
(1989) 08 AHC CK 0063
In the Allahabad High Court
Case No : F.A.F.O. No's. 364 and 365 of 1980

U.P. State Electricity Board	Vs	APPELLANT
Aryavart Nirman Limited		RESPONDENT

Date of Decision : 10-08-1989

Acts Referred:

Arbitration Act, 1940 — Section 14, 2, 3, 37(3)
Benami Transactions (Prohibition) Act, 1988 — Section 4

Citation : (1989) 2 AWC 1489

Hon'ble Judges : N.N. Mithal, J;G.D. Dubey, J

Bench : Division Bench

Advocate : Sudhir Chandra, for the Appellant; Shah Om Prakash, for the Respondent

Final Decision : Dismissed

Judgement

G.D. Dubey, J.—These two appeal raise common questions of law and facts and, therefore, are being disposed of by this judgment. F.A.F.O. No. 364 of 1980 arises from an order of Civil Judge, Mirzapur, dated 12th March, 1980 in Original Suit No. 56 of 1977 : M/s. Aryavart Nirman Ltd. v. U.P. State Electricity Board. F.A.F.O. No. 365 of 1980 arises from an order of Civil Judge Mirzapur on the aforesaid date in Original Suit No. 57 of 1977: M/s. Aryavart Nirman Ltd. v. U.P. State Electricity Board.

2. The matter in F.A.F.O. No. 364 of 1980 relates to a contract agreement between the parties entered on 7-5-1971. In the other appeal, contract agreement took place between the parties on 30-5-1977. Per both contracts, the Respondent was required to execute certain works at Obra Thermal Power Station. It is not necessary to give the details. After a dispute arose between the parties, the matter was referred to the arbitration. The Respondent had appointed Sri A.K. Sen as arbitrator. The Appellant appointed Sri N.K. Mittal as its arbitrator. Both the arbitrators entered into reference in each of the case. They gave separate awards in each case on 12-11-1977. These awards were filed in

the court of Civil Judge, Mirzapur u/s 14 of the Arbitration Act. The Respondent had prayed that the awards be made rule of the court. The Appellant filed objections against these awards.- The lower court rejected these objections and made the awards rule of the court in each case. The U. P. State Electricity Board has come in appeal.

3. , Before coming to the points in issue, it is necessary to state the essential facts in brief. Both the parties had submitted the statements of case before the arbitrators. In Original Suit No. 56 of 1977 (relating to contract, agreement of 7-5-1971), the Respondent had claimed Rs. 14, 40, 953. 75 p. The details are given in the statements. The claimant had also prayed for release of bank guarantee amounting to Rs. 1, 55, 64000 P. The interest was also claimed at the rate of 12 per cent per annum on the amount of Rs. 14, 40, 953.75 P. The Appellant had made a counter claim of Rs. 12, 74, 170-19 P. No claim of any interest was made by the Appellant in its statement. The arbitrators awarded a sum of Rs. 7, 40, 060.00UP. in full and final settlement of all claims and counter claims between the parties. The Appellant was directed to return two bank guarantees totalling Rs. 1, 59, 640.00 P. The Appellant was required to pay 9 per cent interest on the awarded amount of rupees seven lacs and odd from the date of entering into reference i.e. 4-12-1974 till the date of payment or the date of decree by competent court whichever was earlier. Further the Appellant was directed to pay Rs. 20,000/- as costs of reference. Each party was directed to pay the fees and expenses of the arbitrators appointed by them. The Respondent was directed to pay the respective stamp duty on the awards.

4. In Suit No. 57 of 1977, the Respondent Company had claimed Rs. 1, 42, 740-91P. with interest 18 per cent from 14-8-1973 till filing of the claim before arbitrators and also future and pendente lite interest. The Appellant Electricity Board had made a counter claim of Rs. 79,869-66 together with interest from 14-8-1973 till filing of claim with future and pendente lite interest (q) 18 per annum. The arbitrators directed the Appellant to pay Rs. 25,418/- in full and final settlement of all claims and counterclaims. On this amount the Electricity Board was directed to pay interest 9 per cent from the date of their entering into reference i.e. 4-9-1975 till the date of payment or the date of decree by the competent Court, whichever was earlier. Both the parties were directed to bear their cost. Other awards were similar to award in Suit No. 56 of 1977.

5. The Appellant had objected against the awards before the lower court on the ground that the arbitrators had misconducted themselves and the proceedings by awarding the aforesaid sums in the two cases with interest without giving any finding as to which of the party had committed breach of agreement. Secondly it was urged that the arbitrators had not decided the main dispute between the parties and had thus misconducted. It was also contended that the claim and counter claim of both the parties being separate the arbitrators ought to have given separate findings and thus the arbitrators had misconducted the proceedings. The power of the arbitrators to award the interest was also

challenged. It was urged that the arbitrators had exceeded their jurisdiction by awarding costs which had resulted in miscarriage of justice.

