

**(1990) 04 GAU CK 0009**

**Gauhati High Court**

**Case No:** Civil Revision No. 33 (H) of 1985

The Union of India (UOI)

APPELLANT

Vs

D.S. Narula and Co.

RESPONDENT

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**Date of Decision:** April 6, 1990

**Acts Referred:**

- Arbitration Act, 1940 - Section 16, 17, 30, 39
- Civil Procedure Code, 1908 (CPC) - Section 115
- Constitution of India, 1950 - Article 227

**Citation:** AIR 1992 Guw 13

**Hon'ble Judges:** S.N. Phukan, J

**Bench:** Single Bench

**Advocate:** J.N. Cheita, Addl. Central Govt. Standing, for the Appellant; J.P. Bhattacharjee, J. Singh and S.N. Sarma, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

S.N. Phukan, J.

This Revision petition is by the Union of India through the Chief Engineer, Shillong Zone against the judgment and order of the learned Addl. Deputy Commissioner, East Khasi Hills District, Shillong, by which the learned lower appellate court affirmed the judgment of the learned Assistant to the Deputy Commissioner.

2. On first of May, 1973 a contract was entered into between the parties herein for construction of the main sewers at Dinjan within the district of Dibrugarh. The agreement was executed at Shillong. After completion of the work a dispute was raised by the contractor viz. the opposite party herein and as per the terms of the agreement it was referred to the sole arbitrator. The arbitrator gave a non-speaking award, awarding a sum of rupees five lacs and odd in favour of the contractor. It may be mentioned that during the arbitration proceeding the petitioner herein filed a petition under Sections 5 & 11 of the Arbitration Act, 1940, for short "the Act"

praying for leave of the court to remove the sole arbitrator. Stay of further proceeding before the arbitrator was rejected by the learned lower appellate court. During the pendency of the above petition the award was published. The opp. partly filed a petition before the court of the Assistant to the Deputy Commissioner praying for making the award a rule of the court and the present petitioner also filed a petition u/s 30 of the Act praying for setting aside the award which was rejected. As stated above, the appeal was also rejected by the learned lower appellate court. Hence, the present petition.

3. The main contention of Mr. J. P. Bhattacharjee, learned counsel for the opposite party is that the present revision petition is not maintainable in view of Section 39 of the Act. The Section provides for appellable orders and reading Sub-section (1) it is clear that an appeal shall lie against the original decree of the court setting aside or refusing to set aside the award. Sub-section (2) provides that no second appeal shall lie under this Section, but shall not affect or take away any right to appeal to the Supreme Court. Mr. Chetia, learned standing counsel appearing for the petitioner has urged that in view of Rule 27 of the Khasi Siemships (Administration of Justice) Order, 1950 the present revision petition is maintainable. In reply Mr. Bhattacharjee, has urged that as the Act is an exhaustive one and the present proceeding not being a civil proceeding, the provision of the above Order is not applicable to the case in hand.

4. Before I consider the contentions raised at the bar I would like to dispose of one preliminary point raised by Mr. Chetia. According to Mr. Chetia as the present award is a non-speaking award it is bad in law more particularly as the counter-claim of the petitioner was rejected. The controversy, whether a non-speaking award i.e. an award where no reasons are recorded is bad in law or not also being agitated before the apex court and various other High Courts from time to time and the question has been settled by the Constitutional Bench of the apex Court in Raipur Development Authority v. Chokhamal Contractors (1989) 2.SCC 721 : AIR 1990 SC 1426 wherein it was, inter alia, held that an award passed under the Arbitration Act, is not liable to be remitted or set aside merely on the ground that no reasons have been given in its support except where the arbitration agreement or deed of submission or an order made by the court such as one u/s 20 or 21 or 34 of the Act or the statute governing the arbitration requires that the arbitrators or the umpires should give reasons for the award. Their Lordships observed that this position is firmly established in India and remitting or setting aside an award solely because it is unreasoned would mean virtually introducing by a judicial verdict an amendment to the Act when it is not been in the law for nearly 7 or 8 decades.

5. Before I proceed further to consider the contentions regarding maintainability of the present petition I may state the legal position regarding judicial system in the State of Meghalaya and also the applicability of the Act. There is no dispute that the Act viz. the Arbitration Act, 1940 applies to the State of Meghalaya and as the

