

State of Orissa

Vs

Orient Paper & Industries Ltd.

Civil Appeal No. 522 of 1992.

(D.P. Wadhwa, N. Santosh Hegde JJ)

09.04.1999

JUDGMENT

N. Santosh Hegde, J.

1. Disputes having arisen between the State of Orissa and the respondent is this civil appeal, in respect of exclusive right and licence to fell, cut and remove bamboos, parties opted to go for arbitration as provided in the agreement. The disputes referred to the Arbitrator for determination are :-

1. "As provided in Note (i) under clause 10 of the Agreement, the C.C.F., Orissa had determined that 2300 mtrs. or 7475 running ft. of Salia bamboos and 600 miters. Or 1950 running ft. of Daba bamboos respectively make a tonne vide his letter No. 24755 dated 17.12.1974 (copy of which is placed in the State's written argument) and the same is held to be final and binding on both parties."

2. "The respondent company was entitled to a refund of Rs. 2,03,325/- for excess royalty paid."

The Arbitrator by his award held as follows :-

"As provided in Note (i) under clause 10 of the Agreement, the Chief Conservator of Forests has determined that 2300 metres of 7475 running feet of Salia Bamboos and 600 metres of 1950 running feet of Daba bamboos respectively make a tonne vide his letter No. 24755 dated 17.12.1974 copy of which is placed in the State's written argument and the same is held to be final and binding on both parties."

2. Based on the finding in dispute No. 1, he made a consequential award on the second issue. The said award of the Arbitrator was made a Rule of Court by the Judgment of the learned Sub-Judge, Bhubaneswar dated 7.8.1980 in Misc. Case No. 442/78.

3. Being aggrieved by the said order of the learned Sub-Judge, respondent-company preferred Misc. Appeal No. 260/80 before the Hon'ble High Court of Orissa at Cuttack. The High Court by its judgment dated 19th of November, 1986 allowed the Misc. Appeal setting aside the order of the Subordinate Judge as well as the award of the Arbitrator and remitted the matter back to the Arbitrator for redetermination.

4. Being aggrieved by the order of the High Court referred to above, this appeal is preferred. The

High Court came to the conclusion that the learned Arbitrator had not decided the disputes referred to him for arbitration. Therefore, the award was unsustainable in law. Consequently, the High Court held such an award could not have been made a rule of court by the learned Subordinate Judge.

5. Before us, Shri P.N. Misra, the learned Senior Advocate appearing for the State of Orissa contended that a perusal of the award shows that the Arbitrator had in fact concurred with the decision taken by the Chief Conservator of Forests, Orissa in regard to the methodology to be adopted for determining the quantity of bamboos cut and removed. Since the Arbitrator was agreeing with the methodology adopted by the Chief Conservator of Forests, the question of giving reasons in a non-speaking award does not arise. Therefore, the High Court ought not to have interfered with the award and the consequential order passed by the Subordinate Judge. On behalf of the respondent, Shri S.B. Sanyal, Senior Advocate contended that the High Court was right in setting aside the award in question since the learned Arbitrator had not at all decided the various points that arose in the first dispute referred to him, therefore, there was non-application of mind by the Arbitrator and consequently the dispute referred to the Arbitrator remained unanswered, hence the High Court was justified in remitting the matter back to the Arbitrator.

6. A perusal of the first dispute referred to the Arbitrator shows that he has to determine three specific points, namely,

(1) Whether the decision of the Chief Conservator of Forests that 2300 metres or 7475 running feet of Salia bamboos and 600 meters or 1950 running feet of Daba bamboos would make a tonne in weight;

(2) Whether this calculation is scientific;

(3) Whether this calculation will apply in all cases, to take effect from 1.10.1973.

7. The award of the learned Arbitrator in regard to the first dispute referred to him merely says that the Chief Conservator had determined under Clause 10 of the Agreement that 2300 metres or 7475 running feet of Salia bamboos and 600 metres or 1950 running feet of Daba bamboos respectively make a tonne and the same is held to be final and binding on both the parties. He did not even advert to the other points. In my opinion, the High Court was right in coming to the conclusion that the learned Arbitrator did not decide the question whether the method adopted by the Chief Conservator of Forests was scientific or not. He also did not determine whether this methodology could be made applicable to all cases w.e.f. 1.10.1973. In my opinion by merely agreeing with the decision of the Chief Conservator of Forests, the Arbitrator has not addressed himself to other points arising in first dispute and has not answered those points. Therefore, in my opinion the High Court is justified in setting aside the award and remitting to back to the arbitrator. This appeal fails and is accordingly dismissed with costs.

8. D.P. Wadhwa, J. - . I agree.

9. I may, however, add that in this case the agreement was entered into in January, 1974. After disputes and differences arose and parties went for arbitration, the Arbitrator gave his Award on November 30, 1978. The Award was challenged by the respondent before the Sub-Judge, Bhubaneshwar who upheld the Award by judgment and order dated August 7, 1980. The matter was taken in appeal before the Orissa High Court by the respondent. High Court by its judgment dated

November 19, 1986 allowed the appeal holding that the Arbitrator had failed to decide the actual disputes specifically referred to him and remitted the matter to the Arbitrator for reconsideration under Section 16 of the Arbitration Act. This appeal was filed by the State of Orissa against the judgment of the High Court and it has taken more than 12 years for the decision of the appeal. However, it was not necessary that the State Government should have challenged the order of the High Court in the circumstances of the case causing unnecessary expenses to the parties and the time this Court had to spend in hearing the appeal. Had the State Government abided by the order of the High Court the matter before the Arbitration would have been completed years ago. State cannot act like a private litigant that it must challenge every order made against it. State has to be advised properly if a case required determination of this Court under Article 136 of the Constitution.

Appeal dismissed.