6. The lower court had rejected the pleas raised by the Appellant. It was held by the lower court that the arbitrators had power to award interest. The lower court came to the conclusion that it was not necessary to give separate findings. It held that consolidated award in respect of claims and counter claims was fully valid. The lower court opined that the arbitrators had not exceeded their jurisdiction in awarding a sum of Rs. 20,000/- as costs in relation to the matter involved in F.A.F.O. No. 364 of 1980.

7. It was contended on behalf of the Appellant that the award of the interest by the arbitrators was not within their jurisdiction. Our attention was drawn to the issues framed by each of the parties and delivered to the arbitrators. It was pointed out that these issues do not contain any issue about interest. Therefore, the arbitrators were not required to give an award or interest. Consequently, the award was erroneous. Learned Counsel for the Respondent had pointed out during the course of arguments of the learned Counsel for the Appellant that such a power has been conferred on the arbitrators by introduction of paragraph 7-A in Schedule 1 of the Arbitration Act. This paragraph reads as under:

7-A. Where and in so far as an award is for the payment of money, the arbitrators or the umpire may, in the award, order interest at such rate as the arbitrators or umpire may deem reasonable to be paid on the principal sum awarded, from the date of the commencement of the arbitration, as denned in Sub-section (3) of Section 37, to the date of award, in addition to any interest awarded on such principal sum for any period prior to such commencement, with further interest at such rate not exceeding six per cent per annum as the arbitrators or umpire may deem reasonable on such principal sums from the date of the award to the date of payment or to such earlier date as the arbitrators or umpire may think fit, but in no case beyond the date of the decree to be passed on the award.

8. Learned Counsel for the Appellant had then argued that this paragraph was added by U.P. Act No. 57 of 1976 which came into force on 1-1-1977. Since the matter had been referred to the arbitrators before this date of enforcement of Uttar Pradesh Amendment Act, the paragraph 7-A could not be applied to these cases. It was pointed out that every law is prospective unless it has been made retrospective by the legislature. Learned Counsel has cited several case laws in support of his contention which we shall discuss at the appropriate place.

9. The second contention was that in both the cases both the parties had given separate claims and counter claims. There were details of these counter claims hence it was necessary that the arbitrators should have given their findings on each of the items of claims and counter claims. In not doing so and making a non-speaking award the arbitrators had misconducted themselves.

10. The last argument related to items 4 and 5 of the Award in F.A.F.O. No. 364

of 1980 wherein the Appellant was directed to pay Rs. 20,000/- to the Respondent as costs of the reference and by the fifth item each party was directed to pay the fees and expenses of the arbitrators appointed by them.

11. In the above respect, our attention was drawn to paragraph 8 of Schedule I. It reads as under:

8. The costs of the reference and award shall be in the discretion of the arbitrators or umpire who may direct to, and by whom and in what manner, such costs or and part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between legal practitioner and client.

12. It was urged that the costs of the reference and the award do not mean separate award for costs of reference and expenses of the arbitration. It was urged that the arbitrators should have awarded only one cost towards costs of reference and award.

13. In respect of the first submission of the Appellant a reference was made to Section 3 of the Arbitration Act (hereinafter referred to as the Act). Schedule I of the Act has been framed as an addition to Section 3 of the Act. This Section 3 of the Act reads as under:

3. Provisions implied in arbitrations agreement.--An arbitration agreement, unless different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference.

14. Schedule I read with Section 3 of the Act clearly indicates that the provisions set out in the First Schedule shall be deemed to include the provisions contained in the arbitration agreement. Admittedly, the arbitration agreement and reference had taken place before paragraph 7-A of Schedule I of the Act was added.

15. Our attention was drawn to the word "reference" occurring in the aforesaid Section 3 of the Act. Learned Counsel pointed out that the word "reference" has been defined in Section 2(e) of the Act as under:

"reference" means a reference to arbitration.

16. It was urged that in view of the above definition, the reference means the reference to arbitration. Consequently as in F.A.F.O. No. 364 of 1980, the reference had been made on 4-1.2-1974 and in the other F.A.F.O. No. 365 of 1980, the reference had been made on 4-9-1975, it was urged, that on these dates only the provisions contained in Schedule I shall be deemed to have been included as far as they were applicable in the arbitration agreement. It was urged that any provision added after the aforesaid dates of reference could not be deemed to have been included in the arbitration agreement. On this basis, it was submitted that paragraph 7-A of Schedule I to Arbitration could not be

invoked.

