

B.N. Agarwalla

Vs

State of Orissa

Civil Appeal No. 9413 of 1995

(J.S. Verma, K. Venkataswami JJ )

16.10.1995

JUDGMENT

J.S. VERMA, J.

1. Leave granted.

2. By the impugned judgment the High Court allowed the appeal against the judgment of the Subordinate Judge, Bhubaneswar making an award dated 26-3-1983 the rule of the court, by which a sum of Rs. 95,003 was directed to be paid to the appellant by 24-6-1983 failing which it was to carry interest at the rate of 12 per cent per annum from 27-3-1983 till the date of payment. On behalf of the respondent, the award was challenged on the ground that the arbitrator was incompetent to make the award in view of Section 41-A(7) of the Arbitration (Orissa Amendment) Act, 1982 (Orissa Act 3 of 1983) which came into force w.e.f. 26-3-1983 and had the effect of amending the Indian Arbitration Act, 1940. Since the date of the award and the date of the enforcement of the amending Act are the same, the question is of the applicability of the said amendment. This is the only question involved for decision in this appeal by special leave.

3. The Arbitration (Orissa Amendment) Act, 1982 was an Act to amend the Arbitration Act, 1940 in its application to the State of Orissa. It received the assent of the President of India on 21-3-1983 and came into force on publication in the Orissa Gazette, Extraordinary, No. 358 dated 26-3-1983. A new Section 41-A was inserted in the principal Act relating to constitution of and references to the Arbitration Tribunal. Sub-section (1) of Section 41-A provided that notwithstanding anything contained in the Act or any contract or any other instrument, in all cases where the State Government, a local or other authority controlled by the State Government, statutory corporation or a government company is a party to the dispute, all references to arbitration shall be made to the Arbitration Tribunal. Sub-section (2) provided for constitution of an Arbitration Tribunal by the State Government in the manner provided therein. Sub-sections (3), (4), (5) and (6) relates to ancillary matters pertaining to constitution of the Arbitration Tribunal. Sub-section (7) relates to pending proceedings and it is the construction of this provision which is involved in this appeal. Sub-section (7) is as under:

"All arbitration proceedings relating to a dispute of the nature specified in sub-section (1) which are pending before any arbitrator on the date of commencement of the Arbitration (Orissa Amendment) Act, 1982 and in which no award has been made by the said date, shall stand transferred to and disposed of by Arbitration Tribunal."

4. The only question in the present case is: Whether the arbitration proceeding in the present case

was such a pending proceeding before the arbitrator to be governed by sub-section (7) of Section 41-A? The controversy really relates to the meaning of the expression "by the said date" occurring in sub-section (7).

5. The contention of the learned counsel for the appellant is that the arbitration proceeding in the present case was not pending before the arbitrator on 26-3-1983 which is the date of commencement of the Act as the award had been made on that day. He submits that the date of commencement of the Act is to be included in the expression "by the said date" and, therefore, the arbitrator was not divested of jurisdiction to make the award on 26-3-1983. On the other hand, learned counsel for the respondent contends that the Act having come into force on 26-3-1983, an award made on that day was without jurisdiction in a pending arbitration proceeding which stood transferred to the Arbitration Tribunal by virtue of sub-section (7) of Section 41-A. Learned counsel for the respondent further submitted that the object of the enactment was to prevent the mischief for which the provision was enacted and, therefore, the contemplated legislation being widely publicised with the assent of the President being given on 21-3-1983, the construction which he suggests would promote the object of the legislation. It is well known that this amendment was made in the Arbitration Act because of the realisation on account of strong observations by the courts in several arbitration cases from Orissa suggesting the desirability of an Arbitration Tribunal to decide the arbitration disputes in which the State Government, its instrumentalities or other public bodies were parties.

6. Sub-section (7) of Section 41-A provides for automatic transfer to the Arbitration Tribunal of all arbitration proceedings of the kind specified in sub-section (1) which were "pending before any arbitrator on the date of commencement" of the said Act and "in which no award had been made by the said date". Obviously, the expression "by the said date" here means by the date of commencement of the Arbitration (Orissa Amendment) Act, 1982. The first expression clearly means an arbitration proceeding pending before any arbitrator on the date of commencement of the Act, namely, 26-3-1983. The meaning of the second expression should be consistent with that of the first expression since the two could not be used to create a conflict. The purpose of sub-section (7) is to divest the arbitrator of authority to make the award in all such arbitration proceedings which were pending before the arbitrator on the date of commencement of the said Act and to provide for their automatic transfer to the Arbitration Tribunal. The General Clauses Act, 1897 provides that unless the contrary is expressed, an Act shall be construed as coming into operation immediately on the expiration of the day preceding its commencement. There being no contrary indication in the Act, it must be held that the said Act came into force on the midnight on the expiration of the day preceding its commencement, i.e., the midnight between 25-3-1983 and 26-3-1983. There can be no doubt that if the second expression "in which no award has been made by the said date" was not also present in sub-section (7), then the undoubted result of the first expression would be that an arbitration proceeding in which no award had been made up to the midnight between 25-3-1983 and 26-3-1983 would be a pending arbitration proceeding which automatically stood transferred to the Arbitration Tribunal. The question, therefore, is whether the further words used in the second expression in sub-section (7) must lead to a different conclusion. The construction of the first expression being unambiguous, the second expression must be construed harmoniously unless that is not a permissible construction of the expression "by the said date".

