

(1993) 05 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 15 of 1993

Tashkant Stone Crushers

APPELLANT

Vs

The Himachal Pradesh State Electricity Board

RESPONDENT

Date of Decision : 07-05-1993

Acts Referred:

Citation : (1993) 2 ShimLC 189

Hon'ble Judges : Devinder Gupta, J

Bench : Single Bench

Advocate : J.S. Bhogal, for the Appellant; K.D. Sood, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—This is a revision arising out of an order passed on 17th November, 1992 by Senior Sub-Judge, Kangra at Dharamshala allowing the application of objector-Respondent for examining the Arbitrator as a witness.

2. After the Arbitrator had made, signed and filed his award, in pursuance to the reference made by the Senior Sub Judge, Kangra at Dharamshala on 12th July, 1985, Respondent preferred objections for setting aside the same. After the issues had been framed and the case adjourned from time to time for objector's evidence, the same was not adduced, instead an application was made on 23rd September, 1992 seeking permission to examine the Arbitrator. The application was opposed by the Petitioner. The trial Court by allowing the application permitted the Arbitrator to be examined as a witness. It is this order, which is under challenge.

3. The impugned order on the face of It will show that ground on which permission to examine the Arbitrator was sought was to know the material which the Arbitrator utilised in arriving at his decision and as to on every matter of fact with reference to the making of the award. This prayer was opposed on the ground that the Arbitrator cannot be allowed to be examined as a witness. The trial Court in the impugned order has not considered the facts and circumstances

of the case or the nature of the objections for setting aside the award. It has also not been considered as to whether the award was a speaking award or a non-speaking award or whether it was necessary, in the facts and circumstances to go into the merits of the award in order to ascertain as to what material had been utilised in arriving at the decision.

4. It is not disputed that the award which the Arbitrator made is a non-speaking award. Proposition of law with regard to the scope of inquiry and the limits of the Courts' power in dealing with an application for setting aside the award is not capable of dispute. The scope is very limited. It is not open to speculate, where no reasons are given by the Arbitrator, as to what impelled the Arbitrator to arrive at his conclusions. The Court cannot proceed to determine whether the conclusions are right or wrong on the assumption that the Arbitrator must have arrived at his conclusions by a certain process of reasonings. The mental process by which the Arbitrator has reached his conclusions will not be open for scrutiny by the Court where reasons are not disclosed in the award. See *Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others*, .

5. Constitution Bench in *Som Datt Datta v. Union of India and Ors.* AIR 1969 SC 424, held that there is no obligation on the part of an administrative or statutory Tribunal to give reasons for the order passed by it. In *Anr. Constitution Bench in Raipur Development Authority and Ors. v. Chokhamal Contractors and Ors.* (1989) 2 SCC 722, it was held that an Arbitrator appointed under the Arbitration Act, 1940 is not obliged to record or furnish his reasons to the award, unless there is anything in the Arbitration clause enjoining upon the Arbitrator to record his reasons. It was further held that when no reasons are given in the award, the same will not be liable to be set aside on the ground that reasons have not been assigned.

6. The trial Court referred to AIR Manual 4th Edition (1979) or Arbitration Act, 1940 at page 641 in support of its order without referring to any decision. It is not at all proper to make reference to Manual only, without actually making reference to a reported decision quoted in the Manual. The trial Court apparently must have relied upon a decision of Privy Council in *Amir Btgam v. Syed Badr-ud-dm Hussan and Ors.* AIR 1914 PC 105. What can be noticed is that the Court did not examine the question as to whether the ratio of the said decision would apply in the facts and circumstances of the instant case. In the Manual the ratio of the judgment appears to have not correctly been extracted, which has resulted in the trial Court taking an erroneous decision of the matter. The ratio of the judgment in *Mt. Amir Begum's* case (*supra*) is to be found in the following passages of the reports:

...Further, severe comment was made that the arbitrator did not make and retain any adequate notes of the proceedings. No doubt it is generally desirable that an arbitrator should make and retain for subsequent use, if necessary, notes of the proceedings before him; but there is no warrant for holding that in the absence of such notes an award should be set aside at the instance of one of the parties,

who must be held to have known the general course of procedure, and who did not make any protest until after the making of the award with the terms of which she was not satisfied.

