

(1976) 04 KL CK 0011
In the High Court Of Kerala
Case No : A.S. No. 343 of 1973

Varkey

APPELLANT

Vs

Pacific Procon Ltd.

RESPONDENT

Date of Decision : 02-04-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : AIR 1977 Ker 24

Hon'ble Judges : George Vadakkal, J; Bhaskaran, J

Bench : Division Bench

Advocate : M.K. Narayana Menon, for the Appellant;

Final Decision : Allowed

Judgement

George Vadakkal, J.—The only question that arises for consideration in this appeal is whether the Arbitrators were competent to award interest for the period prior to the date of the award. The lower Court held that they were not, and, therefore, modified the award accordingly. Hence this appeal.

2. The appellant in his claim submitted before the arbitrators claimed interest "as damages and also according to the custom and usage". The respondent contended before them that there was "no custom or trade practice or equity" justifying the claim for interest. The appellant in his reply statement justified the claim also on ground of demand made in writing for payment. Parties joined issue thereon, and the arbitrators raised issue No. iii as regards the sustainability of the claim and the quantum of interest, if the claim was sustainable. Without specifically answering the 1st part of that issue relating to sustainability of the claim, and also without giving any reasons, they held that the respondent shall pay the appellant interest at 6 per cent. from the date of registered notice demanding payment, though the claim was for interest from the date of termination of the contract.

3. There was no case before the lower Court that the award has left

undetermined any of the matters referred to arbitration (no such case was argued before us either) nor was there any motion before the lower Court on that ground for remitting the award to the arbitrators as contemplated by Section 16 of the Arbitration Act, 1940. We will therefore proceed on the basis that the parties have no case that any part of issue iii remains undetermined, that the decision in paragraph 16 of the award is comprehensive enough to include determination of the 1st part of that issue relating to sustainability of the claim for interest, and that the decision of the arbitrators on that part of that issue was in the affirmative, for otherwise interest would not have been awarded by them.

4. Though the respondent filed T. A. No. 5243 of 1971 u/s 30 of the Act seeking to have the award set aside that relief appears to have been not pursued. However the lower Court modified the award whereby the appellant was disallowed interest up to date of the award,

5. In the State of Madhya Pradesh Vs. Saith and Skelton (P) Ltd., , it has been laid down:--

"If the contention of Mr. Shroff that under no circumstance an arbitrator can award interest prior to the date of the Award or prior to the date of reference, is accepted, then the position will be very anomalous. As an illustration, we may point out that there may be cases where the only question that is referred to the arbitrator is whether any of the parties is entitled to claim interest on the amount due to him from a date which may be long anterior to the date of reference. When such a question is referred to the arbitrator, naturally he has to decide whether the claim for award of interest from the date referred to by the parties is acceptable or not. If the arbitrator accepts that claim, he will be awarding interest from the date which will be long prior even to the date of reference. Therefore, the question ultimately will be whether the dispute referred to the arbitrator included the claim for interest from any particular period or whether the party is entitled by contract or usage or by a provision of law for interest from a particular date".

6. To the same effect is the decision of the Privy Council in Champsey Bhara and Company v. Jivraj Balloo Spinning and Weaving Company Ltd., AIR 1923 PC 66. The Board said that the statement of law made by Williams J. in Hodgkinson v. Fernie 1857 8 CBNS 189, clearly expounded the law on the subject. That statement is as follows:--

"The law has for many years been settled, and remains so at this day, that, where a cause or matters in difference are referred to an arbitrator, a lawyer or a layman, he is constituted the sole and final Judge of all questions both of law and of fact.....

The only exception to that rule are cases where the award is the result of corruption or fraud, and one other, which though it is to be regretted, is now, I think firmly established viz., where the question of law necessarily arises on the face of the award or upon some paper accompanying and forming part of the

award. Though the propriety of this latter may very well be doubted I think it may be considered as established."

7. In the light of the pleadings of the parties before the arbitrators, and in view of issue iii raised by them we are not prepared to hold that the question of interest was outside the scope of the submission. Being a question expressly referred to the arbitrators for their decision, they were competent to decide the same, and their decision thereon would be binding upon the parties. The award of the arbitrators on a dispute referred to their decision would be immune from attack on the ground of want of jurisdiction on the part of the arbitrators. No grounds have been made out to set aside the award on the basis of misconduct of the arbitrators. The respondent has also failed to establish any other ground on which the award could be set aside. The arbitrators have not founded their decision on issue iii on any legal principle, and therefore no Court is competent to examine whether that decision is vitiated by errors of law necessarily arising on the face of it. That this is so is clear from another decision of the Supreme Court, *Bungo Steel Furniture Pvt. Ltd. Vs. Union of India (UOI)*, , where it was said:--

"It is now a well-settled principle that if an arbitrator, in deciding a dispute before him, does not record his reasons and does not indicate the principles of law on which he has proceeded, the award is not on that account vitiated. It is only when the arbitrator proceeds to give his reasons or to lay down principles on which he has arrived at his decisions that the Court is competent to examine whether he has proceeded contrary to law and is entitled to interfere if such error in law is apparent on the face of the award itself."

