

State of Orissa and Others

Vs

Construction India

Special Leave Petition (Civil) No. 7389 of 1987

( S. Ranganath Misra, Sabyasachi Mukharji JJ)

04.12.1987

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This is a petition for leave to appeal against the judgment and order of the High Court dismissing an appeal from the order of the learned Subordinate Judge dismissing a challenge to the award. This is an unreasoned award. The petitioners challenge the award made in this case and ask for leave in view of the order passed by this Court on July 16, 1986 in similar matters where the question of the validity of the unreasoned award has been referred to the Constitution Bench for consideration. Mr. R. K. Mehta, learned counsel for the petitioners submitted that this matter should also be referred for consideration before the Constitution Bench.

2. In this matter it appears that the contract was entered into by the parties in 1970-71 and the award was made in 1982. The High Court disposed of the objections to the award in 1987. It is true that the grounds of objections were filed before the learned Subordinate Judge and before the High Court. The ground was taken that it was an unreasoned award, inter alia, amongst many other grounds in the order of the High Court which have been gone into and there were that the arbitrator had misconducted himself and the proceedings and the award did not allow or reject the counter-claim made by the appellants and further that the award of interest with effect from a date prior to the date of reference is bad in law. The High Court in its judgment had gone into all these aspects but it appears from the order of the High Court that this point of unreasoned award though taken in the petition of appeal was not passed before the High Court. It also appears that in the grounds of appeal of the special leave petition no grievance has been made on the point although it had been taken by the petitioners. It appears to us that this point was not pressed before the High Court. It further appears that the arbitrator had been appointed by the Court out of the panels submitted by the contesting parties. Furthermore in an allied contracts, i.e. in respect of a contract of another flat in the same building an award has been made and the same has been made the rule of court subject to certain conditions.

3. It is a true that the question of validity of unreasoned award is pending consideration before the Constitution Bench of this Court. It is for consideration before the Constitution Bench as to whether even if unreasoned award be bad, such award of ancient vintage be bad. That would be a matter of grave consequence. In that view of the matter we are not inclined to interfere with the order of the High Court in this case. In the facts and circumstances of this particular case and the features mentioned hereinbefore, we declined to refer the matter to the Constitution Bench.

4. We must note that the award inasmuch as the interest which had been awarded is set aside to the

extent that the award of interest from the commencement of the proceedings before the arbitrator to the date of the award. Subject to this modification the special leave petition is dismissed. The award will stand modified by deletion of interest for that period namely from the commencement of reference before the arbitrator to the date of award. This is in consonance with the views expressed by this Court in the case of Executive Engineer (Irrigation), Galimala v. Abaaduta Jena [(1988) 1 SCC 418]. The special leave petition, is dismissed as indicated before.

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