
(2009) 11 SC CK 0021

In the Supreme Court Of India

Case No : Civil Appeal No's. 2880-2881 of 2005

Tamil Nadu Water Supply and Drainage Board

APPELLANT

Vs

Satyanarayana Brothers Pvt. Ltd.

RESPONDENT

Date of Decision : 05-11-2009

Acts Referred:

Arbitration Act, 1940 — Section 30

Citation : (2010) 1 AWC 316 Supp : (2009) 14 JT 423 : (2009) 13 SCALE 597 :
(2010) 1 SCC 171 : (2009) 16 SCR 598

Hon'ble Judges : Cyriac Joseph, J;Altamas Kabir, J

Bench : Division Bench

Advocate : L.N. Rao and Rakesh K. Sharma, for the Appellant; Dipankar P. Gupta T.G. Narayanan Nair, C.N. Sree Kumar, M.T. George and K.N. Madusoodanan Nair, for the Respondent

Final Decision : Dismissed

Judgement

1. In order to overcome the shortage of drinking water in the City of Chennai, the Government of Tamil Nadu formulated a scheme known as "Veeranam Project" to provide drinking water to the city. Tenders were invited for the said scheme and ultimately, the tender submitted by the respondent M/s. Satyanarayana Brothers Pvt. Ltd. was accepted. The work undertaken could not be completed within the stipulated time and the respondent sought extension to complete the work. Though the time was extended, the respondent could not complete the same on account of disputes which were ultimately referred to the arbitration of two arbitrators appointed by the parties. The arbitrators appointed Hon'ble Mr. Justice K.S. Palaniswamy, a retired Judge of the Madras High Court, as their umpire. On account of disagreement between the arbitrators the matter was referred to the umpire who held that the respondent was entitled to Rs. 40,02,591/- from the appellant and after allowing the deduction for the same the respondent was liable to pay to the appellant a sum of Rs. 2,69,93,674/- with interest @9% per annum from the date of the Award. Out of the said Award, only a sum of Rs. 5,000/- was awarded as damages for breach of contract.

2. The Award was filed by the umpire in the Madras High Court and was numbered as O.P. No. 428/79. While the appellant filed Application No. 560/80 in the said O.P. No. 428/79 praying for a decree to be passed in terms of the Award, the respondent being aggrieved by the Award, filed O.P. No. 122/80 for setting aside the Award. The learned single Judge allowed the prayer for setting aside the Award and consequently, the other application filed by the appellant for a decree to be passed in terms of the Award was dismissed. C.S. No. 176/78, which had been filed by the appellant, was also dismissed.

3. Thereafter, the appellants preferred appeals, being O.S.A. Nos. 248 of 1989 and 59 of 1993, against the order of the Single Judge. The said appeals were allowed by the Division Bench of the High Court by its order dated 18/10/2001 and a decree was passed in terms of the Award dated 10th September, 1979, passed by the umpire. Aggrieved by the order dated 18/10/2001, by which OSA 248/89 and 59/93 had been initially allowed by the Division Bench, the respondent filed SLP(C) Nos. 2096-2097 of 2002. The said special leave petitions were re-numbered as C.A. Nos. 9136-9137 of 2003, and were disposed of by this Court on 18/11/2003. The matter was remitted to the Division Bench of the High Court and on remand, the Division Bench dismissed the said appeals, holding that foreign exchange was to be obtained by the joint efforts of the appellant and the respondent and that the Government was not extending time reasonably but in a piecemeal manner. Accordingly, the High Court held that the respondent had not committed any breach of the contract. Aggrieved by the said order dated 24th March, 2004, the appellant preferred these appeals (C.A. Nos. 2880-2881/05), which were dismissed by this Court on 7th February, 2007. By consent of parties, the Hon'ble Mr. Justice S. Mohan, a retired Judge of this Court was appointed as Sole Arbitrator to decide the disputes between the parties. The learned Arbitrator submitted his Award on 26th October, 2007, holding that the respondent/claimant would be entitled to a sum of Rs. 15,84,933.76p. Thereafter, the parties were given the opportunity of filing their respective objections to the said Award and ultimately the matter has come up for the acceptance of the Award.

4. At the very outset, it was sought to be urged on behalf of both the parties that the said Award dated 26th October, 2007 was not acceptable to either party on account of an erroneous understanding of the respective cases made out by the parties. While the appellant questioned the rejection of its case that the respondent had no claim against the appellant and the innocuous finding that the breach committed by the contractor was no longer available in view of the earlier decision, the respondent-contractor questioned the Award on the ground that its just claims had been wrongly rejected in respect of damages suffered in view of the stoppage of the work on account of the appellant's failure to provide necessary assistance for obtaining foreign exchange for completion of the project.

5. Both the parties are aggrieved by the Award on the ground of non-application of mind by the Arbitrator to the material before him. It is the common ground of

the parties that the learned Arbitrator misconducted himself in appreciating the case made out by of the respective parties vis-a-vis the materials on record. We have considered the submissions made and we have also looked into the Award, which indicates that the learned Arbitrator had legally misconducted himself thereby attracting the provisions of Section 30(a) of the Arbitration Act, 1940. We, accordingly, set aside the Award and remit the matter to the learned Arbitrator for a fresh decision. However, in place of Justice S. Mohan, who had submitted his Award, we appoint Justice Shivraj Patil, a retired Judge of this Court to be the sole Arbitrator to consider the matter and pass a fresh Award in the light of the judgment of this Court dated 07/02/2007 in C.A. Nos. 2880-2881 of 2005 and file the same in this Court. The learned Arbitrator shall be entitled to settle his fees and other expenses which are to be equally shared by the parties and work out the procedure to be followed in conducting the arbitration proceedings. The learned Arbitrator is requested to make his Award expeditiously, but preferably within a period of six months from the date of entering upon the reference.