

Haryana State Electricity Board Vs M/s British Machinery Supply Company and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 28, 2012

Citation: (2013) 2 ARBLR 382 : (2013) 169 PLR 261 : (2013) 2 RCR(Civil) 561

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Advocate: A.P. Bhandari, Advocate for Respondent No. 1 in both the Petitions, for the Respondent

Final Decision: Allowed

Judgement

A.N. Jindal, J.

This judgment shall dispose of two connected revision petition Nos. 2650 and 3043 of 1996, having arisen out of the same

judgment and involving the similar questions of law and facts. However, for convenience, facts are being taken up from Civil Revision No. 2650 of

1996. This revision petition has arisen out of the order dated 1.2.1996 passed by the District Judge, Faridabad, dismissing the appeal against the

order dated 1.11.1994 passed by the Senior Sub Judge, Faridabad, whereby, the award passed by the Arbitrator on 23.3.1990 was set aside

merely on the ground that the same was not passed within the stipulated period.

2. Admitted facts are that on account of a dispute between the parties, the matter was referred to the arbitrator, upon which, Mr. K.C. Gupta,

Superintendent Engineer, OP Circle, Faridabad, passed the award which was referred to the court for making the same as rule of the court,

whereupon, the respondents raised the following objections for setting aside the award.

1. That the Arbitrator has mis-conducted the proceedings and has not made the award within four months from the date of reference. No

extension of time was granted by the court and the proceedings remained pending with the Arbitrator for more than three years.

2. That the arbitrator has not given reasons in support of his award.

3. That the evidence produced by the respondent No. 1 has not been discussed.

4. That the Arbitrator is an employee of the HSEB and he had biased approach from the very beginning and has, therefore, given his award in

favour of HSEB.

3. The reply to the objection petition was filed. From the pleadings of the parties, the following issues were framed:-

1. Whether the award dated 23.3.1990 is liable to be set aside on the grounds alleged? OPP

2. Whether the objections have not been filed within time? OPD

3. Relief.

4. The civil court while relying upon the judgment delivered in case State of Punjab vs. Hardayal, AIR 1985 (SC) 902 held that the award was not

passed within the stipulated time, therefore, the same is not an award in the eyes of law and set aside the award. The appeal against the said

judgment was also dismissed.

5. The admitted facts are that the award was not passed within time, however, vide Ex. 3, the time was extended with the consent of the parties

and statement Ex. R3 was made by Mr. A.P. Budhiraja, counsel for the claimant-objector and Mr. S.P. Nagar, counsel for the HSEB for mutual

extension of time for another four months beyond 11.4.1989. In view of the statement Ex. R3, the arbitrator was to make the award by

11.8.1989.

6. However, in this case, the award was passed on 23.3.1990.

7. Notwithstanding the fact that the award was not passed within time, but the fact is that the time for passing the award was extended from time to

time and lastly the award was to be passed by 11.8.1989. Even after 11.8.1989, parties did not object to the passing of the award on 23.3.1990

which also amounts to the extension of time by way of mutual consent. Similar view was taken by the Apex Court in case Nagar Palika, Mirzapur

Vs. The Mirzapur Elect. Supply Co. Ltd., wherein it was observed as under:-

5. Dr. Ghosh further pointed out that the time for arbitration expired on 31st December, 1970 and the Award was made by the Arbitrator 27 days

late on 27.1.1971 without formal extension of time. This argument does not appeal to us. The conduct of the parties is a major factor to waive the

extension of time given by the Court. The time be taken as extended.

8. The admitted facts reveal that the parties were very much aware of the provisions of law regarding the time within which the award was to be

passed but they without doubting the conduct of the arbitrator continued getting the time extended for making the award and even after 11.8.1989,

no such objection was raised with regard to the passing of the award thereafter. As such, it must be taken to be "time extended". Even otherwise,

the petitioner did not challenge the award on the ground that the same was passed after expiry of the time. Since no such objection was raised

before the court with regard to time for passing of the award before the court, therefore, the court should not have dealt with the objections rather

this non raising of the objection by the respondents would also amount to consented extension of time.

9. As regards the judgment delivered in Harydayal Singh's case (supra), the same is not applicable to the facts of the present case. In any case, in

the light of the judgment delivered in Hardayal Singh's case (supra) the award was passed after the expiry of the stipulated period; even then, the

Apex Court did not deprive the court to extend the time. The rights of the parties could not be scuttled merely for the reasons that the award was

passed after expiry of the time. The Apex Court in Hardayal Singh's case (supra) observed as under:-

18. The policy of law seems to be that the 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 court concerned may in its discretion extend and the court along has been given the power

to extend time for giving the award. As observed earlier, 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 the court has to exercise its discretion in a judicial manner. The High Court in our opinion

was justified in taking the view that it did. This power, however, can be exercised even by the appellate court. The present appeal has remained

pending in this Court since 1970. No useful purpose will be served in remanding the case to the trial court for deciding whether the time should be

enlarged in the circumstances of this 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, 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.

10. The aforesaid observations recorded by the Apex Court are fully applicable to the facts of the present case. As such, this court is not

handicapped to extend the time, accordingly, the time for passing the award stands extended. However, since the trial court has set aside the

award merely on the ground that it was passed after the expiry of the stipulated period, did not touch the other grounds for setting aside the award,

therefore, it would be expedient in the interest of justice if the case is remitted back to the trial court to decide the objections on merits. Resultantly,

both these revision petitions are accepted, impugned orders are set aside and the cases are remitted back to the trial court with the direction to

dispose of the objection petition and decide about the making of the award as rule of the court on merits, in accordance with law.