

PETITIONER:
GRID CORPORATION OF ORISSA LTD. & ANR.

Vs.

RESPONDENT:
BALASORE TECHNICAL SCHOOL

DATE OF JUDGMENT: 30/03/1999

BENCH:
S.R.Babu, S.N.Phukun

JUDGMENT:

RAJENDRA BABU, J. :

On April 28, 1961, the respondent entered into an agreement with the appellant for supply of electrical energy in which the contract demand was specified at 68 Kws and unless a certain percentage of the contract demand was utilised the respondent would be liable to pay minimum charges as specified in the agreement. On July 18, 1966, the tariff specified in the agreement was revised in terms of Section 49 of the Electricity Supply Act and such tariff as prescribed for general purpose tariff was made applicable to the respondent. However, no bill in terms of the revised rate as applicable to general purpose tariff was issued and a bill for additional amount payable was sent to the respondent. The respondent contended that the contract demand should be reduced from 68 Kws to 31 Kws. With effect from July 25, 1973, the respondent did not pay any amount to the appellant in respect of the energy consumed either at the revised rate effective from 1966 or at the old rate as specified in the agreement and continued to consume the energy without any payment at all. On account of non-payment of the energy charges, supply was disconnected to the respondent after due notice under Section 24 of the Indian Electricity Act, 1910. The respondent challenged the disconnection and the demand raised by the Board by invoking the arbitration clause of the original agreement of 1961 and filed O.S.No.127/77 under Sections 8 and 20 of the Arbitration Act for reference of disputes to arbitration. The Subordinate Judge, who considered this matter, allowed the claim of the respondent and an appeal was preferred to the High Court. In the appeal, a joint memo was filed to the effect that the respondent shall enter into a fresh agreement with the appellants and upon such agreement being executed the appellants would resume supply to the respondent; the respondent shall pay the charges from the date of reconnection at the new tariff rate applicable to the respondent; and arrears alleged to be due and claimed by the appellants, if ultimately accepted by the Arbitrator and made rule of the court shall be paid by the respondent. On February 1, 1980, the respondent executed a fresh agreement which contained a recital in clause 27 thereof which provided that the arrears under the old agreement shall be deemed to be arrears under the new agreement. The Subordinate Judge appointed Justice H.Mohapatra, a retired Judge of the High Court as the Arbitrator and referred five questions involving law and facts for consideration of the

Arbitrator. On February 19, 1983, the Arbitrator made an award after perusing the claims and counter-statement of the parties and material on record and answered all the five questions against the appellants and further held that no amount was payable by the respondent towards charges for consumption of electricity, although admittedly it had been consumed until the date of disconnection, that is, December 30, 1976, and no amount had been paid either at the revised rate or at the original rate with effect from February 16, 1973. When objection was filed under Sections 30 read with Section 33 of the Arbitration Act, the Subordinate Judge set aside the award principally on the ground that the award runs contrary to the agreement. On appeal by the respondent under Section 39 of the Arbitration Act, the High Court set aside the order made by the Subordinate Judge and confirmed the award made by the Arbitrator except in regard to one aspect, namely, that the Orissa State Electricity Board is not entitled to be paid anything by the respondent in respect of their claims in relation to the agreement. The High Court having noticed that the observations was outside the reference confirmed the award on all other questions. Hence this appeal. In this Court, on each of the question referred to the Arbitrator answer is sought to be given by contending that the view taken by the Arbitrator was wholly outside the scope of the contract and hence perverse or award made was without jurisdiction. However, the learned counsel for the respondent contended that the view taken by the High Court is in conformity with several decisions of this Court including N.Chellappan vs. Secretary, Kerala State Electricity Board & Anr., 1975 (1) SCC 289. It is submitted that even if the Arbitrator had made a mistake either in law or in fact in determining the matters referred and such mistake does not appear on the face of the award, the award cannot be interfered notwithstanding the mistake. It is only when a proposition of law is stated in the award and which is the basis of the award and that is erroneous can the award be set aside or remitted on the ground of error of law apparent on the face of the record. The appellants, however, contended that the Arbitrator cannot ignore the law or misapply it in order to do what he thinks as just and reasonable even though it was a case of non-speaking award. The courts are entitled to examine the contract even though the contract was not incorporated into the award and an Arbitrator being a creature of the contract must operate within the four corners of the contract and cannot travel beyond it either by misinterpreting the contract or otherwise. In this case, the High Court is of the view that a civil court does not sit on appeal against the award and the power of the court when an award is challenged is rather limited. The award of the Arbitrator is ordinarily final and conclusive as long as the Arbitrator has acted within its authority and according to the principle of fair play. An Arbitrator's adjudication is generally considered binding between the parties for he is a Tribunal selected by the parties and the power of the court to set aside the award is restricted to cases set out in Section 30 of the Arbitration Act. It is not open to the Court to speculate where no reasons are given by the Arbitrator, as to what impelled him to arrive at his conclusion. If the dispute is within the scope of the arbitration clause it is no part of the province of the court to enter into the merits of the dispute. If the award goes beyond the reference or there is an error apparent on the face of the award it would certainly be open to the court to interfere with such an award. In New India Civil

