

(1971) 02 AHC CK 0031
In the Allahabad High Court
Case No : F.A.F.O. No. 75 of 1967

Union of India (UOI)

APPELLANT

Vs

Ghaziabad Railway Station

RESPONDENT

Date of Decision : 18-02-1971

Acts Referred:

Arbitration Act, 1940 — Section 30

Citation : AIR 1972 All 34

Hon'ble Judges : Satish Chandra, J;A.K. Kirty, J

Bench : Division Bench

Advocate : Gur Pratap Singh, for the Appellant; S.S. Bhatnagar, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This appeal is directed against an order setting aside the award.

2. M/s. Ghaziabad Railway Station Co-operative Labour Contract Society, obtained a contract for loco coal handling at the Ghaziabad station from the Northern Railway. Disputes arose between the parties. The General Manager Northern Railway, in accordance with the Arbitration clause in the agreement, appointed Sri R. C. Tandon, an officer of the Railway, as an Arbitrator, by an order dated 7-8-1964. The Arbitrator gave an award in favour of the Railways, on 5-4-65. The Railway authorities moved an application u/s 14 of the Arbitration Act, praying that the award may be made the rule of the Court, and a decree be passed for Rs. 58,038.60 against the aforesaid Society. The Society filed objections u/s 33 of the Arbitration Act. The learned Civil Judge upheld the objections and set aside the award. He found that the Arbitrator did not serve either a copy or any notice of the claim made by the Railway authorities before him on the Society. He was guilty of judicial misconduct, and the award was as such vitiated.

3. It appears that in August 1964 the Arbitrator served a notice on the Society requiring it to file its claim before the Arbitrator by 28.8.64. A Copy of this notice was also sent to the Divisional Superintendent, Northern Railway. Thereafter the Arbitrator sent several notices requiring the Society to file its claim petition before him by the given date. Copies of these notices were sent to the Divisional Superintendent, Northern Railway. In spite of these notices, the Society did not lodge any claim petition before the Arbitrator. Then on 12.11.64 the Arbitrator sent a letter to the Divisional Superintendent informing him that the Society has filed no claim petition and directing him to appear on 23-11-64 to put up their case before the Arbitrator. A copy of this letter was sent to the Society also. On 23-11-64, the Divisional Superintendent appears to have lodged a claim petition on behalf of the Railway before the Arbitrator. No copy of this claim, or any information of its details, was served on the Society either by the Divisional Superintendent or by the Arbitrator. The Arbitrator did not call upon the Society to meet this claim, with the result that the Society had no notice of the claim made by the Railway. The Arbitrator fixed 7.12.64 for hearing. He sent a letter to the Divisional Superintendent informing him of this date and asking him to appear with the original documents; a copy of this letter was sent to the Society. It is noticeable that even at this stage the Arbitrator did not apprise the Society of the claim made by the Railway, nor did he inform the Society to appear and contest the claim. The Arbitrator heard the Divisional Superintendent on 7.12.64 ex parte, and closed the hearing. Thereafter he gave the award on 5-4-65.

4. These facts clearly show that the Society had no notice of the claim made by the Railway before the Arbitrator. The Arbitrator gave his award accepting the claim of the Railway without affording the Society an opportunity of hearing. He thus transgressed the principles of natural justice and was guilty of committing judicial misconduct. The Court below was justified in setting aside the award.

5. The parties filed affidavits. The case of the Railway authorities was that the representatives of the Society did not appear before the Arbitrator on any of the dates. The President and the Secretary of the Society stated that they appeared before the Arbitrator on 23rd November 1964 as well as on 7th December, 1964 but they were told that their presence was not required and that they could go. If the case of the Railway authorities is accepted, it is clear that the Society had no opportunity of hearing at all. If the case of the Society's representatives is accepted it is clear that the Society's representatives were not permitted to participate in the hearing. In either case the violation of the principles of natural justice is clearly established,

6. The appeal has no merits and is accordingly dismissed with costs.