

PUNJAB AND HARYANA HIGH COURT

Union of India

Vs

Ram Sukh Das

(A.N Bhandari, C.J.)

18.11.1957

ORDER

A.N. Bhandari, C.J.

1. The question which arises for decision in the present case is whether a revision is competent from an opinion given by a Court in exercise of its consultative jurisdiction under Section 13(b) of the Indian Arbitration Act.

2. The facts of the case are very simple indeed. Messrs. Ram Sukh Dass and Brothers who are military contractors of Solon entered into an agreement with the Government of India for the supply of firewood to the military authorities in Delhi for the period 1-4-1948 to 31-3-1949. Disputes arose in regard to the rate at which the contractors should be paid and the matters in controversy between the parties were referred to an arbitrator in accordance with the provisions of an arbitration clause.

During the course of proceedings the arbitrator stated the following question of law in the form of a special case for the opinion of a Subordinate Judge at Delhi under the provisions of Section 13(b) of the Arbitration Act, namely:

"Whether in the revision of rates for the supply of firewood the rates of the place of supply and not the place of procurement will govern the contract?" When this matter came up for consideration before Mr. Dhamija, a Subordinate Judge of Delhi, the latter expressed the view that the payment should be made in accordance with the rates which were prevalent at the place of supply. The contractors were dissatisfied with this order and presented a petition to this Court under Section 115 of the Code of Civil Procedure. This petition was allowed and the order of the trial Court was set aside on the ground that the order in question was recorded by the trial Court. Without affording the parties a reasonable opportunity of being heard. The question which was propounded by the arbitrator was later dealt with by Mr. Pritam Singh, Commercial Sub Judge at Delhi. He

has now recorded an opinion which is not favourable to Government. Government are dissatisfied with this opinion and have come to this Court in revision.

3. Mr. Gurbachan Singh, who appears for the firm, takes a preliminary objection that this Court has no power to deal with this case under the provisions of Section 115 of the Code of Civil Procedure, for the order under revision is neither a decision nor a judgment. Sec. 13 of the Arbitration Act provides that the arbitrator or umpire shall, unless a different intention is expressed in the agreement, have power to state a special case for the opinion of the Court on any question of law involved or state the award wholly or in part, in the form of a special case of such question for the opinion of the Court. This section imposes a statutory obligation upon Courts to give advisory opinions upon questions of law referred to them by arbitrators. The jurisdiction exercised by a Court which proceeds to give an opinion on a case stated by an arbitrator is consultative. An advisory opinion cannot be regarded either as a judgment or as an order, for it does not finally determine the case. It merely advises the arbitrator to act upon the law as the Court states it and leaves it to him to decide for himself whether he should or should not act upon the advice given. As pointed out by Bowen, L. J. in *Re Knight and the Tabernacle Permanent Benefit Building Society*, (1892) 2 QB 613 at pp. 613, 1319, this consultative jurisdiction of the Court does not result in a decision which is equivalent to a judgment or order. The view taken in this case and similar other cases has been rendered obsolete in England by the enactment of Section 21(3) of the Arbitration Act, 1940, which provides that a decision of the High Court under this section shall be deemed to be a judgment of the High Court within the meaning of Section 27 of the Supreme Court of Judicature (Consolidation) Act, 1925, which relates to the jurisdiction of the Court of appeal to hear and determine appeals from any judgment of the High Court. No similar provision appears under the Indian Arbitration Act of 1940. It seems to me therefore that the opinion given in the present case cannot be regarded as a decision and consequently that the help of Section 115 of the Code of Civil Procedure cannot be invoked.

4. Mr. Bishambar Dayal contends that although a revision may not be competent from an order passed by a Court under Section 13(b) of the Arbitration Act, it is open to the Court in exercise of the power of superintendence conferred upon it by Article 227 of the Constitution to interfere with the order if it comes to the conclusion that the order is wrong and has put forward a proposition of law which cannot be upheld.

There can be no doubt that this Court has full power to interfere under Article 227 of the Constitution, but it seems to me that there is no occasion for interference in the present case which is favourable to the opposite party. The advisory opinion given by Mr. Dhamija cannot be regarded as an opinion in the eye of law for the order in which that opinion was embodied was set aside by me on the ground that it had been recorded in the absence of one of the parties.

The only opinion which now holds the field is the opinion furnished by Mr. Pritam Singh. It would be open to the arbitrator either to accept or not to accept this opinion, for as pointed out in a preceding paragraph of, this judgment the jurisdiction exercised by a Court under Section 13(b) is consultative jurisdiction.

5. After I had recorded the above order I started wondering whether the above decision was correct, for although an advisory opinion rendered under the provisions of Section 13(b) of the Arbitration Act may not fall within the ambit of the expression "judgment" appearing in Clause 10 of the Letters Patent, it may still fail within the ambit of the expression "case decided" appearing in Section 115' of the Code of Civil Procedure. I accordingly heard the parties over again with the object of resolving the doubt which had arisen in my mind.

6. Section 115 of the Code of Civil Procedure empowers the High Court to call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and to pass such orders thereon as it thinks fit if any of the conditions set out in the body of the section is fulfilled. The expression "case decided" refers presumably to a case decided by a Court in its capacity as a Court, for in *Gurdevi Bibi v. Mohammad Bakhsh*¹, a Full Bench' of the Lahore High Court expressed the view that the word "case" means any state of facts juridically considered. It is the duty of a Court of law to decide controversies which are brought before it and to pronounce a judgment which is binding and conclusive between the parties. The giving of advisory opinions is not the exercise of judicial function. An opinion given by a Court in its executive or administrative capacity cannot fall within the ambit of the expression "case decided"

7. For these reasons I am of the opinion that the petition ought to be dismissed with costs. I would order accordingly.

Cases Referred.

¹AIR 1943 Lah 66