8. We are therefore of the view that the lower Court went wrong in modifying the award on the ground of want of jurisdiction on the part of the arbitrators, to award interest.

9. According to the lower Court the rule is that the arbitrators are incompetent to award interest, the only exception to that rule being, according to that Court, arbitration arising out of pending suits. The same proposition was advanced before us by the learned counsel for the respondent. We are afraid that this is a misconception of law on the subject. If the submission includes expressly or impliedly the question of interest as well, be it a reference under Chapter II, III or IV of the Act, the arbitrators would be competent to decide that question, and award interest. When the question of interest is expressly and specifically raised and submitted for arbitration there can be no doubt that the arbitrators would be competent to decide that question and to award interest. In other cases the rule is:--

"An arbitrator may award interest by virtue of his implied authority to follow the ordinary rules of law." (Russell on Arbitration 17th Edition, p. 256). This rule is founded on the decisions in *Edwards v. G. W. Ry.* 1851 11 CB 588 and was reiterated, a century later in *Chandris v. Isbrandtson Moller Co. Inc.* 1951 1 KB

240 :66 TLR 358 . In the latter decision adapting the language Lord Salva-sen used in *Ram Dutt Ramkissan Dass v. E. D. Sasoon and Co.* 1929 45 TLR 205 : AIR 1929 PC 103 with reference to the applicability of the Indian Limitation Act, 1908 to arbitration proceedings Tucker L. J. said:--

"Although the Law Reform (Miscellaneous Provisions) Act, 1934, does not in terms apply to arbitrations, I think that in mercantile references of the kind in question it is an implied term of the contract that the arbitrator must decide the dispute according to the existing law of contract, and that every right and discretionary remedy given to a Court of law can be exercised by him." And Cohen L. J. in that case stated the principle to be:--

".....apart from any statute, an arbitrator had all the powers of the appropriate Court, including the power to award interest in the case indicated." The Court of Appeal reversed the decision of Devlin, J. in *Chandris v. Isbrandtsen Moller Company, Incorporated* 1950 66 TLR 971, where the question: "had the arbitrator jurisdiction to award interest" was answered in the negative on the authority of the decision of Lord Goddard, C. J. in *Podar Trading Co. Ltd., Bombay v. Francois Tagher, Barcelona* 1949 2 AH ER 62. This last mentioned case was overruled by the Court of Appeal.

10. Referring to the decision of the Court of Appeal, the Supreme Court observed in *Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd.,* , as follows:--

"It was pointed out by the Court of Appeal that the power of an arbitrator to award interest was derived from the submission to him, which impliedly gave him power to decide "all matters in difference" according to the existing law of contract, exercising every right and discretionary remedy given to a Court of law;..... .The legal position is the same in India"

11. Applying the above rule of implied authority, this Court in *State of Kerala Vs. K.R. Narayanan*, held that the arbitrator would be competent "to give such relief with regard to interest as" a Court could give on the basis of the principle underlying Section 34, C. P. C.". That was a case not covered by the Interest Act, 1839 or by an agreement regarding interest. This Court therefore upholding the award of interest from the date of reference, said that the arbitrators were not competent to award interest for the period prior to the date of reference.

12. On the basis of the doctrine of the implied authority of the arbitrator to award interest from the date of reference, invoking the principle underlying Section 34, C. P. C, in the instant case, the arbitrators should be held to be competent to award interest from 4th, January 1966, when they entered the reference, by issuing notice to parties asking them to appear On 8th January 1966. However, since we have held that there was express reference of the question, the arbitrators had as earlier in this judgment pointed out, jurisdiction to award interest from even an earlier date, that is to say, for a period anterior to the reference, though the case on hand also appears to be one to which the Interest Act, 1839, is not attracted and where no agreement regarding interest

exists. An award of that nature, no doubt can be set aside on grounds of misconduct on the part of the arbitrators, or errors, necessarily arising on the face of the award, but, since the respondent has failed to establish any such ground for setting aside the award relating to interest, the appellant is entitled to succeed.

We allow this appeal. The judgment and decree under appeal are set aside. There will be a judgment in terms of the award and a decree shall follow it. The appellant is entitled to his costs.