
(1982) 07 OHC CK 0005
In the Orissa High Court
Case No : Civil Revision No. 187 of 1982

State of Orissa

APPELLANT

Vs

Prathamakhandi Labour Contract Co-operative Societies Ltd.
and Another

RESPONDENT

Date of Decision : 14-07-1982

Acts Referred:

Arbitration Act, 1940 — Section 30

Citation : AIR 1983 Ori 254

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

Bench : Single Bench

Advocate : Advocate General and Addl. Standing, for the Appellant; P. Kar and D.K. Sahu, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Patnaik, J.—During the pendency of an arbitration proceeding, an application was filed before the learned Subordinate Judge, Bhubaneswar, for removal of the arbitrator on ground of misconduct. This revision has been filed against the rejection of the said application.

2. Mainly on three grounds the application for removal of the arbitrator was made. Firstly, the arbitrator refused to decide the question of limitation as a preliminary issue; secondly the arbitrator did not state a special case for the opinion of the court u/s 13(b) of the Arbitration Act and thirdly, the arbitrator misconducted himself in denying adequate opportunity to the petitioner and had been biased towards the opposite party.

3. It is well settled that in adjudication of a lis, a court or tribunal shall follow the procedure prescribed. Where no procedure has been prescribed, it shall devise its own procedure which is in consonance with justice, equity and good conscience. That is to say, a procedure of just and fair play, serving the ends of justice.

4. The refusal of the arbitrator to decide the question of limitation as a

preliminary issue does not constitute misconduct. Even a court is not bound to decide the question of limitation as a preliminary issue. It is in the discretion of the court. Much less, therefore, is the arbitrator bound to decide the question of limitation as a preliminary issue. The rejection of the petition filed by the petitioner did not amount to misconduct.

5. Similarly, the refusal of the arbitrator to state a special case is neither misconduct nor indicative of bias. The point urged before the arbitrator: whether the contractor was entitled to payment for extra work, was not a question of law. Moreover, the arbitrator is under no obligation to state a case. It is discretionary. He may state a case for the opinion of the court if he so desires and the court has no power to direct an arbitrator to state a special case.

An arbitrator may properly refuse to state a case on a point of law if his finding on a point of fact renders the point of law immaterial: see *Buerger v. Barnett* (1919) 89 LJ 161.

It is not misconduct for an arbitrator or umpire to refuse to state a special case upon a question of law arising in the course of a reference, or to refuse to give his award in the form of a special case: *Russell on Arbitration*, 19th Edn. 473. The second point raised is, therefore, devoid of any merit.

6. Now the third point urged before the learned Subordinate Judge was misconduct of the arbitrator in exhibiting bias. The gravamen of the allegation was that the arbitrator proceeded with the reference when the counsel for the petitioner was absent, while he granted an adjournment on another date when the counsel for the opposite party was in difficulty and that the arbitrator advanced the hearing of the case from 29-11-1981 to 18-11-1981.

7. The cardinal principle in any adjudication is observance of the principles of natural justice. Violation thereof defiles the sanctity of the proceeding. Keeping the said principles in view, it is to be examined if the arbitrator did really conduct himself in a manner which showed prejudice against one party or bias towards the other.

8. The record of the proceeding before the arbitrator was called for with a view to examine the last contention. A perusal of the proceeding shows that the arbitrator entered upon the reference on 23-5-81 and the matter was taken up by him on more than 20 dates. If on a particular day, that is 24-11-81, the arbitrator refused to adjourn the case, he did not close hearing of the case. Arguments had been advanced thereafter before him on a number of dates. A wrong statement by him that the state had already engaged two counsel whereas only one counsel had entered appearance, does not exhibit prejudice or bias. An arbitrator is after all a human being and is liable to err. I am not prepared to hold that refusal to adjourn or an error in the statement as aforesaid disqualified the arbitrator or affected his impartiality.

After 24-7-81 the case was posted for hearing on 3-8-81 and the petitioner took

time. The case was thereafter taken up for hearing on 6-9-81. That day, the petitioner also took time for collecting necessary documents and the arbitrator adjourned the case to 27-9-81. On 27-9-81 the petitioner again prayed for adjournment and an adjournment was granted and the case was adjourned to 1-10-81. On 1-10-81 the petitioner again asked for time and the case was adjourned to 25-10-81. On 25-10-81 the petitioner filed an additional counter and an application to consider the question of limitation as a preliminary issue and the case was adjourned to 26-10-81 and on 26-10-81, the arbitrator refused to hear the question of limitation as a preliminary issue and directed the parties to proceed with the hearing of the case and the case was adjourned to 28-10-81. On 28-10-81, the petitioner advanced arguments before the arbitrator. Certain documents were exhibited on the side of the petitioner and the case was adjourned to 30-10-81. That day, the petitioner sought an adjournment and adjournment was granted. On the next day, i.e. 3-11-81, the petitioner was further heard and the case was adjourned to 8-11-81. On 8-11-81, the petitioner sought adjournment on the ground that it wanted to move the High Court and obtain an order of stay. Despite objection from the side of the opposite party not to grant an adjournment, the arbitrator granted time to the petitioner and adjourned the case to 29-11-81. On 9-11-81 the opposite party filed an application to advance the date of hearing. The arbitrator directed that the said application should be heard in presence of the parties on 10-11-81. On 10-11-81 the counsel for the petitioner submitted before the arbitrator that some time be granted to obtain stay order from the High Court and the arbitrator granted time till 18-11-81. On 18-11-81 a fresh application was filed seeking adjournment till 29-11-81, so that the petitioner might be able to obtain stay order from the High Court and if necessary, from the Supreme Court. The opposite party vehemently objected to this prayer for adjournment. It was also contended by the petitioner that the Executive Engineer was not available to render necessary instructions. So, adjournment should be granted. The arbitrator dealt with the contentions and while refusing to accede to the prayer of the petitioner to adjourn the case till 29-11-81, however, fixed the case for hearing on 23-11-81. On 23-11-81, two petitions were filed before the arbitrator one for stating a special case and the other asking the arbitrator to frame issues. Both the petitions were rejected by the arbitrator and thereupon an application was filed that day seeking adjournment so as to enable the petitioner to move the Court, for appropriate orders and on 22-12-81, the petitioner filed the application before the learned Subordinate Judge, Bhubaneswar, for the removal of the arbitrator.

9. The learned. Subordinate Judge has rightly observed: "the course of the proceeding before the arbitrator did not indicate any misconduct" and held that the allegation that the arbitrator was biased towards any of the parties was unfounded. In my opinion, the arbitrator on the contrary, has shown much consideration to the petitioner and the grievance is baseless.

10. The learned Subordinate Judge has observed in his order that adequate opportunity should be granted to the parties by the arbitrator. The revision,

therefore, has no merit and is accordingly dismissed. The arbitrator is requested to dispose of the proceeding expeditiously. No costs.