

RAJASTHAN HIGH COURT

Pukh Raj

Vs.

Magh Raj

S.B. Civil Misc. Appeal No. 1860 of 2004

(N.P. Gupta, J.)

13.01.2005

JUDGMENT

N.P. Gupta, J.

1. By the impugned order, the learned trial Court has made, the award of the Arbitrator, the Rule of the Court.
2. Assailing the impugned order, the only submission made is, that the arbitrator Shri Satya Narain Khanna was not qualified, rather disqualified, to be the arbitrator, and therefore, the award made by him is wholly without jurisdiction, and should have been set aside by the learned trial Court. The disqualification, or disability, contended is, that in the arbitration agreement, he is one of the witnesses, and since, according to the learned Counsel, he is a witness to the agreement, he could not be the arbitrator. Learned Counsel relied upon the judgment of Hon'ble the Supreme Court in *Manak Lal v. Dr. Prem Chand*, reported in ¹ and *Associated Cement Co., Ltd. v. The Workmen*, reported in ² Learned Counsel also relied upon an unreported judgment of this Court, in *D.K. Parihar v. Union of India*,³ decided on 19.10.2004.
3. Since it is not in dispute that the arbitrator was one of the witnesses the arbitration agreement the matter does not involve any factual aspect. In that view of the matter. I straight way take up the cases cited by the learned Counsel.
4. The judgment in D.K. Parihar's case was cited only for the purpose of reference to the observations made by the Lord Hewart in *R.V. Sussex Justices (1924) 1 K.B. 256 (259)*, to the effect, that it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done, have to be kept in mind.

5. Suffice it to say, that this legal principle does not admit of any doubt, and for that no further authority of law is required. Apart from above quotation and the observations of Lord Hewart, the judgments have no other relevance, and was not pressed either, for any other purpose.

6. In Manak Lal's case Hon'ble the Supreme Court was considering the controversy raised in the manner, that the appellant before Hon'ble Supreme Court was a practicing advocate at Sojat. A complaint was filed against him under Section 13 of the Legal Practitioners Act by the respondent, contending the appellant to be guilty of professional misconduct. That complaint was tried by the Tribunal nominated by the Chief Justice of the Rajasthan High Court to enquire into the alleged misconduct. The Tribunal consisted of three members, including one Shri L.N. Chhangani Advocate, (Late and a former judge of this Court) as its Chairman. The contention raised before Hon'ble the Supreme Court was, that the Tribunal was improperly constituted. The impropriety of the constitution of the Tribunal contended was, that Shri Chhangani had filed his Vakalatnama on behalf of the complaint, in proceeding under Section 145 Criminal Procedure Code on 23.08.1952, and had, in fact, argued in the case on that date. Thus, it was contended that Shri Chhangani had appeared in the criminal proceedings in question for the opponent, and, therefore, he was disqualified from acting as a member of the Tribunal, and this disqualification introduces a fatal infirmity. Appreciating this contention, Hon'ble the Supreme Court held as under:-

"That it is obvious that pecuniary interest, however, small it may be in a subject matter of the proceedings, would wholly disqualify a member from acting as a judge. But where pecuniary interest is not attributed but instead as bias is suggested, it often becomes necessary consider whether there is a reasonable ground for assuming the possibility of a bias, and whether it is likely to produce in the minds of the litigant, or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case."

7. Then, in this regard the Halsbury's Laws of England was quoted. Then, Hon'ble the Supreme Court went on the question of waiver of objection, inasmuch as, the parties had gone to trial before the Tribunal knowing fully well of the alleged disqualification, and then the objection was found to have been waived. In my view, it is obvious from the judgment of Hon'ble the Supreme Court, that Shri Chhangani had a pecuniary interest in the matter, as he had been the Counsel for one of the clients in the criminal

proceedings under Section 145 CrPC in question for one party, and therefore, he was found to be disqualified, but then, in view of the fact, that the parties had gone to trial, the objection was found to have been waived.

8. In the present case, the arbitrator is not shown to have any personal or pecuniary interest in the matter. To use the expression used by Hon'ble Supreme Court, that where pecuniary interest is not attributed then the question rests only in the realm of allegation of bias. It remains a question of fact to be decided in each case, as to whether there is a reasonable ground for assuring the possibility of a bias, and whether it is likely to produce in the minds of the litigant, or the public at large, a reasonable doubt about the fairness of the Tribunal.

9. In the case in hand, as appears from the record, that the name of Sri Khanna was suggested on 06.05.1998 by the respondent, and the appellant wanted to suggest the name of his arbitrator, for which he sought time to give out the name of 07.05.1998, but that day he did not appear, and therefore, the matter was referred to sole arbitrator. Significantly, this order of making reference to the arbitrator was challenged by the appellant by way of filing revision petition before this Court, being S.B. Civil Revision Petition No. 606/1998. This revision was dismissed by this Court on 04.07.1998.

10. Thus the appointment of Arbitrator Sri Khanna has become final upto this Court. Then taking up the question of fact, as to whether there is a reasonable ground for assuming the possibility of a bias, it may at once be observed, that there is no material placed on record by the appellant, on the basis of which, the question could be decided by the learned Tribunal, or by this Court. Thus, on the factual parameters, the judgment in Manak Lal's case does not help the appellant.

11. I was shown the Photostat copy of the arbitration agreement and a perusal thereof shows that, that it is not even indicated therein, that the persons signing as witnesses had, or could possible have, any interest whatever in the controversy.

12. Taking up the case in Associated Cement's case, that was a case regarding domestic enquiry, and Hon'ble the Supreme Court was deciding the question about fairness of the enquiry, and considering the aspect, that the enquiry officer himself had seen the misconduct alleged against a employee, it was found that enquiry was not fair.

13. In my view, seeing a misconduct being committed, and the same person enquiring

into the factum of commission of the misconduct, stands entirely on a different footing, as compared to the arbitrating upon the dispute, though the arbitrator happens to be the witness to the arbitration agreement. At the time, the agreement is entered into, there is no dispute between the parties, and both the parties are friendly, and the witnesses are at par for both the parties. It cannot be said, that at that time any of the witness had any association, or leanings towards one of the parties to the arbitration agreement. That being the position, such witnesses cannot be said to be attracting any disqualification to become the arbitrator.

14. I may refer to another judgment of Hon'ble the Supreme Court, in *State of Rajasthan v. Puri Construction Co. Ltd., reported* ⁴ in where the award was challenged by the appellant on the ground, that the arbitrator nominated by the respondent mis conducted, and disqualified himself from acting as arbitrator by accepting brief from, and appearing as Counsel for, the respondent before Hon'ble the Supreme Court in respect of another case, though concerning a different cause of action. Hon'ble the Supreme Court negatived the challenges, as no objection to his functioning was raised.

15. In these circumstances, in my view, simply because the arbitrator happened to be one of the witness to the arbitration agreement, that by itself does not attach any disqualification to his becoming arbitrator, in absence of any further allegation, material, about his bias against, or in favor of, one of the parties. No such bias is even alleged, much less established.

16. Thus, I do not find any force in the appeal. The same is, therefore, dismissed summarily.

Appeal dismissed.

Cases Referred.

1. AIR 1957 SC 425
2. 1963(7) FLR 269
3. S.B. Civil Writ Petition No. 4274/2004
4. 1994(6) SCC 485