

HINDUSTAN STEEL WORKS CONSTRUCTION LTD.

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v.

C. RAJASEKHAR RAO

JULY 27, 1987

[SABYASACHI MUKHARJI AND G.L. OZA, JJ.]

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Arbitration Act, 1940: Sections 3, 28 and 33—Arbitration proceedings—Not to be unduly prolonged—Whether Court has power to extend time for giving award after award is made—Award—When can be set aside—Reasons not given by arbitrator—Whether court entitled to speculate and probe mental process by which arbitrator reached conclusion.

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There was an Agreement between the respondent-contractor and the appellant-construction company in respect of certain works. Differences and disputes arose and there were proceedings before the arbitrators named in the Agreement. As the arbitrators could not agree and there were differences, this Court by an Order dated 16th June, 1983 directed that the arbitrators appointed by each of the parties be appointed arbitrators and if there was disagreement between the arbitrators, the matter was to be referred to the Umpire. In pursuance of the said directions the parties appeared before the arbitrators who referred the matter to the Umpire and the Umpire after consideration made an award dated 15th July, 1985.

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The petitioner-construction company made a petition to this Court for a decree in terms of the award, which was opposed by the respondent-contractor contending that (a) the Umpire had made a speaking award and that the validity or otherwise of the said award was justifiable in a Court of law, (b) that the Umpire had no jurisdiction to proceed with the arbitration on or about 18th December, 1984 as the period of two months from the date of his entering upon the reference had expired and consequently the award was beyond time, and (c) that the award contained error of law on the face of the award and there were inconsistent findings.

The Court while confirming the award,

HELD: 1.1 The policy of law is that arbitration proceedings should not be unduly prolonged. The arbitrator, therefore, has to give the award within the time prescribed, or such extended time as the

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A court concerned may in its discretion extend, and the Court alone had been given the power to extend the time for giving the award. [656E]

1.2 The Court has got power to extend time even after the award has been given or after the expiry of the period prescribed for the award. But the court has to exercise its discretion in a judicial manner.

B This power could be exercised even by the appellate court. [656F]

1.3 The arbitrator gets the jurisdiction to enlarge the time for making the award only in a case where after entering on the arbitration, the parties to the arbitration agreement consent to such enlargement of time. [657B]

C In the instant case, in view of the policy of law that the arbitration proceedings should not be unduly prolonged and in view of the fact that the parties have been taking willing part in the proceedings before the arbitrator without a demur and had all along been willing to extend time, this will be a fit case for the extension of time, and the time for giving the award is accordingly extended and the award will be deemed to have been given in time. [656F-G]

2.1 An award might be set aside by the court on the ground of error on the face of the award, but an award is not invalid merely because by a process of inference and argument, it might be demonstrated that the arbitrator had committed some mistake in arriving at his conclusion. [657D]

Jivarajbhai Ujamshi Sheth and others v. Chintamanrao Balaji and others, [1964] 5 S.C.R. 480, followed.

F 2.2 Only in a speaking award the Court could take into the reasoning of the award. It is not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled him to arrive at his conclusion. It is also not open to the Court to attempt to probe the mental process by which the arbitrator had reached his conclusion where it is not disclosed by the terms of his award. [657D, H, 658A]

G The instant case is not one of a speaking award. The Umpire had not spoken his mind indicating why he has done, what he has done, he has narrated only how he came to make the award. No reasons have been given for the purpose of making the award. There is no legal proposition in the award which is unsustainable or improper. The H challenge to the award cannot, therefore, be accepted. [659G-H]

State of Punjab v. Sri Hardyal, [1985] 3 S.C.R. 649; *H.K. Wattal v. V.N. Pandya*, [1974] 1 S.C.R. 259 and *Chempsey Bhara and Company v. Jivraj Balloo Spinning and Weaving Company Ltd.*, L.R. 50 I.A. 324, referred to.

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CIVIL APPELLATE JURISDICTION: Civil Misc. Petition No. 28356 of 1986.

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IN

CIVIL APPEAL No. 5579 of 1983.

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From the Judgment and Order dated 22.4.1983 of the Andhra Pradesh High Court in Civil Rev. Petn. No. 2626 of 1982.

Dr. Shanker Ghose and P.P. Singh for the Appellant.

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S. Markandeya and C. Markandeya for the Respondent.