present agreement was executed at Shillong, the Shillong courts have jurisdiction to decide dispute under the Act. In the State of Meghalaya in the partially excluded areas under the Govt. of India Act, 1935 the Administration of Justice is governed by the Rules viz. Rules for Administration of Justice and Police in the Khasi and Jaintia Hills, 1937. These rules were framed u/s 6 of the Scheduled Districts Act, 1874. After the merger of the erstwhile Khasi States, the Khasi Siemships (Administration of Justice) Order, 1950 was framed under the provisions of the Extra Provincial Jurisdiction Act, 1947 for Administration of Justice, by courts in these areas. For deciding disputes between members of Scheduled Tribes by the courts constituted under VI Schedule to the Constitution, the Governor framed rules under sub-para (4) of para 4 of VI Schedule to the Constitution and these Rules are called the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953. Similar sets of rules were also framed for such courts for the undivided district of Garo Hills. In the entire district of Garo Hills was partially excluded areas and for the purpose of courts constituted by the Government, similar rules were also framed under the Scheduled District Act and these rules were known as Rules for Administration of Justice and Police in Garo Hills District. There is no dispute at the bar that as the present agreement was executed at Shillong, the Khasi Siemships (Administration of Justice) Order, 1950 applies to the cases in hand. Under this Order, the Administration of Civil Justice is entrusted to the courts of Deputy Commissioner, Addl. Deputy Commissioner and Assistant to the Deputy Commissioner and Siems. The Assistant to the Deputy Commissioner has got unlimited pecuniary jurisdiction and under para 24 of the Order an appeal shall lie to the Deputy Commissioner or the Addl. Deputy Commissioner from the decision of Assistant to the Deputy Commissioner, and this para further provides that High Court shall be the court of appeal from an original decision of the Deputy Commissioner or Addl. Deputy Commissioner. Para 27 of the Order gives revisional power to the High Court and this Order provides that High Court may, on application or otherwise call for the proceedings of any case decided by the Deputy Commissioner or Addl. Deputy Commissioner. Assistant to the Deputy Commissioner and the Siems Courts and pass such order as High Court may deem fit.

6. Now the question is whether under para 27 of the said Order High Court can exercise powers in respect of dispute under the Act.

7. Mr. J. P. Bhattacharjee has placed reliance in the *Union of India v. Mohindra Supply Co.*, AIR 1962 SC 256 : (1962 All LJ 1). In that case the question was whether in view of the provisions of Section 39 of the Act a second appeal under Letters Patent is maintainable. Their Lordships held that the Arbitration Act which is consolidating and amending Act, being substantially in the form of a Code relating to arbitration must be construed without any assumption that it was not intended to alter the law relating to appeals. Their Lordships further observed that words of the Act are plain and explicit and they must be given their full effect and must be interpreted in their

natural meaning uninfluenced by any assumptions derived from the previous state of law and without any assumption that the legislature must have intended to leave the existing law unaltered. Their Lordships also observed that the legislature has made a deliberate departure from the law prevailing before the enactment of the Act by codifying the law relating to appeals in Section 39 of the Act. Their Lordships held that a second appeal under Letters Patent is not maintainable.

8. Mr. Bhattacharjee has also drawn my attention to a decision of the apex court in [Ishwarlal Girdharlal Parekh Vs. State of Maharashtra and Others](#). In this case an application was filed u/s 8(1) of the Act before the Court of the Assistant to the Deputy Commissioner, Shillong and against the order of the Assistant to the Deputy Commissioner an appeal was filed before the Deputy Commissioner. Their Lordships also held that in view of the provisions the order of the Assistant to the Deputy Commissioner passed u/s 8 of the Act is not maintainable.

9. In view of the above ratio laid down by the apex court it follows that Arbitration Act is a self contained Code and as in the Act there is no provision for invoking the revisional jurisdiction of this court against the order passed by the lower appellate court, by exercising revisional jurisdiction under any other law, this court cannot interfere with the said judgment of the lower appellate court. The Act being a self contained Code, this court cannot exercise powers under para 27 of the Khasi Siemships (Administraton of Justice) Order, 1950. It may be stated that CPC is not applicable to this area and only power of revision is under the said para 27. I, therefore, hold that the present petition is not maintainable either under para 27 of the above Order or u/s 115 Civil Procedure Code.

10. This petition has also been filed under Article 227 of the Constitution. It is well settled that powers under Article 227 of the Constitution is to be exercised sparingly and only in appropriate cases to keep the subordinate courts and tribunals within the bounds of his authority and not for correcting mere errors and in exercising powers under this Article this court is only to see that the tribunal functions within the limits of its authority. The scheme of the Arbitration Act is to provide a domestic forum for speedy and substantial justice without following the legal technicalities by getting the dispute resolved by a person on whom the parties have full faith and confidence. The award given by such a person under the Act can be set aside only on very limited ground mentioned in Section 30 of the Act. Mr. Chetia, learned Central Govt. Standing Counsel has urged that though petition for removal of the arbitrator was pending, the award is bad in law as it was published during the pendency of the petition. I do not find force in his contention as the prayer for stay of the proceeding before the arbitrator was rejected. Mr. Chetia has further urged that by disallowing the counterclaim of Rs. 1 lac and odd, the arbitrator has misconducted in law. I am afraid this matter cannot be gone into by exercising power under Article 227 of the Constitution as the scope is limited. That apart, this being a non-speaking award given by a domestic tribunal appointed by Govt. of

India through its officer, this Court should not interfere with the award.

11. For what has been stated above the present petition has no merit and is accordingly rejected. No cost.