

State of Orissa and Others

Vs

M/s Lall Brothers

Special Leave Petition (Civil) No. 7396 of 1987

(Sabyasachi Mukharji, S. Ranganathan JJ)

25.08.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This is an application for leave to appeal under Article 136 of the constitution from the decision and judgment of the High court of Orissa, dated April 8, 1967. By the said judgment the High court had allowed the appeal in part and modified the award so far as it related to the payment of interest on the awarded amount. Another appeal challenging the validity of the award was, however, dismissed.
2. In or about 1975-76 the respondent was entrusted with the work of " construction of balance work of earth dam of Koska Minor Irrigation Project" vide an agreement No. 207 F-2. The said work was due to be completed on August 3, 1977 but it was actually completed on March 31, 1978. the estimated value of the work was Rs. 25,06,299. It is stated that the contractor, respondent herein, had executed only 18 out of 22 items of work beside one extra item and he was paid a sum of Rs. 23,63,122 for the work done. According to the petitioner, no further amount was due to the contractor, the respondent.
3. Final bill was prepared on February 12, 1980 and it was unconditionally accepted by the respondent-contractor. This contention, however, was sought to be disputed before us by the respondent contractor by producing certain bill stated to be the final bill which was "accepted under protest". It is, however, not necessary for us to go into this question at this stage.
4. On or about April 16, 1980, the respondent-contractor raised certain claims and gave notice for appointment of an arbitrator according to the contract. On April 22, 1980, the Chief Engineer appointed Shri N. K. Mishra as arbitrator. However, on the application of the respondent the subordinate Judge removed Shri N. K. Mishra and instead appointed Shri P. C. De as the arbitrator. Before the arbitrator the respondent filed its claim along with some documents and the petitioner filed his counter-statement. It is stated on behalf of the State that no further evidence was adduced by the respondent but the petitioner produced the measurement books. The petitioner contended that no amount was due. The respondent disputed that.
5. The arbitrator on the basis of the claim statement and some document filed by the respondent-contractor, gave a lump sum award for Rs. 14,67,000 plus interest at 9 per cent from April 30, 1978. The award was given on June 23, 1982. On July 11, 1983, the learned Subordinate Judge made the award rule of the court with the modification that the interest was directed to run from June 23, 1982 instead of April 30, 1978. The High Court allowed the appeal in part and deleted the direction

regarding future interest awarded by the arbitrator and modified by the learned subordinate Judge. In appeal it was contended before the High Court for the said judgment by the Subordinate Judge that the following objections were taken against the award, namely :

- (i) that there is an error of law apparent on the face of the award;
- (ii) that the arbitrator has misconducted himself by giving a lump sum award without examining each item of the claims;
- (iii) that the claimant having accepted the final bill unconditionally deposit (sic), the contract between the parties stood closed and, therefore, the arbitration clause was not operative and the arbitrator appointed had no jurisdiction to adjudicate upon the disputes;
- (iv) that the award of interest is without jurisdiction.

6. Except the documents on record, neither of the parties adduced any evidence. It was urged before us that the High Court did not accept challenge to the award but modified the order of interest as indicated before. The award in question contained the recitals to the effect that the arbitrator had gone through the claim statement, counter-statement and documents produced before him and heard the representations made by the parties. There is no error of law apparent on the face of the award. there was no misconduct on the part of the arbitrator or in the conduct of the proceedings. It was contended before us that this is an award which was unreasoned and a lump sum amount was awarded without specifying the amount awarded on particular grounds.

7. In our opinion, the High Court was right in refusing to accept the challenge to the award. The fact that there is an unreasoned award, is no ground to set aside an award. Lump sum award is not bad per se, as such. An award is conclusive as a judgment between the parties and the court is entitled to set aside an award only if the arbitrator has misconducted himself in the proceedings or when the award has been made after the issue of an order by the court superseding the arbitration or after arbitration proceedings have become invalid under Section 35 of the Arbitration Act or where an award has been improperly procured or is otherwise invalid under section 30 of the Act. An award may be set aside by the court on the ground of error on the face of the award, but an award is not invalid merely because by a process of inference and argument it may be demonstrated that the arbitrator has committed some mistake in arriving at his conclusion.

8. It is not open to the court to speculate, where no reasons are given by the arbitrator, as to what impelled him to arrive at his conclusions. See in this connection the observations of the Judicial Committee in *Champsey Bhara & Co. v. Jivraj Balloo Spinning & Weaving Co. Ltd.* and of this court in *Jivarajbhai Ujamshi Sheth v. Chintamanrao Balaji*.

9. The fact that a lump sum award has been given, is no ground to declare the award bad. See further *Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd., Indore, Union of India v. Bungo Steel Furniture Pvt. Ltd.* as well as the decision of this Court in *Allen Berry & Co. (p) Ltd. v. Union of India*.

10. Learned solicitor General for the petitioner relied on *Continental construction Co. Ltd. v. State of Madhya Pradesh*. Reliance was misplaced. If a question of law was not specifically referred to the arbitrator his decision is not final. It was reiterated that the arbitrator is bound by law, and if an error of law in the award is on the face of it, is amenable to correction.

11. In that view of the matter the points sought to be urged in this application for leave, are not entertainable. The application fails and is accordingly dismissed.

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