The Judgment of the Court was delivered by

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SABYASACHI MUKHARJI, J. This is an application filed by the Hindustan Steelworks Construction Company Limited for filing the award of the Umpire appointed by this Court, Shri Justice Jaganmohan Reddy, retired Judge of this Court and for passing a decree in terms of the said award. It appears that there was an agreement between Shri Rajasekhar Rao, the contractor and the Hindustan Steelworks Construction Limited, petitioner, in respect of certain works. Differences and disputes arose, and there were proceedings before the arbitrator named in the Agreement and there were certain proceedings, the detail of which is not necessary to refer. As the arbitrators could not agree, there were differences. This Court by an order dated 16th of June, 1983 directed that arbitrators appointed by each of the parties be appointed arbitrator to adjudicate upon the dispute between the parties. It was stipulated therein that in the said order of this Court dated 16th of June, 1983, it would be no longer open to the party to question the validity of the appointment of the arbitrators. In the event of any disagreement between the two arbitrators, Shri Jaganmohan Reddy, a former Judge of this Court was directed to act as the Umpire. Further consequential directions were also given. Thereafter the parties appeared before the arbitrators and referred the matter to the umpire. The Umpire after consideration has made the award dated 15th of July, 1985 which has been filed in this

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A Court and the petitioner seeks a decree in terms of the award. The respondent-contractor, Shri Rajasekhar Rao objects to the award being made a rule of the Court. He states in his objections that the umpire had made a speaking award, therefore according to his counsel the validity or otherwise of the said award was justifiable in a court of law.

B He, however, firstly contends that the award was made beyond time. He further contends that the umpire had no jurisdiction to proceed with the arbitration on or about 18th of December, 1984 as the period of two months from the date of his entering upon the reference viz, October 20, 1984 had expired on December 18, 1984. According to the said objections, the umpire became *functus-officio*. It was contended that the power to extend the period of passing the award was vested in the court alone under section 28 of the Arbitration Act and it was not permissible for the parties to extend the time. We are unable to accept this position. Mr. Markendeya drew our attention to certain observations of this Court in the case of *State of Punjab v. Sri Hardyal*,

C [1985] 3 S.C.R. 649. He relied on the observations of the Court at page 656 and emphasised that law precludes parties from extending time after the matter had been referred to the arbitrator, it would be contradiction in terms to hold that the same result could be brought about by the conduct of the parties. These observations, in our opinion, are out of the context. The policy of law is that the arbitration

E proceedings should not be unduly prolonged. The arbitrator therefore has to give the award within the time prescribed or such extended time as the court concerned may in its discretion extend and the court alone has been given the power to extend time for giving the award. The court has got the power to extend time even after the award has been given or after the expiry of the period prescribed for the award. But

F the court has to exercise its discretion in a judicial manner. In that case this Court found that the High Court was justified in taking the view that it did. This power, however, could be exercised even by the appellate court. In view of the policy of law that the arbitration proceedings should not be unduly prolonged and in view of the fact that the parties have been taking willing part in the proceedings before the arbitrator

G without a demur and had all along been willing to extend time, this will be a fit case, in our opinion, for the extension of time. We accordingly extend the time for giving the award and the award will be deemed to have been given in time. In this case, it appears that under section 28 and in the light of section 3 of the First Schedule the parties are allowed to extend the time. In this connection reference may be made

H to *H.K. Wattal v. V.N. Pandya*, [1974] 1 S.C.R. 259, where this Court

reiterated that sub-section (2) of section 28 indicated one exception to the above rule that the arbitrator could not enlarge the time, and that was when the parties agreed to such an enlargement. It is clear this Court reiterated that the arbitrator gets the jurisdiction to enlarge the time for making the award only in a case where after entering on the arbitration the parties to the arbitration agreement consent to such enlargement of time. In this case precisely it happened. Furthermore the parties have proceeded before the umpire on that basis which is just and proper and furthermore the time should be extended as was done in the case of *State of Punjab v. Sri Hardyal*, (supra). In the aforesaid view of the matter we are unable to accept the submission on behalf of Shri Markendeya that the award of the umpire was beyond time.

