

(2008) 03 SC CK 0131

Supreme Court of India

Case No: Civil Appeal No"s. 3534-3535 of 2001

P.R. Catering Co. and Another

APPELLANT

Vs

Oil and Natural Gas Corporation
Ltd. and Others

RESPONDENT

Date of Decision: March 13, 2008

Acts Referred:

- Arbitration Act, 1940 - Section 30

Citation: AIR 2008 SC 2335 : (2008) AIRSCW 3841 : (2008) 2 ARBLR 118 : (2008) 1 CLT 420 :
(2008) 4 JT 276 : (2008) 4 SCALE 62 : (2008) 5 SCC 272

Hon'ble Judges: Tarun Chatterjee, J; H. S. Bedi, J

Bench: Division Bench

Advocate: Vijay Hansaria, Rachna Gupta and Indra Pratap Singh, for the Appellant; K.P.
Pathak, A.S.G. and Rekha Pandey, for the Respondent

Final Decision: Allowed

Judgement

Harjit Singh Bedi, J.

These appeals arise out of the following facts.

2. The respondent, the Oil and Natural Gas Corporation Ltd. (hereinafter called the "ONGC") invited tenders from qualified persons for providing catering services and house-keeping facilities in two drilling sites at Dimapur, in Nagaland. The appellants, M/s. P.R. Catering Company and several others submitted their quotations. As the rates submitted by the appellants were acceptable, its tender was accepted and an agreement entered between the parties on 21st September 1991 for the purpose of providing the necessary facilities for a period of two years starting 1st October 1991. One of the unsuccessful tenderers, Hotel Paradise however instituted a Civil Suit before the Additional District Judge at Jorhat on which the appellants were restrained ad-interim from acting in terms of the letter of intent issued by the ONGC and the ad-interim order granted was made absolute on 28th May 1992. The ONGC

filed an appeal before the appellate court which vacated the injunction on 17th July 1992. The case of the ONGC is that vide letters dated 1st October 1992 and 28th May 1993 the ONGC had asked the appellants to provide the necessary services at two drilling sites whereas the case of the appellants is that they were in fact already providing necessary facilities as per terms and conditions of the contract and had accordingly submitted bills from time to time totaling Rs. 56,42,940/- and through the ONGC had received the bills, it had refused to make any payment in response thereto. The appellant thereafter approached the High Court for a direction for the payment of its dues but the said writ application was dismissed on 18th May 1993. The appellant then filed an application in the Civil Court at Jorhat for appointment of an arbitrator as per terms of the contract and vide order dated 22nd May 1994 Justice S.P. Rajkhowa, a retired Judge of the High Court, was in fact appointed as the arbitrator. An appeal filed by the ONGC against the order dated 22nd May 1994 was dismissed by the High Court on 30th January 1996. The arbitrator thereafter made his award on 6th February 1996 granting the full amount claimed by the appellants along with the interest at 16% per annum. The ONGC thereupon filed an application for the setting aside of the award before the Civil Court at Jorhat which was dismissed and the award made a rule of the court and a decree passed accordingly. This order was challenged before the High Court on the following grounds:

- (1) That the learned arbitrator while making the award totally ignored vital documents which has resulted in a faulty decision amounting to total perversity;
- (2) That there was non-application of mind by the learned arbitrator and he has thus committed legal misconduct;
- (3) That the respondents were prevented by injunction issued by the court from rendering services during the period from 1.10.1991 to 23.7.1992 and as such even if any service was taken or given as claimed by the respondents, it was de hors/beyond the contract and the learned arbitrator has no jurisdiction to pass any award for that period.

3. The High Court observed that the award given by the arbitrator was a reasoned and a speaking one and that Section 30 of the Arbitration Act itself visualized its setting aside on only three limited grounds (1) that the arbitrator or umpire had misconducted himself; (2) that the award had been made after the supersession of the arbitration or the proceedings becoming invalid; and (3) that it had been improperly procured or was otherwise invalid. It was also observed that in the light of the well settled principles of the law, proceedings u/s 30 of the Act did not visualize a drastic reappraisal of the findings of the arbitrator unless there was a total perversity in the award and that if two views were possible the one taken by the arbitrator was not liable to be interfered with. The court then went on to the specific case put up by the parties and observed that the ONGC had questioned the provision of services w.e.f. 1st October, 1991 as being impossible on account of the injunction granted by the Civil Court and the fact that the services had not been

provided earlier was clear from the letters dated 1st October 1992 and 28th May 1993 directing the appellants to move to the site and to provide the necessary services and as these two letters which went to the root of the matter (as to date when the services started) had not been considered by the arbitrator, interference by the court was called for. It was further observed that as per the terms of the contract the appellants were under an obligation to maintain a common register indicating therein a date wise, individual wise and meal wise account of those persons who had been given the required services per day and that every employee receiving such benefit was required to put his signature on it as a token of its correctness and that even this important piece of evidence had been withheld by the appellants and had not been produced before the arbitrator. The court accordingly concluded that the arbitrator had without any evidence presumed that the appellants had provided the necessary services w.e.f. 1st October, 1991 itself and once again wound up its decision citing a large number of judgments and observing that as the two letters and the common register were material documents which had not been considered by the arbitrator there was a manifest error apparent on the face of the record and having held above, remitted the case to the arbitrator for a fresh decision. Aggrieved thereby, the service provider is the appellant before us in this appeal.

4. We have heard Mr. Vijay Hansaria, the learned senior counsel for the appellants and Mr. K.P.Pathak, ASG for the respondents. We find that several arguments have been raised by Mr. Vijay Hansaria in the course of the hearing pointing out that the appeal did not justify interference by the High Court inasmuch as the findings of fact recorded by the arbitrator were based on a proper assessment of the evidence that included the monthly bills raised by the appellants duly certified by officers of the ONGC and also letters dated 5th October 1992 and 23rd June 1993 from the ONGC that the bills submitted by the appellants were under consideration pending payment and it had never been the case of the ONGC except in proceedings before the arbitrator and the High Court that the bills submitted were fake. The learned Counsel for the ONGC respondents has, however, supported the order of the High Court.

5. We are of the opinion that it would not be proper to labour the matter any further in view of the fact that we intend to maintain the order of the High Court and to make any comment on the merits could prejudice the case of one of the parties. We accordingly dismiss the appeals but request the arbitrator to complete the arbitration proceedings within three months from the date of the supply of the copy of this order. There will be no order as to costs.