

(1986) 05 KL CK 0005

High Court Of Kerala

Case No: M.F.A. No. 516 of 1980

P.K. Ittyrah

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision: May 26, 1986

Acts Referred:

- Arbitration Act, 1940 - Section 30

Hon'ble Judges: Kochu Thommen, J

Bench: Single Bench

Advocate: M.A. George, P.M. Poullose and A.T. Santhamma, for the Appellant; P. Krishnamurthy, Government Pleader, for the Respondent

Judgement

Kochu Thommen, J.

This appeal arises from the order in O.P. No. 39 of 1979. The Original Petition was filed by the present Appellant on the grounds mentioned u/s 30 of the Arbitration Act, 1940. It was dismissed by the Court below stating that the award was perfectly valid and legal.

2. As per the arbitration clause contained in the agreement between the Appellant and the Respondent-State, the dispute which arose between the parties was referred to Arbitration. The Arbitrator made the following award:

I hereby award and direct as follows: The final bill has been paid to the claimant on 14th February 1978 in full settlement of all the claims. Hence he is estopped from preferring any further claims. All the claims are therefore rejected. No costs.

It is contended on behalf of the Appellant that the Arbitrator has made a speaking award which stands vitiated by an error appafent on the face of the record, for the reason that the conclusion arrived at by the Arbitrator is not based on any evidence. Shri M.A. George appearing for the Appellant-claimant submits that the reason stated by the Arbitrator to conclude that the claimant was estopped is that he had on 14th February 1978 accepted the amount paid to him by the Respondents in full

settlement of his claims. That finding is vitiated because the Arbitrator has failed to advert to the letter written by the claimant to the second Respondent on 8th February 1978. That letter was one of the documents produced before the Arbitrator. In that letter the claimant had reserved his right to claim certain amounts and requested the second Respondent to pay to him the undisputed amounts "without prejudice to my right to move for arbitration and/or otherwise". In paragraph 17 of that letter the claimant stated:

Needless to add, even if I am to receive the alleged final bill as being unilaterally prepared by the department, the same cannot and shall not be treated as relinquishment of all/any of my claims aforesaid unless and until I specifically agree further in writing in my hand that I am waiving so.

Counsel submits that this letter shows beyond doubt that the amount was received by the claimant not in full and final settlement of his claim, but without prejudice and subject to his objections and right to claim the balance.

3. Counsel for the Respondents Shri P. Krishnamurthy submits that the award in question is not a reasoned award. He says that the arbitrator merely stated that the claimant was estopped from preferring any further claim. But that did not mean that he made a speaking award, and the challenge against the award on the ground alleged by the claimant is not sustainable.

4. It is true that the award is very brief. In fact it contains only three sentences. In the second sentence the Arbitrator says that the claimant is estopped from preferring any further claim. In the last sentence he says that all the claims are therefore rejected. But the reason for saying that the claimant was estopped or that his claims were rejected is what he says in the first sentence of the award, that is, the claimant had accepted the amount from the Respondents in full and final settlement of his claims on 14th February 1978. That was the basis on which the claims were rejected. The Arbitrator thus spoke to the reason for rejecting the claim or for concluding that the claimant was estopped.

5. The question whether the amount had been accepted by the claimant on 14th February 1978 in full and final settlement was itself a question which the Arbitrator had to decide. That question ought to have been decided with reference to the applicability and scope of letter dated 8th February 1978 which was produced before the Arbitrator. Before speaking to the reason for rejecting the claims, or drawing an inference leading to that conclusion, as the Arbitrator did, namely, the alleged estoppel arising from the acceptance of the amount in full and final settlement, the Arbitrator ought to have examined the relevant primary fact which was available to him, namely, the scope of the letter, dated 8th February 1978 subsequent to which the amount in question was accepted. In the circumstances, I see an error on the face of the award vitiating and rendering it invalid: See [Damodar Valley Corporation Vs. K.K. Kar](#), , Allen Berry and Co. v. Union of India A.T.R. 1971 S.C.

690, [N. Chellappan Vs. Secretary, Kerala State Electricity Board and Another, , K.P. Poulose Vs. State of Kerala and Another, and Union of India \(UOI\) Vs. D. Bose and Others, .](#)

6. The award is accordingly set aside and the matter is remanded to the Arbitrator to pass a fresh award with reference to the relevant facts. The Arbitrator shall after reconsideration of the matter made the award and file the same in the Court below within four months from the date of receipt of the records. Send back the records urgently to the Arbitrator.