

(1960) 04 BOM CK 0024
In the Bombay High Court
Case No : O.C.J. Award Petition No. 7 of 1960

Surajmal Karamchand

APPELLANT

Vs

C.M. Shah

RESPONDENT

Date of Decision : 19-04-1960

Acts Referred:

Arbitration Act, 1940 — Section 14, 30, 32, 35
Contract Act, 1872 — Section 28

Citation : (1961) 63 BOMLR 884 : (1961) NLJ 730

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K.K. Desai, J.—[His Lordship after dealing with points not material to this report, proceeded:] The other important question is whether the arbitration bye-laws 282 to 315 contain any provision which is inconsistent with the provisions of Section 14 and the right of the petitioner to make this application for directing respondents Nos. 1 and 2 to file the award in question in Court.

2. In that connection Mr. Nariman has relied upon the bye-laws Nos. 282, 283, 290, 291, 294, 295, 296, 297, 298, 304, 305, 311 and 315. He has for the purpose of facilitating construction also relied upon bye-laws Nos. 259 and 270 which are bye-laws applicable to "arbitration other than between members".

3. Bye-laws 282 and 283 inter alia, provide as follows:-

282. All claims.. .and disputes between members arising out of or in relation to any bargains, dealings, transactions or contracts made subject to the Rules, Bye-laws and Regulations of the Exchange or with reference to anything incidental thereto.. .shall be subject to arbitration and referred to the Arbitration Committee as provided in these Bye-laws and Regulations.

283. In respect of any claim.. .or dispute required to be referred to arbitration under these Bye-laws and Regulations no member shall commence legal

proceedings against another without the permission of the Governing Board. If a member institutes such proceedings without permission and recovers any money or other relief he shall hold the same in trust for the Exchange and shall pay the same to the Exchange to be dealt with in the manner directed by the Governing Board.

4. Before referring to the other relevant bye-laws it is necessary to refer to bye-law No. 311 which inter alia provides as follows:

311. A member who fails or refuses to submit to or abide by or carry out any award in arbitration, between members as provided in these Bye-laws and Regulations shall be expelled by the Governing Board and thereupon the other party shall be entitled to institute any suit or legal proceedings to enforce the award or otherwise assert his rights.

5. Mr. Nariman has placed reliance upon the scheme of arbitration as contained in the bye-laws. He has mainly relied upon bye-laws Nos. 283 and 311 in support of his contention that the provisions in the bye-laws are inconsistent with the right of the petitioner to make an application u/s 14 for directions that the award made must be filed. He contends that the petitioner and respondent No. 3 are members. Respondent No. 3 has made a claim against the petitioner which claim must be held to be a claim required to be referred to arbitration under these bye-laws as mentioned in bye-law No. 283. He accordingly submits that unless the Governing Board has given permission there is no right in the petitioner to make any application at all. He further contends that by reason of bye-law 311 until the petitioner is expelled by the Governing Board no proceedings can lie in Court in respect of rights of either party under or against the award.

6. It appears to me that the true construction of bye-law 283 is that a claimant and/or plaintiff who is entitled to recover any amount against any other member cannot commence legal proceedings and is bound to take arbitration proceeding for recovering his claim. The language of bye-law 283 is not applicable to a person against whom an award has come into existence and/or is made. The intention of bye-law No. 283 appears to be that in respect of amounts recovered by claimant member and/or plaintiff against another member the whole of the amount in claim should be available to be distributed according to the directions of the Governing Board. It is not permissible according to the intention of this bye-law for a claimant to recover moneys against another member in respect of matter required to be referred to arbitration outside the arbitration machinery and utilise the money for himself. That is the control which was intended to be kept on the claimant member and bye-law No. 283 is in any event not applicable to a debtor member against whom an award has come into existence under the arbitration machinery.

7. The true construction of bye-law 311 is that a claimant member who has succeeded in procuring an award in his favour is prevented from going to Court for enforcing the award or rights arising under the award until the debtor

member is expelled by the Governing Board. This bye-law also has nothing to do with the right of a debtor member to approach Court for reliefs available under the Arbitration Act. Upon examination of the scheme of the arbitration bye-laws I have not been able to trace any bye-law which directly provides against the right of either a claimant or a debtor to go to Court for making applications in respect of an award already made. Bye-law No. 311 in any event contemplates the right of a plaintiff to go to Court to enforce an award. That right in view of the provisions of the Arbitration Act can only be enforced after the award is filed in Court as provided by Section 14. If a plaintiff in an arbitration matter is entitled to go to Court and have an award filed, there is no reason why in the absence of any direct provision it must be held that a debtor member is not entitled to have, an award filed for proceeding to claim the reliefs which he may be entitled to under the Arbitration Act. There is nothing in bye-laws 283 and 311 which is inconsistent with the provisions of Section 14 and the right of a petitioner to have the award in question filed in Court.