...An arbitrator, selected by the parties, comes within the general obligation of being bound to give evidence, and where a charge of dishonesty or partiality is made, any relevant evidence which he can give is without doubt properly admissible. It is, however, necessary to take care that evidence admitted as relevant on a charge of dishonesty or partiality, is not used for a different purpose; namely, to scrutinize the decision of the arbitrator on matters within his jurisdiction, and on which his decision is final. The limitation applicable to the evidence of an arbitrator as witness in a legal proceeding to enforce his award are stated in the case of *Buccleuch v. Metropolitan Board of Works* (1871) 5 HL 418, but where charges of dishonesty are made the Court would reject no evidence of an arbitrator which could be of assistance in informing itself whether such charges were established.

(emphasis supplied)

...the Subordinate Judge did not take sufficient care in the discrimination of the purpose for which the evidence was admissible and utilized evidence relevant on the charge of corruption to criticize methods adopted by the arbitrator in determining the quantum of his valuations....

7. The proposition of law in *Amir Begum's* case (supra) laid down is that an Arbitrator may be examined and his evidence would be relevant and admissible when charge of dishonesty and partiality is made. Such evidence cannot be used and utilised for scrutinising the decision of the Arbitrator on matters, which are within his jurisdiction.

8. Thus, it will be noticed that the trial Court was not justified in having relied upon the extract from Manual. This practice of quoting from Manual without going to the particular decision deserves to be deprecated.

9. The question has been now examined by the Apex Court in *State of Orissa v. Niranjana Swain* AIR 190 SC 635, by holding that when a Court is requested to call the Arbitrator for examination as a witness. it must be shown that there is some cogent ground for his examination within the permissible limits. In a case of non-speaking award, where scope of inquiry in proceedings to challenge the same is limited one where it will not be permissible for the Court to go into the question as to how mind of the Arbitrator worked, it is not understandable as to how the material utilised in arriving at the decision would be relevant. The Respondent merely wanted to know from the Arbitrator as to what material he has utilised in arriving at the decision. This evidence in a non-speaking award would not be relevant. The observations which the Court made in *Niranjana Swain's* case (supra) in para 9 are:

We may dispose of the second point urged by learned Counsel for the Appellant

straightway since it does not merit any elaborate consideration The argument of the learned Counsel for the Appellant relating to calling the arbitrator for examination as a witness in the Court was based on the decision of the Orissa High Court in State of Orissa Vs. D.C. Routray, That decision itself says that even though an arbitrator is a competent witness, the Court must exercise the power of calling him as a witness cautiously and sparingly and not in a routine manner It is obvious that when the Court is requested to call the Arbitrator for examination as a witness it must be shown that there is some cogent ground for his examination within the permissible limits Nothing has been shown in the present case to indicate that it was at all necessary to call the arbitrator as a witness to depose on any matter which could legitimately be examined by the Court in the proceedings. This alone is sufficient to Justify the view taken by the High Court....

10. In order to satisfy the Court as to whether reasons assigned in support of the prayer made in the application for allowing the Arbitrator to be examined as a witness, are sufficient or not it will always be necessary for a party to indicate that it is necessary to call the Arbitrator and examine him as a witness to depose on a matter which could legitimately be examined by the Court. Since it will not be permissible in the instant case to go into the correctness or otherwise of the material utilised by the Arbitrator, it being a non-speaking award, the trial Court committed material irregularity in exercise of its jurisdiction in allowing the Respondent's application. The application made by the Respondent was liable to be rejected. Consequently, revision petition is allowed and the impugned order is quashed and set aside. The interim stay is vacated.

11. The disposal of the revision will not preclude the Respondent from examining any other evidence in the case as might be permissible under law.