

M/s Neelakantan & Bros. Construction

Vs

Superintending Engineer, National Highways, Salem and Others

Special Leave Petitions (Civil) Nos. 11650-58 of 1987

(Sabyasachi Mukharji, S. Ranganathan JJ)

16.08.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. These are petitions under Article 136 of the Constitution seeking leave to appeal against the judgment and order of the High Court of Madras dated July 31, 1987. The petitioner company undertook the work of widening and strengthening pavements in National Highways No. 7, Madurai-Kanyakumari Road from reaches 37.6 km. to 213 km. on the Madurai-Kanyakumari Road and the work was divided into fourteen Reaches and fourteen separate agreements were entered into between the petitioner and the Superintending Engineer, National Highways, Tirunelveli, respondent 3 to the present petitions. There is not much dispute on this point. At the relevant time, according to the petitioner, the Superintending Engineer, National Highways, Salem was one Thiru Mohan. He entered into reference. He took up the matter for arbitration and called for statements from the parties. Statements were filed before him and evidence were also adduced before him. But before he could complete the adjudication he was transferred and was succeeded by one Thiru J. R. Cornelius, Superintending Engineer. The contention of the petitioner in this case was that he had no jurisdiction to proceed and complete the arbitration. It appears, however that he entered into the task of adjudication with the knowledge and consent of the petitioner and the petitioner had his active participation in the proceeding before him. From the notices served by Thiru Mohan previously and subsequently by Thiru Cornelius, it is apparent that the petitioner had knowledge of the change of the incumbent of the Superintending Engineer who was to arbitrate in the matter. This is evident from the documents appearing at pages 164 and 165 of the present paper book and both the parties had notice of the succession in office. The arbitrator could not complete the award within time and there was need for extension of time. He wrote a letter to the petitioner on May 1, 1977 stating "extension of time was necessary to pass orders on reference and hearing has been concluded". In reply to that letter on May 11, 1977 the petitioner agreed to such extension. The petitioner rested content with that situation and never asked for any further or fresh opportunity either to make any submission or to adduce any evidence. In that light the arbitrator has made the award. This was challenged before the learned District Judge by means of a suit under Sections 30 and 33 of the Arbitration Act, 1940 that the previous arbitrator Thiru Mohan having entered into reference Thiru Cornelius had no jurisdiction to conclude. It was violative of the principles of natural justice, it was submitted. But as mentioned hereinbefore, the petitioner had knowledge of the change of the incumbent. He did not protest and the proceedings went on before Thiru Cornelius. It is apparent from the terms of the agreement between the parties that the Superintending Engineer of the Circle for the time being was to be the named arbitrator. The learned District Judge held that Thiru Cornelius was competent to pass the award. The High Court also upheld that and rejected the challenge to the award on this ground made by the petitioner.

2. Shri A. K. Sen learned counsel for the petitioner urged before us that once an arbitrator had entered into reference, the next incumbent could not conclude the said arbitration proceeding without a fresh agreement. In the facts of this case, as the petitioner had knowledge of the alleged defect and had acquiesced in the proceedings before the successor, namely, Thiru Cornelius, we are of the opinion, that this contention of Shri Sen cannot be entertained. It was contended that there was violation of the principles of natural justice. This objection cannot be entertained. If the parties to the reference either agree beforehand to the method of appointment, or afterwards acquiesces in the appointment made, with full knowledge of all the circumstances, they will be precluded from objecting to such appointment as invalidating subsequent proceedings. Attending and taking part in the proceedings with full knowledge of the relevant fact will amount to such acquiescence, explains Russell Arbitration, 18th edn. at page 105. This was stated by the Judicial Committee long ago in Chowdhury Murtaza Hossein v. Mussumat Bidi Bechunnissa [3 IA 209 : 3 Sar 663 : 3 Suther 342]. See also the observations of P. B. Mukharji, J. in the decision of the Calcutta High Court in Jupiter General Insurance Co. Ltd. v. Corporation of Calcutta [AIR 1956 Cal 470, 472 : 1955 Cri LJ 1243]. This Court held in N. Challappan v. Secretary, Kerala State Electricity Board [(1975) 1 SCC 289] that acquiescence defeated the right of the appellant at later state. See also the observations of this Court in Prasun Roy v. Calcutta Metropolitan Development Authority [(1987) 4 SCC 217]. See also Russell on Arbitration, 20th edn., pages 432-435. Shri Sen contended that no notice was issued after the appointment of the new arbitrator. this was factually incorrect, as mentioned before. Then, it was said that the award was bad as it did not consider all the claims. This also cannot be entertained. It must be assumed that the arbitrator had considered all the evidence adduced before him. There was no disregard of any principle of law. There was nothing to indicate that the arbitrator had not considered all the evidence. Unless there was a patent mistake of law and gross misstatement of facts resulting in miscarriage of justice or of equity, the award remains unassailable. In this case the arbitrator gave no reason for the award. There is no legal proposition which is the basis of the award, far less a legal proposition which is erroneous. There is no appeal from the verdict of the arbitrator. The court cannot review, in such circumstances, the award and correct any mistake in the adjudication by the arbitrator - See Champsey Bhara & Company v. Jivray Balloo spinning and Weaving Company Ltd. [(50 IA 324 : AIR 1923 PC 66] and the observations of Bachawat, J. in Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd., Indore [(1967) 1 SCR 105 : AIR 1967 SC 1030] of this Court.

3. In the facts and circumstances of the case, in our opinion this award is not assailable. The High Court was, therefore, right in upholding the District Judge's dismissal of the challenge to the award. These petitions, therefore, fail and are dismissed accordingly without any order as to costs.

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