Erectors (P) Ltd.vs. Oil & Natural Gas Corporation, 1997 (11) SCC 75, this Court considered a case of non-speaking award. In that case the Arbitrator had acted contrary to the specific stipulation/condition contained in the agreement between the parties. It was held that the Arbitrator being a creature of the contract must operate within the four corners of the contract and cannot travel beyond it and he cannot award any amount which is ruled out or prohibited by the terms of the agreement. In that contract it was provided that for construction of housing unit, in measuring the built-up area, balcony areas should be excluded. However, the Arbitrator included the same which was held to be without jurisdiction. In the same manner it was also held that the price would be firm and not subject to any escalation under whatsoever ground till the completion of the work and awarding any sum as a result of escalation was not permissible. To the same effect is the decision in Associated Engineering Co. vs. Government of Andhra Pradesh & Anr., 1991 (4) SCC 93. It was stated that if the Arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error and an umpire or Arbitrator cannot widen his jurisdiction by deciding a question not referred to him by the parties or by deciding a question otherwise than in accordance with the contract. A conscious disregard of the law or the provisions of the contract from which he has derived his authority vitiates the award. The principle of law stated in N.Chellappans case (supra) on which a strong reliance has been placed by the learned counsel for the respondent would make it clear that except in cases of jurisdictional errors it is not open to the court to interfere with an award. That proposition is unexceptionable. However, from a reading of the decisions of this Court referred to earlier it is clear that when an award is made plainly contrary to the terms of the contract not by misinterpretation but which are plainly contrary to the terms of the contract would certainly lead to an inference that there is an error apparent the award results in jurisdictional error in the award. In such a case the courts can certainly interfere with the award made by the Arbitrator.

In the present case, the view taken by the High Court as to the construction of Section 3 of the Orissa Electricity Supply Act appears to us to be correct. In that provision the proceedings which relate to a challenge to the power of the Board to enhance the tariff are subject matter of arbitration. Such proceedings would abate and not in other cases. The High Court, while considering the question whether the Orissa Electricity Supply Board is not entitled to be paid anything by the respondent in respect of their claims relating to the agreement dated April 28, 1961 was outside the scope of arbitration but failed to see that the amounts due under the agreement dated April 28, 1961 became part of the agreement entered into subsequent to the joint memo filed before the High Court. In the agreement dated February 1, 1980, clause 27 provided that the arrears under the old agreement shall be deemed to be arrears under the this agreement. Therefore, if the award made by the Arbitrator was incorrect in regard to that aspect of the matter, other questions referred to the Arbitrator formed integral part of the same and, therefore, the entire award had to be set aside. Even otherwise in respect of each of the question referred to the Arbitrator, the answers given

by him would indicate that the same has been given in utter disregard of the contract and, therefore, the view taken by the Subordinate Judge in this case appears to be correct and the High Court ought to have accepted the same.

In the result, the order made by the High Court is set aside and the order made by the Subordinate Judge stands restored and the matter shall stand remitted to the Arbitrator for fresh consideration in accordance with the law and in the light of this order. No order as to costs.

JUDIS