

(2000) 04 P&H CK 0070
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2239 of 1983

The State of Haryana and Another	Vs	APPELLANT
Sohan Lal Kalra		RESPONDENT

Date of Decision : 28-04-2000

Acts Referred:

Arbitration Act, 1940 — Section 30
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2000) 126 PLR 105 : (2000) 3 RCR(Civil) 11

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Suvir Sehgal, D.A.G, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

R.L. Anand, J.—By this judgment, I dispose of two C. Rs. No. 2239 and 2240, of 1983, titled State of Haryana and Anr. v. Sohan Lal Kalra, as in the opinion of this Court, both the revisions can be disposed of by one judgment because the point of law for determination in both the revisions is the same.

2. The brief facts of the case are that the respondent Sohan Lal Kalra used to work as a Contractor with the P.W.D. (B&R) Department and he filed an application under sections 20 of the Indian Arbitration Act, 1940 (hereinafter referred to as "the Act") in the court of Shri B.P. Jindal, the then Sub Judge, Ist Class, Kamal. Notice of the application was given to the State. Since, there was an arbitration agreement between the parties, the State did not object to the application under sections 20 of the Act and as per the agreement, vide order dated 5.12.1979, the matter was referred to the Arbitration of Shri B.K. Wadhwa, Superintending Engineer, PWD (B&R), Rohtak. The Arbitrator gave the award on 14.1.1981 vide which the Contractor was directed to pay to the States sum of Rs. 59,275/- in one case and Rs. 623.39 in the other, to the State. An application was moved by the State under sections 14 and 17 of the Act for making the award as rule of the court. Notice of the application was served upon the

Contractor, who filed objections under sections 30 and 33 of the Act and it was pleaded by him that it was the duty of the Arbitrator to appreciate the relevant documents on the basis of which he made his award, such as, measurement book, etc. It was also pleaded by the Contractor that the Contractor did not follow the principles of natural justice and he did not afford opportunity to the parties to adduce evidence and, in these circumstances, the award should be set aside and should not be made the rule of the court.

3. The learned trial Court framed the followed issues for the disposal of the objections of the contractor :-

"I) Whether the award in question is liable to be set aside on the grounds mentioned in the objection petition dated 5.1.1982 filed by Sohan Lal Kalra? OPO

2) Whether the objection petition filed by Sohan Lal has been stamped with proper court fees? OPO

3) Relief."

4. The parties led evidence in support of their case and finally the trial court vide order dated 9.12.1982 decided issue No. 1 against the Contractor. However, issue No. 2 was decided in favour of the Contractor but on the strength of the findings given on issue No. 1, the objections under sections 30 and 33 of the Act, filed by the Contractor, were dismissed and the application under sections 14/17 of the Act was allowed and both the awards made by the Arbitrator were made ordered to be made rule of the court and it was further ordered by the trial Court that the State of Haryana shall realise interest also at the rate of 12% on the awarded amount.

5. Aggrieved by the order of the trial court, the contractor filed an appeal under sections 39 of the Act in the Court of the learned Addl. Distt. Judge, Karnal, who vide the impugned judgment dated 10.6.1983 accepted the appeal of the Contractor and allowed his objections under sections 30/33 of the Act and dismissed the application of the State under sections 14/17 of the Act by holding that the Arbitrator has misconducted himself and the proceedings when he has not given the award within four months from the date of entering upon the reference. Reasons of disagreement on the part of the first appellate court are contained in paras 13 to 15 of the judgment, which read as under:-

"However the question germane to be decided in this case is whether or not the arbitrator became functus officio when he entered upon reference ? To my mind the answer is in the affirmative. The brief resume of fact enunciated herein above would clearly show that the Arbitrator was called upon by the court of Sh. B.P. Jindal to enter upon reference on 5.12.1979. The Arbitrator slept over the matter until and ultimately served notice of hearing for first time on that date 19.12.1980 and 14.1.1981 hastened to pass said award. There is a considerable force in the arguments of Shri Vij that at the time of entering upon reference as also calling the parties and passing the award, the Arbitrator by itself had

become *functus officio*. In *Hari Shankar Lal Vs. Shambhunath Prasad and Others*, their Lordship of the Supreme Court while answering the provisions of Rule 3 of first schedule of the Arbitration Act held that act of entering on reference as well as the action to proceed for arbitration on the asking of the party are synonymous in nature and if the Arbitrator is called upon by any party after the expiration of period of four months, then the Arbitrator becomes *functus officio* unless the period of limitation is extended under the provisions of section 28 of the Act *ibid*. In the case in hand it is a common case of the parties that neither the Arbitrator nor the parties to the proceedings ever approached the court seeking to extend the time of limitation. No notice to the Arbitrator by either party was given to commence arbitration proceedings within the period of four months of the entering upon reference by Sh. B.P. Jindal.

I have carefully perused the decided case law on this subject and in my opinion the authority cited at the bar is on all fours applicable to the present case. In these circumstances the award passed by the Arbitrator cannot sustain for a moment in the eyes of law.

15. The learned counsel for the State further sought to crave indulgence of the court that the arguments now being advanced by the appellant were not advanced before the trial court. I find no force in the submission of the learned counsel for the State because this is a matter based on arbitration in nature and legal arguments which can always be taken and appreciated at the appellate stage,"

6. In this manner, the State of Haryana is aggrieved by the judgment of the first appellate court and has come in the present revision.

7. Notice of the revision was given to the Contractor who did not think it proper to contest the revision in spite of service. Therefore, I am disposing of these two revisions with the assistance of Mr. Suvir Sengal, D.A.G., Haryana, appearing on behalf of the petitioners, and have gone through the record of this case.