8. The more important question which arises having regard to the contentions of the petitioner in this case is as to whether the question of jurisdiction of the arbitrators or a contention made by a member that the claim made against him does not fall within the arbitration bye-law No. 282 must not be decided by Court and is liable to be decided by arbitrators under the arbitration bye-laws. The petitioner's contention in this case is that he had informed the arbitrators that the claim against him was not covered by bye-law No. 282 and the arbitrators had no jurisdiction. The petitioner wants to make an application for setting aside the award inter alia on the basis of the contention that the arbitrators had no jurisdiction at all and the claim against him was not covered by bye-law No. 282, I have not been able to find anything in these bye-laws which confers (exclusive) jurisdiction on arbitrators to decide that contention. Though the question directly does not arise in this petition, it appears to me that a question of this kind is prima facie liable to be decided by Court only and not by arbitrators.

9. The other bye-laws on which Mr. Nariman relied may now be referred to. Bye-law 290 provides for an appeal from the award of the arbitrators to the Arbitration Committee. That is only an enabling provision and does not compel the dissatisfied party to go in appeal to the Arbitration Committee. Bye-laws 29.1 and 292 contain a scheme under which an aggrieved debtor must deposit the full amount of claim awarded before he can be heard in appeal before the Arbitration Committee. Under bye-law 294 an award made by Arbitration Committee is stated to be final and binding on the parties if the sum involved in dispute is less than Rs. 1,000. Bye-law 295 provides for an appeal to the Governing Board from the decision of the Arbitration Committee. The scheme of bye-law 296(a) is that an aggrieved party is not heard in appeal by the Governing Board until the full claim awarded against him by the Arbitration Committee is deposited with the Exchange. Under bye-law 297 the decision of the Governing Board is stated to be final and binding on the parties to the appeal. Under bye-law 304 awards made ex parte can be set aside and directions can be given for a re-hearing. Under bye-

law 305 Governing Board is empowered to remit the award again for reconsideration.

10. Mr. Nariman has submitted that having regard to these bye-laws I should make a finding that the arbitration claims referable to arbitration under bye-law No. 282 cannot be challenged in a Court of law. They must be held to be final and binding between members and in respect of awards made under the arbitration bye-laws of the Exchange there is no question of a right in a party to have the same set aside u/s 30. That contention appears to me to be unwarranted. u/s 28 of the Contract Act,

Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

The policy of law has throughout been that in matters of arbitration awards which are otherwise final the same could always be challenged on grounds of want of jurisdiction in arbitrators and other legal misconduct. The grounds are shortly stated in Section 30 of the Arbitration Act as follows:-

- (a) that an arbitrator or umpire has misconducted himself or the proceedings ;
- (b) that an award has been made after his issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid u/s 35;
- (c) that an award has been improperly procured or is otherwise invalid.

These grounds do not relate to matters of merits and/or contentions of facts or law raised in denial of claim in arbitration. These are matters which relate to jurisdiction and conduct of arbitrators. It appears to me that these are grounds which ordinarily a domestic tribunal is not competent to decide. All decisions by domestic tribunals in contravention of principles of natural justice have been repeatedly held to be liable to be set aside. That in the bye-laws for arbitration it is mentioned that the decision of the Arbitration Committee and the Governing Board shall be final is not intended to provide that no application shall ever lie to Court u/s 30 for setting aside of awards. In fact all proceedings without jurisdiction and/or in violation of principles of natural justice must in the result come to nothing and are nullity and must be liable to be challenged in a Court of law. The true construction of the bye-laws is that in respect of matters of and contentions on merits of a claim awards made must be held to be final. I, therefore, do not accept the contention of Mr. Nariman that bye-laws providing that awards of the Arbitration Committee and Governing Board shall be final provide that awards made without jurisdiction or in violation of principles of natural justice cannot be challenged in a Court of law. In fact all awards are final even under the Arbitration Act and can only be set aside on restricted grounds as mentioned in Section 30. There is, therefore, no difference between an award

made under the above scheme of arbitration bye-laws or under the Arbitration Act in so far as they can be challenged u/s 30.

11. Mr. Nariman has referred to bye-law No. 259 which provides for filing of an award in Court. That bye-law is in respect of "arbitration other than between members." Mr. Nariman's contention is that no such provision was made as between members as the awards made as between members were intended to be final. That contention, however, is contrary to the provisions of bye-law No. 311 which contemplates enforcing of an award by legal proceedings in Court.

12. Mr. Nariman appeared to suggest that the legal proceedings as mentioned in bye-law No. 311 would not be under the Arbitration Act and would be some other proceedings. That appears to me to be contrary to the exhaustive provisions of the Arbitration Act as regards arbitration between parties. Section 32 of the Act provides that

...no suit can lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in this Act.

It is not possible to construe bye-law 311 to mean that it is inconsistent with Section 32 and that a suit can now lie for enforcing awards made under the arbitration bye-laws of the Stock Exchange,

13. Mr. Vakil for respondent No. 3 contended that there was misjoinder of causes of action in this petition and that respondent No. 3 has been wrongly brought to Court. Mr. Vakil, however, adopted all contentions made for respondents Nos. 1 and 2. It appears to me that in all applications against arbitrators a party deriving benefit under the award should be before Court and" must be joined in the application as being the only party interested in making contentions contrary to those contained in such an application.

14. The result is that there will be an order in favour of the petitioner in terms of prayer (a). The respondents will pay costs of the petitioner fixed at Rs. 350.