

Food Corporation of India

Vs

Jagdish Chandra Saha

Civil Appeal No. 4476 of 1992

(S. Ranganathan, V. Ramaswami II, B. P. Jeevan Reddy JJ)

13.10.1992

JUDGMENT

1. Leave granted.

2. The award in this case did not give any reasons. When the matter went to the Subordinate Judge he set aside the award on the ground that the order appointing the arbitrator had contained a specific direction that where the amount of claim in dispute is Rs. 25,000/- or above, the arbitrator should record his reasons for the award and that, since no reasons had been given by the arbitrator the award should be set aside. In this view, he did not consider the other objections raised on behalf of the Food Corporation of India which had challenged the award. However, on appeal, the High Court has reversed this conclusion of the learned subordinate Judge. It has held that, in view of the decision of this Court in Food Corporation of India v. Great Eastern Shipping Company Ltd. (1988) 3 SCR 366 (AIR 1988 SC 1198) and Raipur Development Authority v. M/s Chokhamal Contractors, (1989) 2 SCC 721 : (AIR 1990 SC 1426), no objection could be taken to an award merely on the ground that no reasons have been stated therefor when the arbitration clause did not contain any requirement to that effect. The High Court, however, instead of considering other objections permissible to challenge a non-speaking award, directed that the award be made a rule of Court.

3. The Food Corporation of India has come up in appeal, Sri Mahajan, appearing on behalf of the petitioner submits that in view of the paragraph 9 of the order of appointment of the arbitrator, the arbitrator could not have proceeded to give an award without disclosing or setting out his reasons. In support of this contention he refers to a passage in the decision of this Court in the Raipur Development Authority case (AIR 1990 SC 1426) (supra) where this Court has observed as follows (para 19):

"The arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submission he is required to give reasons....."

(Emphasis added)

His argument is that the order of the arbitrator should be taken as a deed of submission. We are unable to agree. What this Court had in contemplation in the above passage was that reasons are obligatory on the arbitrator only where the arbitration clause contains such a requirement or where both parties agree that the reasons should be given in a deed of submission or by a letter addressed

by both parties to the arbitrator. We do not see how one of the parties can restrict the scope of the arbitrator's powers as envisaged in the arbitration agreement by mentioning certain terms in a unilateral order of the appointment of the arbitrator. For instance, it cannot be seriously disputed that the order of appointment of an arbitrator cannot unilaterally specify that the arbitrator should conduct the arbitration proceedings in a particular place or in a particular manner or give his order after examining only certain parties, thus imposing limitations which are not contemplated by the arbitration agreement. We do not think that the learned counsel is right in submitting that the terms of the appointment of the arbitrator can impose restrictions on the arbitrator which are not envisaged by the arbitration clause.

4. We, therefore, agree with the High Court that the award cannot be set aside merely on the ground that the arbitrator has not given reasons for the award made by him. However, in our opinion, the High Court should have remitted the matter to the subordinate Judge for considering the objections of the parties on merits to the extent they are permissible in the case of a non-speaking award. We, therefore, allow this appeal in part and restore the matter to the subordinate judge and direct him to dispose of the objections in accordance with law. The parties may appear before the subordinate judge on 12-11-1992.

5. Having regard to the fact that the award is one of 1983, we direct the subordinate judge to dispose of the matter within three months from today. The appeal is disposed of accordingly. No costs. Appeal partly allowed.

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