

(1962) 05 CAL CK 0023
In the Calcutta High Court
Case No : A.F.O.O. No. 88 of 1959

Union of India (UOI)

APPELLANT

Vs

N.P. Singh

RESPONDENT

Date of Decision : 09-05-1962

Acts Referred:

Arbitration Act, 1940 — Section 30, 33
Constitution of India, 1950 — Article 299

Citation : AIR 1962 Cal 594 : 66 CWN 977

Hon'ble Judges : P.B. Mukharji, J; N.K. Sen, J

Bench : Division Bench

Advocate : M.N. Banerjee and Monotosh Mukherjee, for the Appellant; R.C. Deb and S.C. Deb, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—This is an appeal by the Union of India from the orders of A.N. Ray, J. refusing to set aside the award of the Arbitrators dated the 13th day of June, 1958. The Union of India made an application to set aside the award of the Arbitrators on a number of grounds and that application was dismissed by the learned Judge.

2. The main argument on behalf of the Union of India in this appeal is that the award is bad on the face of it. It is also contended on behalf of the Union of India that the award contains erroneous decisions in law and in fact. The award in this case is a long award running into 12 printed pages. It is argued on behalf of the Union of India that the award gives reasons which are erroneous.

3. Mr. M. N. Banerjee, learned Counsel for the Union confined his arguments in challenging the award mainly to the findings of the Arbitrators and their decision on issues 7, 10, 12, 13, 15 and 17. It will be necessary, therefore, to briefly refer to the nature of these different issues. The dispute between the appellant and the respondents arose in connection with tender and work for blast oven and loading coal into the tubs, trams and wagons at Kargali collieries under the

direction of the Chief Mining Engineer, Railway Board and his Officers.

4. The 7th issue raises the question whether the Chief Mining Engineer or the Manager, Superintendent of Collieries or the G. C. A. or any authorised agent of the Union agreed on behalf of the Union to pay any extra charges. The 10th issue relates to the question whether the Agreement dated the 26th August, 1952, constitutes a new agreement and prevents the respondents from making any claim after that date. The 11th issue raises the question first whether in fact the respondent did any extra work and secondly whether the appellant enjoyed the benefit of such extra work and if so was the appellant liable to compensate for such extra work done. The 12th issue raises the question whether the appellant was bound by the contract particularly mentioned in paragraph 15 of the statements of fact before the Arbitrators. The 13th issue raises the question whether the appellant ratified the contract mentioned in the same paragraph of the statement of facts. The 17th issue raised the question of Limitation, which it must be recorded here, Mr. Banerjee, learned Counsel for, the Union, definitely abandoned before us. The 15th issue raises the question whether the respondent carried out the work in dispute under the faith that the alleged assurances given by the officers of the appellant were legal and binding and if such assurances were discovered to be void whether the appellant was bound to restore the benefits received by him.

5. The Arbitrators by their award found (1) that the assurances and the agreement were duly ratified by and on behalf of the Government and in any event the ratification was made by the Chief Mining Engineer who had the authority to do so as also to enter into the contract, (2) that the agreement dated the 26th August, 1952 was only meant to fulfil the requirements of the Constitution and not to bring about any change in the agreement, (3) that the respondent did carry out the extra work in the faith that the assurances given by the officers concerned were legal and binding on the appellant and that such assurances were neither illegal nor unenforceable, and, (4) that there was positive evidence to show that the Chief Mining Engineer and other officers of the Union promised to reimburse the respondent for expenses of the extra work done. The Arbitrators also held by their Award that no part of the claim was barred by limitation. On the face of these findings the Arbitrators gave an Award in favour of the respondent for the sum of Rs. 2,60,000/- against the Union of India and allowed Rs. 2,000/- as cost.

6. Mr. Banerjee attacked these findings by saying that the Arbitrators by this decision have committed errors of law by deciding that a contract which is not in legal form according to Article 299 of the Constitution is valid and binding on the Union of India. He contends that oral assurances on which the respondent relied for doing the extra work cannot bind the Union of India. He also contends that the Arbitrators' decision is illegal on the point of ratification by the Government of the extra work. He contends that even the ratification must conform to Article 299 of the Constitution and that the principal Union of India must itself ratify

according to Article 299 of the Constitution and not the officers of the Union of India.

7. This appeal must in my judgment fail for a number of reasons. I shall state the reasons briefly.

8. The first reason is that where there is a proper submission whether of fact or of law to arbitration it is not for this Court to sit as an ordinary court of appeal over the award of an Arbitrator because he has taken a view of law or of fact which a Court of law may not have been taken if the court were trying the dispute. Except to the extent expressly or by necessary implication permitted by the Arbitration Act, this Court will not revise, remit or set aside an award of the arbitrators. The issues in this case clearly indicate that specific points of fact and law were submitted to the Arbitrators for their decision. The Arbitrators have a right to decide them. Their decision according to the Court may be right or may be wrong. Even if it is wrong on a point of fact or on a point of law, if it has been properly submitted to the arbitrator, this court cannot and should not interfere under the Arbitration Act, except in so far as such Act expressly or impliedly permits it.