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It was next contended that the award contained error of law on the face of the award and there were inconsistent findings. It has to be borne in mind that it was only in a speaking award that the court could look into the reasoning of the award. In the case of *Jivarajbhai Ujamshi Sheth and others v. Chintamanrao Balaji and others*, [1964] 5 S.C.R. 480, this Court observed that an award might be set aside by the court on the ground of error on the face of the award, but an award was not invalid merely because by a process of inference and argument it might be demonstrated that the arbitrator had committed some mistake in arriving at his conclusion. The law on this point is well-settled. The Judicial Committee in *Chempsey Bhara and Company v. Jivraj Balloo Spinning and Weaving Company Ltd.* L.R. 50 I.A. 324 clarified that an error of law on the face of the award means, that one could find in the award or a document actually incorporated thereto, as for instance a note appended by the "arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which one could then say was erroneous. It did not mean that if in narrating a reference was made to a contention of one party, that opened the door to seeing first what that contention was, and then going to the contract on which the parties' rights depended to see if that contention was sound". It has been further reiterated by this Court in the aforesaid decision relying on *Chempsey Bhara and Company's* case (supra), that in dealing with an application to set aside an award the court had not to consider whether the view of the arbitrator on the evidence was justified. The arbitrator's adjudication was generally considered binding between the parties, for he was the tribunal selected by the parties and the power of the Court to set aside the award was restricted to cases set out in section 30 of the Arbitration Act. It is not open to the court to speculate, where no reasons are

- A given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. It is not open to the Court to attempt to probe the mental process by which the arbitrator had reached his conclusion where it is not disclosed by the terms of his award. In this case this is not a speaking award. The learned Umpire has not spoken his mind indicating why he has done, what he has done, he has narrated only how he came to make the award.
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Counsel drew our attention to page 26 of the award where different items have been set out and referred to page 30 of the award where the arbitrator noted as under:

- C "The Respondent demurs to this and its officers have denied having received them in their affidavits and in their oral testimony. No officer of the Post Office from which the letter was sent by Registered Post or of the Post Office through which delivery of that Registered letter was effected to the addressee has been summoned to establish that these letters did not emanate from their Post Offices or that the Post Office seals affixed on the "Certificates of Posting" and "Postal Acknowledgements" were not of those Post Offices which delivered them to HSCL or that they were forged or fraudulent, nor was anything produced to show that these were not posted or registered from the Post Offices from which they emanated".
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- F Counsel further drew our attention to the statement at page 33 of the award about the losses. Mr. Markandeya contended that these were the reasons given by the learned umpire. We are unable to accept. What the learned umpire did in the aforesaid paragraphs was to narrate the facts and state the history and state of pleadings. The umpire in the operative part of the award observed as under:

- G "WHEREAS I perused and considered the entire record with great care including the record of affidavits, the oral evidence tendered before me, the statement of claim dated 12.10.1983; the counter-statements dated 27/31-10-1983 and the Rejoinder of the claimant and considered the documents filed in support of the case of the respective parties as also the written and oral submissions made before me by counsel for the parties in support of their respective cases of the parties for which they have
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appeared; and having duly considered the dispute in its A varied aspects placed before me by the parties and in the light of the entire material in the case as above narrated.

I, P. JAGANMOHAN REDDY, the Umpire, B nominated by the Supreme Court of India as aforesaid, and having jurisdiction to adjudicate the dispute between the parties in the claims and counter-claims relating to Work Orders Nos. 3, 4, 5, 6 and 8 concerning the Glass Factory and Works Orders Nos. 9 and 10 concerning Lamp Factory and the contention of the claimant and the respondent in respect of the said Claims and counter claims.

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(1) I DO HEREBY MAKE MY AWARD, order and direct that the Respondent do pay to the claimant a sum of Rs.31,740-30p. (Rupees thirtyone thousand seven hundred and forty and thirty paise) only in full satisfaction of its liability for the claim made by the Claimant-Contractor against the Respondent with interest at the rate of six per cent per annum from the date of Award.

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(2) I further award and direct that the counter-claims made by the respondent do stand dismissed.

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(3) I further award and direct that the parties do bear their respective costs incidental to these proceedings.

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(4) I further direct that the amounts paid by the parties towards the hearing fees etc., from time to time in respect of the several hearings of these arbitration proceedings and the amount in deposit be appropriated and has/ have accordingly been appropriated towards the remuneration of the Umpire".

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Therefore, in his award as a whole no reasons have been given for the purpose of making the award. In other words, it is not a speaking award at all. The Award did not speak as to why the umpire has awarded as he did. It does not speak the mind of the umpire. It mentions the events leading to the making of the award. In the award, there is no legal proposition which is unsustainable or improper. In that view of the matter the challenge to the award cannot be accepted. H

A In the premises, the objections are rejected. There will be decree in terms of the award of the Umpire, Shri P. Jaganmohan Reddy. There will be interest on the judgment at 9% until realisation. The applicant will have the costs of this application.

B N.P.V.

Award Confirmed.