8. The Ist Schedule to section 3 of the Act is the relevant provision for us to determine the issue in hand. According to clause-3 of the Ist Schedule, the Arbitrator shall make the award within four months after entering on the reference or after having been called upon to act by notice in writing from the party to the arbitration agreement or within such extended time as the court may allow. A reading of para-13 of the judgment of the first appellate court would show that the award has been set aside mainly on the ground that the Arbitrator has not given the award within four months, after entering on the reference. In these circumstances, we have to interpret the words "after entering on the reference." In the view of this court, the above wording would mean when the Arbitrator applies his mind to the controversy referred to him. In the objections filed by the Contractor, it was not his case that the award has been made after four months by the Arbitrator from the date when he entered upon the reference, rather, his grouse was that the Arbitrator has not

appreciated the relevant documents such as measurement books and that he did not comply with the principles of natural justice and did not afford proper opportunity to him. There was no specific objection to the effect that the Arbitrator has not given the award within four months from the date of his entering upon the reference. Be that as it may, even if some concession is granted to the Contractor to take the legal plea regarding limitation, still we have to see whether the award which was made on 14.1.1981 is beyond limitation or not. The order of Shri Jindal was passed on 5.12.1979 when the application of the Contractor under sections 20 of the Act, was allowed. There is no evidence on the record to show that when the appointed Arbitrator was called upon to act as an Arbitrator and to dispose of the controversy. Yet there is no evidence led by the contractor to show when the Arbitrator issued notice to the parties calling upon them to appear before him for the purposes of submitting their claims, if any. Rather, the record is that the parties appeared before the Arbitrator for the first time on 19.12.1980 and he conducted only one proceeding and, thereafter, on 14.1.1981, the Arbitrator made the award. In the absence of any proof as to when the Arbitrator entered upon, the reference, it could not be said on the part of the first appellate court that the Arbitrator entered upon the reference on 5.12.1979. This approach on the part of the first appellate court was totally erroneous. On that day, only an application under sections 20 of the Act was allowed. When the court sent intimation to the Arbitrator is not clear. The record is barred as to when the Arbitrator entertained the claims of the parties and when he issued notices to the parties to appear before him on 19.12.1980. Rather, a reasonable inference can be drawn that the Arbitrator must have given the notice somewhere in the months of October/November, 1980, enabling the parties to appear before him on 19.2.1980. In the present case, in the absence of evidence I have to calculate the time w.e.f. 19.12.1980 and if that is so, then the award which was made on 14.1.1981 was within limitation.

9. As I have stated above, the contractor never filed any objection to the effect that the award was made beyond time. Assuming for the sake of arguments that the award was made beyond limitation, still such an award is not invalid or void merely on that account. If it is taken for worse to worse for the disadvantage of the State that the limitation started from 5.12.1979, still the award could not be set aside by the first appellate court because in that eventuality, the Arbitrator was estopped by his own act and conduct. The Contractor participated in the proceedings which went upto 19.12.1980. This amounts to waiver and acquiescence. He never raised any objection before the Arbitrator on 19.12.1980 that he had become functus officio. For this view of the matter, reliance can be placed on *Bokaro and Ramgur Ltd. Vs. Dr. Prasun Kumar Banerjee*, where it was held as under:-

"Under the Act an award made beyond time can never be held to be invalid or void merely on that account. The court has power u/s 28 of the Act to extend the time even after the making of the award. The arbitrator has no such power and even the parties in view of the provision of law contained in sub-section (2) of

section 28 cannot confer such power on the arbitrator alone. The parties, however, in a case of arbitration without the intervention of the Court, have still got a right to enlarge the time for making the award by their fresh written agreement. If, therefore, an award is made beyond the time fixed or extended by the Court or by the parties and in spite of the fact that one of the parties objected to the proceeding before the arbitrator going beyond the time fixed or took part in it under protest the award may be liable to be set aside u/s 30 of the Act under clause (a) of the section on the ground that the arbitrator misconducted himself or the proceeding or under clause (c) on the ground that the award is otherwise invalid."

10. If the contractor had taken the objection before the trial court that the award is beyond limitation the State would have made an equal prayer to the trial court for the extension of time under sections 28 of the Act. Since, there was no culpable delay in making the award from the last date of hearing before the Arbitrator, there would have been no difficulty on the part of the trial court to allow the prayer of the State under sections 28 of the Act.

11. In Ramanath Agarwalla Vs. Goenka and Co. and Others, , while interpreting clause 3 to Schedule I, it has been held that the Arbitrator will be deemed to have entered upon the reference when he first applies his mind to the dispute. He does not necessarily enter by merely commencing the proceedings for consideration of the dispute.

12. In Smt. Bharati Mukherjee v. Shiva Trading Co. and Ors., the term "entering on reference" had been again, considered and it was observed that issuance of the notice by an Arbitrator is a material act and if the Arbitrator just issues a notice to the party calling upon him to file his claim or counter claim, that does not amount to entering of the reference and contemplated by Schedule I para-3 of the Act. It was further observed that the Arbitrator enters upon reference when he first applies his mind to the dispute or controversy before him depending on the facts and circumstances of each case.

13. In view of the above case law relied upon by the counsel for the petitioners, this court is of the considered opinion that the view taken by the first appellate court was not according to law and is not sustainable and. therefore, the same is set aside. Resultantly, both the revisions are allowed. The impugned judgments dated 10.6.1983, passed by the Addl. Distt. Judge, Karnal, are set aside and the orders passed by the court of Sub Judge, Ist class, Karnal, are hereby restored. The awards are ordered to be made rule of the court as earlier ordered by the trial court. No costs.