9. The second reason is that the doctrine by which an award can be challenged on the ground that it is bad "on the face of it" cannot be applied in the facts of this case to the present Award of the Arbitrators. This doctrine is a technical doctrine and must be understood with its proper limitations. The essential principles on which an Award is bad on the face of it can be stated in four short propositions. First, unless it can be shown by something appearing on the face of the award that the arbitrator had proceeded illegally, his award must stand. Secondly, an award of an arbitrator can be set aside only on the ground of error of law on the face of the award when in the award a document is incorporated with it, as for instance, a note appended by the arbitrator stating the reasons for his decision and there is some legal proposition which is the basis of the award and which is erroneous. Thirdly, the statement in the award that a dispute relates to a contract between, the parties of certain date does not thereby so incorporate the contract with the award as to entitle the court to refer to its terms and by so doing to embark on an enquiry whether there is an error of law. Fourthly, before a court can set aside an award on the ground that an error of law appears on the face of it by its reference to some documents, it must be demonstrated affirmatively that the law was departed from by the arbitrator in noticing the existence or contents of those documents so that a mere reference to certain documents in the award is insufficient to establish that it was a wrong in law to refer to them. These four propositions of law I deduce respectively from the leading authorities (1) In *Govt. of Kelantan v. Duff Development Co. Ltd.* 1923 AC 395 at pp. 409-10, (2) In AIR 1923 66 (Privy Council) (3) AIR 1927 164 (Privy Council) and (4) In AIR 1949 334 (Privy Council) I had occasion to collect and refer to those authorities in my previous decision in *Haji Ebrahim Kassam Cochinwalla Vs. Northern Indian Oil Industries Ltd.*,

10. Applying these tests, it is clear in the facts of this Award that no legal proposition as such is propounded by the Arbitrators in this case on which their decision is based and which legal proposition can be said to be erroneous. Our attention has been drawn by Mr. Banerjee to the findings of the Arbitrators under issues, 7, 12 and 13. We have carefully scanned the relevant part of the Award touching these issues but find nothing to justify Mr. Banerjee's argument that any wrong proposition of law has been made the basis of the Award on this point. All that these findings show is that the Arbitrators were noticing the different arguments advanced on behalf of the appellant and the respondent. Noticing arguments of either side does not mean propounding wrong propositions of law and making them the basis of the award within the meaning of the doctrine laid down by the Privy Council in *Champsey Bhara and Co.*'s case reported in 50 Ind App 324: AIR 1923 66 (Privy Council) Nor again do we find that the Award of the Arbitrators in this case at all propounded any proposition of law with regard to the interpretation or application of Article 299 of the Constitution, the need of formal contract to bind the Government and ratification by the Government of acts done beyond the contract. No proposition of law as such was propounded by the Award of the Arbitrators to make it bad on the face of it. The argument that the Arbitrators must have by some kind of unexpressed and implied decision arrived at one kind of interpretation or other on this point, cannot make the Award come within the mischief of the limited doctrine,--"the award is bad on the face of it". The face must show the error and if it does not, it is not permissible for the court to go behind the face under this doctrine.

11. The Supreme Court recently in *Alopi Parshad and Sons Ltd. Vs. Union of India (UOI)*, , discusses this branch of the law and lays down the guiding principles. It is observed there by Shah, J. :

"The award of an arbitrator may be set aside on the ground of an error on the face thereof only when in the award or in any document incorporated with it, as for instance, a note appended by arbitrator, stating the reasons for his decision, is the basis of the award & which is erroneous--50 Ind App 324: AIR 1923 66 (Privy Council) If, however, a specific question is submitted to the arbitrator and he answers it, the fact that the answer involves an erroneous decision in point of law, does not make the award bad on its face so as to permit of its being set aside. In *re King and Duveen* 1913 2 KB 32 and 1923 AC 395".

12. It was also laid down by the Supreme Court in that case again at page 592 that:

"If the reference is of a specific question of law, even if the award is erroneous, the decision being of arbitrators selected by the parties to adjudicate upon those questions, the award will bind the parties."

13. No doubt if Mr. Banerjee could have shown to us that the Arbitrators in their award propounded a proposition that a contract between the Union of India and a private individual although not in the form required by the Constitution could

be enforced and on the face of such proposition an award was made, we would have, other circumstances permitting, upheld Mr. Banerjee's contention for that would have come within the meaning of the award being bad on the face of it and also within the well-known and now settled law as laid down by the Supreme Court in Seth Bikhraj Jaipuria Vs. Union of India (UOI), explaining the previous decision of the Supreme Court in Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and Others,

14. It is necessary to emphasise that in an application to set aside the award on the ground of being bad on the face of it, the court does not and should not make a roving and sifting investigation of the entire records and proceedings before the Arbitrators as distinguished from the Award, and constitute itself as a regular court of appeal from the award of the arbitrators, as if it were hearing the usual ordinary appeal from a lower court. Such a course and such an attitude will defeat the very purpose and principles of arbitration, where parties select their own private forum of arbitrators to be bound by their decision.

15. The final reason for not accepting Mr. Banerjee's argument is that we do not find any error in the decision of law on the merits. In fact having regard to the decision of the Division Bench of this Court in the case of Union of India v. New Marine Coal Co. Ltd. reported in 65 Cal WN 441 and Pratabmull Rameshwar Vs. K.C. Sethia (1944), Ltd., we are satisfied that Mr. Banerjee's arguments cannot be supported even on the merits.

16. For these reasons I dismiss the appeal with costs.

17. Certified for two counsel.

18. N. K. SEN, J. : I agree.