17. Learned Counsel for the Respondent urged that the whole I Schedule of the Arbitration Act speaks that such provision of the Schedule, as are not contained in the arbitration agreement, shall be deemed to be implied conditions of arbitration agreement. For example in paragraph 1 the reference provides to a sole arbitrator whereas in this case the parties had appointed their own arbitrators. Therefore, para 1 will not be applicable. It was urged that on a reading of the prefatory note giving the statements of objects and reasons, it appears that, while enacting the Uttar Pradesh Civil Laws (Reforms and Amendment) Act, 1976 (by which paragraph 7 was added to I Schedule), it was stated that certain provisions of the Arbitration Act, 1940 were being amended with a view to making the remedy of Arbitration more efficacious and popular. Thus the object of this Amending Act, 1976 was not to add paragraph 7 to the Schedule making it applicable to pending proceedings in which reference had already been made before the enforcement of the Act. The object of the amendment was made to make the arbitration more efficacious and popular it self speaks that the intention of the legislature was to make the arbitration attractive to the litigants from the date of amendment. In this way, it was argued that there is no scope for any doubt after reading the prefatory note that the amendment was intended to be retrospective in nature and could be made applicable to the cases where reference had been already made to arbitration. This contention of learned Counsel for the Respondent is not correct. The preamble itself speaks that till amendment the provisions were not popular. They were being incorporated to the Act to make it attractive. Hence the intention was to make it popular onwards. It was not intended to apply to pending proceeding u where refernce had been already made

18. Certain passages were quoted by learned Counsel for the Respondent from Maxwell on the Interpretation of the Statutes and "Legislation and Interpretation" by Jagdish Swarup 1968 Edition. It is not necessary to quote them. From a reading of the preamble to the prefatory note giving the statements of object and reasons to the Amendment Act, 1976 makes it obvious that the Amending Act was prospective in nature.

19. Learned Counsel for the Respondent had cited Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others, . In this case, the Supreme Court has observed as under:

All laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectively if they affect vested rights and obligations unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Hence the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous effect will have to

be given to the provision in question in accordance with its tenor. If the language is not clear then the Court has to decide whether in the light of the surrounding circumstances retrospective effect should be given to it or not.

20. In the other case law, on which reliance was placed by learned Counsel for the Respondent, is B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others, . In this case, the Supreme Court had observed:

It is open to the Court to give retrospectivity to a legislation to which the legislature plainly and expressly refused to give retrospectivity, because unlike United Kingdom, India has a written Constitution which confers justiciable Fundamental rights and so that very refusal to make an Act retrospective or the non-application of the Act with reference to a date or to an event that took place before the enactment may, by itself create an impermissible classification justifying the striking down of the non-retroactivity or non-application clause, as offending the fundamental right to equality before the law and the equal protection of the laws.

21. This was a peculiar case in which the Government of Andhra Pradesh had decided to reduce the age of superannuation of its employees from 58 to 55 years in February, 1983. Several Notifications on amendment in the rules have been made and the question ?arose whether the amendment made and the enactment by the Andhra Pradesh Legislature suffers from arbitrariness. No such question arises in the present appeal.

22. Learned Counsel for the Respondent has also urged that paragraph 7-A is not remedial. It is procedural or declaratory. It was urged that the exercise of power of paragraph 7-A will not arise unless the award is being made. We do not agree with this contention. As stated above in the previous paragraphs, paragraph 7-A cannot be deemed to have been included in the arbitration agreements. Consequently, paragraph 7-A cannot be deemed to have been included in the arbitration agreements. Paragraph 7-A cannot be deemed to be procedural or declaratory. Right to get interest is a substantive right. It cannot be made retrospective in operation unless the Statute makes it so. This view is fortified by cases cited by learned Counsel for the Appellant, viz. Sree Bank Ltd. Vs. Sarkar Dutt Roy and Co., , Sukhram Singh and Another Vs. Harbheji, , The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, and Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others, . In all these cases it was held that when a substantive law is altered, then it shall have prospective operation unless a new amendment or statute expresses a clear intention to make it retrospective in operation.

23. Learned Counsel for the Respondent has cited a case in Mithilesh Kumari v. Prem Behari Khare JT1989 SC 275 : 1989 SCC 96. This was a case where the interpretation of Section 4 of the Benami Transaction (Prohibition) Act, 1988 came up for consideration before the Supreme Court. In that section there was a clear prohibition that suit claim or action to enforce any right by a person

claiming to be real owner in respect of any property held benami against the person in whose name the property is held or against any person shall not lie. The defence based on benami claims was also prohibited. Interpreting these provisions, the Supreme Court observed that in the circumstances of the case and by necessary implication from the language employed in the legislation, the Benami Transaction (Prohibition) Act must apply to pending proceedings irrespective of time of the benami transaction. The facts of the case were, therefore, quite different and cannot be applied to the present matter.

24. From the above, we have seen that the first part of argument of Respondent's learned Counsel that the interest could be granted under para 7-A of Schedule I of the Act is not tenable. It has no force at all.

