

State of Andhra Pradesh and Others

Vs

R. V. Rayanim and Others

Special Leave Petition (Civil) No. 8094 of 1988

(CJI Sabyasachi Mukharji, M.M. Punchhi, K. Jayachandra Reddy JJ)

15.01.1990

JUDGMENT

SABYASACHI MUKHARJI, C.J. -

1. The respondent R. V. Rayanim was, at all material times, a class I contractor who had entered into an agreement with the Government of Andhra Pradesh for formation of earth dam in gorge portion from change 3360 to 3380-M of Raiwada Reservoir Project near Devarapalli village, Chodavaram Taluk, District, Visakhapatnam, Andhra Pradesh. Disputes and differences arose between the parties in respect of the aforesaid agreement. A reference was made to the arbitrator as per the arbitration clause in the agreement between the parties. The respondent made eleven claims claiming various amounts, particulars whereof have been set out by the arbitrator as follows :

#I. Payment for forming cross bund and refund (Rs. in lakhs) of the amount recovered. 15.89(subsequently reduced to Rs. 14.89 lakhs)II Refund of Seigniorage charges 2.071 (withdrawn)III Escalation and damages 14.00IV. Extra load for sand 1.075 (subsequently reduced to Rs. 0.575 lakhs)V. Payment for excavation under water for 1.030 probing diaphragm wallVI Compensation for loss suffered due to 1.500 partial prevention by the departmentVII Compensation for loss suffered due to 2.015 non-payment for the work doneVIII Refund of excess hire charges recovered 0.730IX Overheads 0.960X. Costs 0.100XI (a) Interest on II and VII at 24 per cent from the date of recovery (b) On Rs. 8.30 lakhs at 24 per cent per annum from November 30, 1981 to May 12, 1982. (c) Interest at 24 per cent on the award amount except II and VIII from the date of petition.##

2. The arbitrator gave a non-speaking award dated July 27, 1985 in favour of the respondent, amounting to Rs. 19.39 lakhs, wherein he stated as follows :

"Claim II has been withdrawn by the petitioner himself on the ground it was subsequently refunded by the respondents. On the balance claims (I and III to X) according to my assessment, I award a consolidated amount of Rs. 19.39 lakhs to the extent of the claims judged admissible. The respondents shall pay Rs. Nineteen lakhs and thirty nine thousand to the petitioner."

3. It is, therefore, apparent that claim II as mentioned above, had been withdrawn. On the balance claims I and III to X the arbitrator had awarded a consolidated amount of Rs. 19.39 lakhs 'to the extent of the claims judged admissible. The respondent filed proceeding before the court to make the award rule of the court. The petitioner preferred an application for setting aside the award. By a

common judgment dated April 21, 1986 the Second Additional Judge, City Civil Court, Hyderabad, dismissed the petition of the petitioners for setting aside the award and allowed the judgment in terms of the award. The petitioner preferred an appeal and a civil review petition before the High Court of Hyderabad. By a judgment dated March 16, 1988 the Division Bench of the High Court dismissed the appeal and the revision of the petitioner. It held that the non-speaking award of the arbitrator was not liable to be set aside by the court.

4. The petitioner has preferred this special leave petition challenging the said decision of the High Court. The main contention which was sought to be urged in this case was that the award was non-speaking award and, as such, was bad. On this ground, on or about December 9, 1988 this Court directed that the matter should be taken up along with Civil Appeal Nos. 5645 and 5645-A of 1986 pending before a larger bench. At that time, the question was pending consideration by the Constitution Bench of this Court. This Court further directed on December 9, 1988 that the entire amount of award, if not deposited in the trial court, should be deposited in trial court within two months from that date, and upon the deposit being made the respondent will be at liberty to withdraw 50 per cent of the amount which has not been withdrawn on furnishing security to the satisfaction of the trial court. It was further recorded that 50 per cent had already been withdrawn.

5. As mentioned hereinbefore the main contention sought to be urged was that the award being a non-speaking award, was bad in law. In view of the decision of this Court in *Raipur Development Authority v. M/s. Chokhamal Contractors* ((1989) 2 SCC 721), this contention is no longer sustainable. It was then contended that the award has purported to grant damages on the basis of escalation of cost and prices; and such escalation was not a matter within the domain of the bargain between the parties and having taken that factor into consideration the award was bad. We have set out the relevant portion of the award. From reading the award, as set out hereinbefore it is clear that the arbitrator has considered the claim made on the basis of 'escalation and damages' but he has awarded a total sum of Rs. 19.39 lakhs insofar as he finds admissible in respect of the claims which the arbitrator has adjudged. It speaks no further. In such a situation it is not possible to contend that there was any exercise of jurisdiction by the arbitrator beyond his competence. It is well settled that in matter of challenging the award there are often two distinct and different ground. One is an error apparent on the face of the record and the other is that the arbitrator has exceeded his jurisdiction. In the latter case the court can look into the arbitration agreement but under the former it cannot, unless the agreement was incorporated or recited in the award. An award may be remitted or set aside on the ground that the arbitrator, in making it, had exceeded his jurisdiction and evidence of matter not appearing on the face of it, will be admitted in order to establish whether the jurisdiction had been exceeded or not, because the nature of the dispute is something which has to be determined outside the award - whatever might be said about it in the award or by the arbitrator. See the observations of this Court in *Sudarshan Trading Co. v. Government of Kerala* ((1989) 2 SCC 38).

6. 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.

7. In the instant case the arbitrator has not awarded any amount on account of escalation of costs and expenses. At least the arbitrator has not expressly awarded any amount on the ground of such escalation and if so, what amount, is not apparent on the face of the record. In these circumstances, in our opinion, on the basis of well settled principles of law such an award, especially in view of the fact that excluding Item III the remaining items would also be well over Rs. 19.33 lakhs, it is not

discernible on the face of the record that arbitrator has exceeded his jurisdiction in awarding damages on account of escalation and expenses which were beyond the arbitration ambit. The fact that the arbitrator has considered the claim made by the respondent on account of escalation, does not make per se the award to be bad.

8. Mr. C. Sitaramiah learned counsel appearing for the appellant contended that the fact that the arbitrator has taken into consideration the question of escalation would make the award bad because it is not discernible whether he has awarded any amount on account of escalation. We are of the opinion that this argument is not open. In case of an error apparent on the face of the record, it has to be established that an item or an amount which the arbitrator had no jurisdiction to take into consideration, has been awarded or granted. That is not apparent on the face of the award in this case. All that the award stated is that he has considered the claim on the basis of escalation. Such a consideration does not make the award on the face of it, bad on the ground of error apparent on the face of the record. Indeed, the arbitrator when a claim is made, has to take that into consideration either for acceptance or rejection of the claim made. The award states that he has taken the claim made, into consideration. The award does not state that he has awarded any amount on that account. There is neither any error apparent on the face of the record, nor any material to satisfy that the arbitrator has exceeded his jurisdiction in awarding the amounting the amount as he did.

9. In that view of the matter the special leave petition has no merit and must, therefore, fail; and accordingly dismissed. The petitioners were allowed to withdraw the awarded sum on furnishing security but in view of the decision now rendered, they will be entitled to take back the security. We order accordingly. The application is dismissed with aforesaid directions.

</html