. It

is not a matter which is within the special knowledge of the arbitrators as businessmen of experience and they can only decide that the due dates of the contract were extended provided there were some materials before them on the point. They may be right or they may be wrong but they are entitled to come to a conclusion if there is evidence or if there is material on which they can determine the matter. But in the absence of any evidence or any material or even any allegation to that effect they are guilty of legal misconduct if they come to any finding or determine damage on the basis of extension. There was no evidence of any extension and no material to support the same and even then they were guilty of legal misconduct."

(Emphasis Supplied)

The aforesaid has my respectful concurrence.

6. A challenge on the ground of perversity or no evidence is to be specifically alleged in the objection raised to the award so that the other side gets an opportunity to meet and rebut the same and when controverted the Court adjudicates the issue giving the parties opportunity to substantiate their respective contentions.

7. I, however, find in this case that no objection on the ground of no evidence was specifically taken to the award by the appellant before the learned Subordinate Judge. The objection is as vague as vagueness can be and it seems, as if, objection was filed in a routine and casual manner. If the appellants considered the ground to be material, as it is now vehemently contended by the learned Standing Counsel, specific objection with details should have been taken by the appellant before the learned Subordinate Judge so that the other side could have got an opportunity or meeting the same and the learned Subordinate Judge could have gone into the merits thereof.

In the circumstances, it is difficult to entertain the objection to the award as now raised by the learned Standing Counsel. Entertaining such objection at this stage would tantamount to denial of justice. So I reject the contention.

8. No other point having been urged, I find no merit in this appeal which is accordingly dismissed. In the circumstances of the case, there would be no order as to costs.