

(2004) 04 AHC CK 0206

Allahabad High Court

Case No: Order No. 517 and 518 of 2003

Northern Coalfields Ltd.

APPELLANT

Vs

Krishna and Company

RESPONDENT

Date of Decision: April 1, 2004

Acts Referred:

- Arbitration Act, 1940 - Section 20, 21, 21, 28, 29

Citation: (2004) 5 AWC 3991

Hon'ble Judges: R.S. Tripathi, J; M. Katju, J

Bench: Division Bench

Advocate: S.M. Dayal, for the Appellant; Arvind Srivastava, for the Respondent

Judgement

M. Katju, J.

These two First Appeals have been filed against the judgment of Civil Judge, Sr. Division, Sonbhadra dated 26.11.2002 and hence are being disposed off by a common judgment.

2. Heard Sri S.M. Dayal learned counsel for the appellant and Sri Arvind Srivastava learned counsel for the respondents.

By judgment dated 26.11.2002 the court below has directed the arbitration award dated 30.6.2001 to be made Rule of the court and it has rejected the objection of the appellant.

3. The facts of the case are that there was an agreement dated 30.3.91 between the parties under which appellant gave a contract to the respondent to establish a 440 Volts electric line. Since there was a dispute between the parties a suit u/s 20 of the Arbitration Act 1940 was filed by the respondents against the appellant and by order dated 30.5.97 of the court the dispute was referred to one Sri P.O. Haridas as the arbitrator.

4. Against the award of Sri Haridas dated 30.6.2001 an objection was filed by the appellant making various allegations.

5. An objection was also filed by the respondent against the award claiming that the interest should have been 24% instead of 15% but that objection has been rejected by the court below and that order has not been challenged. Hence we are only concerned with the objection of the respondent.

6. It is alleged by the appellant objector that the arbitrator misconducted himself. It was alleged by the learned counsel for the appellant before the court below that in suit No. 82 of 1998 a decree was passed that the parties will bear their own costs. However, the arbitrator has put the entire cost on the appellant.

7. However, we agree with the court below that the decree in suit No. 87 of 1998 was only in respect of the cost, in that suit and has nothing to do with the costs awarded by the arbitrator. Hence, we agree with the court below that the arbitrator has not misconducted himself in this respect. The court below has awarded interest on the facts of the case and we agree with the court below that it had the jurisdiction to do so.

8. Regarding the delay in filing the arbitration award an application for condoning the delay had been filed by the arbitrator and that had not been challenged before the court below in our opinion, the court below had rightly condoned the delay in filing the award. In fact the appellant had consented for extension of time by the arbitrator in the agreement. Hence the contention that the arbitrator had misconducted himself is unsustainable.

9. The interest at 15% had been awarded by the arbitrator from the date of the award to the date of its realization exercising power u/s 29 of the Arbitration Act 1940.

10. The arbitrator in his award has recorded that the appellant has given consent for extension of the time for giving the award. This consent is on the record in the minutes of the last meeting dated 26.3.2001. The agreement also has a clause that the arbitrator has the consent of the appellant for extending the time for giving the award. Clause 9 of the agreement states. -

"9. Arbitration. All disputes or differences whatsoever arising between the parties out of or relating to the construction, meaning and operation of effect of this contract or breach thereof shall be settled by a sole arbitrator appointed by the CMD of NCL and the award of arbitrator shall be final and binding on the parties concerned. The arbitrator may from time to time with the consent of the parties enlarge the time for making and publishing the award. The arbitration proceedings shall be in accordance with the Arbitration Act 1940."

11. Even otherwise, Section 28 of the Arbitration Act 1940 gives the power to the court to extend the time for giving award. Section 28 states: -

"28. Power of Court only to enlarge time for making award: - (1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time, the time for making the award."

12. The court below while considering the objection of the appellant has categorically found that they had not raised this objection before the court below nor had they explained any prejudice caused to them on account of the delay. In our opinion the court below was hence fully justified in condoning the delay.

As regards the interest, Section 29 of the Arbitration Act, 1940 no doubt gives the discretion to the court to award interest.

13. In *Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa and Ors. v. N.C. Budharaj and Ors.* (2001) 2 SCC 721, the Supreme Court has held that the court has ample jurisdiction to award interest even for the period prior to the reference, provided there is no Contract to the contrary.

14. However, we may mention that Section 24 of U.P. Civil Laws (Reforms and Amendment) Act, 1970 amended the first schedule of the Arbitration Act, 1940 by inserting para 7-A after para 7. In view of para 7-A the arbitrator has no jurisdiction to award interest exceeding 6% for the period prior to the making of the reference or pendente lite, in cases governed by the Arbitration Act of 1940 vide *Union of India v. Channa Bros. & Co.* (para 11) and *Union of India v. Gupta Contractors*, First Appeal No. 54 of 2002 decided on 29.3.2004

15. The decision in *Union of India v. Channa Bros.* (supra) applies to references to which the Arbitration Act, 1940 applies (since the 1976 U.P. Amendment was made to the 1940 Act). It will not apply to arbitrations to which the Arbitration Act, 1990 applies. The question therefore arises in this case is as to whether the Arbitration Act 1940 applies in this case or the Arbitration Act 1996.

16. In [Commissioner of Sales Tax Vs. Indian Express Newspapers Pvt. Ltd.](#), it was held that in view of Section 85(2) of the Arbitration Act 1990, the provisions of the 1940 Act will apply to arbitrations proceedings which commenced prior to the coming into force of the new Act. Section 21 of the new Act states that arbitration proceedings commence, unless otherwise agreed by the parties, on the date on which the request for referring the dispute to arbitration is received by the respondent (see also [Delhi Transport Corporation Ltd. Vs. Rose Advertising](#), and [State of West Bengal Vs. Amritlal Chatterjee](#), .

17. In the present case it is not clear from the facts on record as to when the request for referring the dispute was received. Hence we are unable to decide whether the Arbitration Act of 1940 will apply in this case or the Act of 1990 will apply. The limit of 6% interest will apply only when the former Act applies. Hence we make it clear that if the arbitration proceedings commenced before the 1990 Act come into force

then, unless otherwise agreed by the parties, the Act of 1940 will apply and consequently the limitation on interest imposed by para 7 A of the 1s Schedule to the 1940 Act will also apply, but not otherwise.

18. The respondents have alleged that the arbitrator misconducted himself by not assigning any reason for denying the claim of the respondents with respect to items at serial No. C to L. It is well settled that the arbitrator need not record reasons. An arbitrator is not a regular court of law. Both the parties agreed to settle their disputes by arbitration and they cannot challenge the award on the ground that the arbitrator has not given reasons vide *Paradip Port Trust v. Unique Builders* 2001(2) SCC 680; [Hindustan Steelworks Construction Ltd. Vs. C. Rajasekhar Rao](#) ; [Inter-State Transport Agency Vs. Bibi Habiba Khatoon \(Dead\) by Lrs.](#), and [Vishwanath Sood Vs. Union of India \(UOI\) and Another](#) . The appeals are disposed off accordingly.