7. It does appear to us that the second expression, namely, "in which no award has been made by the said date" was further used in sub-section (7) ex abundant cautela to clarify the meaning of pending proceedings by indicating that only those arbitration proceedings in which the award also had been made "by the said date" were excluded from the operation of sub-section (7) and that every other

arbitration proceeding including those in which the award alone remained to be made "by the said date" stood transferred to the Arbitration Tribunal. In other words, if the arbitration proceedings had been closed but the arbitrator had not made the award till the midnight between 25-3-1983 and 26-3-1983 when the Act came into force, it was a pending arbitration proceeding governed by sub-section (7). Acceptance of the appellant's contention would amount to holding that even though the Act had come into force on the midnight between 25-3-1983 and 26-3-1983, an award made thereafter on 26-3-1983 was not a pending arbitration proceeding on the date of commencement of the Act. Unless meaning of the expression "by the said date" used in sub-section (7) be only that suggested by learned counsel for the appellant, the construction which would harmonies with the meaning of the earlier expression, must be given to the provision.

8. We may now consider the meaning of the word 'by' for ascertaining the meaning of the expression "by the said date". Meaning of the word 'by' in some of the dictionaries is:

Black's Law Dictionary (Sixth End.)

"Before a certain time; ... not later than a certain time; on or before a certain time;...."

The New Shorter Oxford English Dictionary

"... On or before, not later than. ..."

9. No doubt the word 'by' means "before a certain time" as well as "on or before a certain time". The question is: whether, the word 'by' in the expression "by the said date" would mean in other words 'before' or 'on' 26-3-1983 in the present context? We have already indicated the meaning of the first expression "pending before any arbitrator on the date of commencement" to mean clearly and unambiguously pending up to the midnight between 25-3-1983 and 26-3-1983, i.e., before commencement of the date 26-3-1983 or at the time of expire of the preceding day i.e. 25-3-1983. The other expression must, therefore, be construed in this context and since the word 'by' means 'before' also, in this context it must be held to mean 'before' and not 'on' the date of commencement of the Act. So construed, the second expression would read as "in which no award has been made before the said date" i.e. in which no award has been made before the date of commencement of the Act, namely, 26-3-1983. This would be the harmonious construction of the two expressions in the provision.

10. Obviously, an award made on 26-3-1983 cannot be said to be an award made before 26-3-1983 and, therefore, the award in the present case having been made on 26-3-1983 and not before 26-3-1983, the date of commencement of the Act, the arbitrator had no jurisdiction to make the award as it was a pending arbitration proceeding which automatically stood transferred to the Arbitration Tribunal.

11. Learned counsel for the appellant has referred to some decisions wherein the word 'by' has been construed to mean that it includes the end or the expire of the date or period indicated. As we have indicated, the meaning of the word 'by' is both 'before' as well as "on or before" and, therefore, the context in which it has been used becomes decisive. Where the context does not exclude the date specified and permits its inclusion, the word 'by' can be construed to mean 'on' and not 'before'; and in that situation, specification of the limit of time by saying "by that date" would require including the specified date up to the expire of that date for computation of the permitted period. P.C. Muthu Chettiar v. Narayanan Chettiar; Sk. Nuroo v. Seth Meghraj Ramkaran Marwadi; T.A. Janakumara

Nainar v. Periaswamy Goundan and Dharamraj Mahadeo v. Addl. Dy. Commr. are all decisions in which the context required the word 'by' to be read as 'on' and not 'before' to permit inclusion of the period up to the expiry of the date specified. We have already indicated that the context in the present case excludes the date specified and, therefore, excludes the meaning 'on' and requires the word 'by' to be read as 'before'.

12. Eastaugh v. Macpherson supports the view we have taken that the meaning of the word 'by' in the phrase "by the date" can mean "on or before the date" or "before the date" depending on the context in which the word 'by' has been used and the meaning to be preferred should be that which it has in the given context. We have indicated that in the context of the provision made in sub-section (7) of Section 41-A meaning of the word 'by' must be 'before' and not 'on' in order to harmonise with the meaning of the earlier part of sub-section (7) and to promote the object of its enactment. The High Court's conclusion that the arbitrator in the present case had no jurisdiction on 26-3-1983 to make the award does not suffer from any infirmity.

13. Consequently, the appeal fails and is dismissed.