25. However, the second part of the arguments of the learned Counsel for the Respondent carries weight. It was argued that both the parties had claimed interest. The whole matter had been referred. Framing of issues was only for the facility of the arbitrators to adjudicate upon the claims of both the parties. The arbitrators were not at all precluded from awarding interest.

26. The preamble to the two awards states that the arbitrators had considered the statements, counter-statements, documents and oral evidence adduced by the parties and having considered and weighed these materials they had given the awards. As we have seen above, the parties were themselves claiming interest. Therefore, the matter of interest was before the arbitrators for adjudication.

27. Learned Counsel for the Respondent has cited a case of the Supreme Court in *Sudarsan Trading Co. Vs. Government of Kerala and Another*, . Therein the Supreme Court made the following observations:

The next question on this aspect which requires consideration is that only in a speaking award the Court can look into the reasoning of the award. It is not open to the court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. See the observations of this Court in *Hindustan Steelworks Construction Ltd. Vs. C. Rajasekhar Rao*, . In the instant case the arbitrator has merely set out the claims and given the history of the claims and then awarded certain amount. He has not spoken his mind indicating why he has done what he has done; he has narrated only how he came to make the award. In absence of any reasons for making the award, it is not open to the court to interfere with the award. Furthermore, in any event, reasonableness of the reasons given by the arbitrator is never a matter which the court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisal of the evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the Court to take upon itself the task of being a judge on the evidence before the arbitrator. See the observations of this Court in *Municipal Corporation of Delhi Vs.*

Jagan Nath Ashok Kumar and Another,

28. Our attention was also drawn to a case in *G.W.S.S.B. v. Unique Erectors (Guj) (P) Ltd.* JT 1989 285. Therein the Supreme Court has observed that it is not at all obligatory for the arbitrator to give reasons in his decision. If the award is non-speaking award the reasonableness of the award cannot be adjudicated unless the award is per se, preposterous or absurd.

29. It has not been shown to us that the award of 9 percent interest was per se, absurd or preposterous. The parties themselves were claiming interest at the rate of 12 percent or 18 percent as stated above. We cannot interfere with the findings of the arbitrators on some imaginary ground. Keeping in view the preamble added to the award and the fact that 9 per cent interest has been granted against claim of 12 to 18 percent interest, we have every reason to believe that the parties had advanced their case before the arbitrators regarding interest also even though they had not submitted any specific issue on the point to the arbitrators. The award of 9 per cent interest cannot be deemed to be unreasonable. We find that as a whole claim including the claim of interest had been referred to arbitration. We find that arbitrators had not exceeded their jurisdiction to award interest. Thus there is no error in the finding of the lower court that the award of interest does not suffer from any misconduct on the part of the arbitrators.

30. The case law *Bibi Rehana Khatun v. Iqtidar Uddin Hasan* AIR1943 ALL cited by learned counsel for the Appellant is not applicable to the present matter. It was held in this case by a Division Bench of this Court that there should be no finding by a Judge on a point which was not a point at issue. It is a principle applicable in trials by regular courts. In arbitration, the arbitrators are not even required to frame issues. As held in *G.W.S.S.B. v. Unique Erectors* case (supra), the awards could be non-speaking. In such cases, the contention about giving of the award without any issue on interest is not tenable. It has no force at all. Hence, the first point raised by the Appellant fails.

31. The second contention that the arbitrators ought to have given separate findings for each claim stands negated by the law laid down by the Supreme Court in *G.W.S.S.B. v. case* (supra). The consolidated awards in respect of claims and counter claims was perfectly valid. It is not open to this Court to examine the reasoning behind the awards. Any such attempt would be based on speculation. It would not be permissible.

32. The last point relates to the awards of cost of Rs. 20,000/- and cost of reference. The argument of the learned counsel, as stated earlier, is based on paragraph 8 of Schedule I of the Act. It had been urged that the costs of award and reference are in respect of the whole matter and cannot be bifurcated. The learned Counsel for the Respondent submitted that the costs of award and reference are two different items. The costs of award, he urged, means the costs which any party should be entitled along with the award made in its favour. The

cost of reference means the cost which the arbitrator had to incur in reference.

33. The above contention of the learned Counsel for the Respondent carries force. The award and reference, as defined in Section 2 of the Act, are entirely different things. The cost of award means the cost which a party may be entitled in respect of a dispute. For example, the costs incurred by a claimant before reference, i.e. costs in approaching the other party in settlement of his matter etc. may be awarded. The cost of reference is the expenses incurred by arbitrators in the reference and giving of award. This is what, exactly, has been done by the arbitrators in the award relating to Suit No. 56 of 1967. Thus this last point too has no force at all.

34. For the reasons mentioned above, there is no force in these two appeals. They deserve to be rejected.

35. In the result, both the appeals fail and are dismissed with costs to the Respondent. Appeals dismissed.