

CASE NO.:
Appeal (civil) 266 of 2007

PETITIONER:
M/S. ENGINEER SYNDICATE

RESPONDENT:
STATE OF BIHAR & ORS

DATE OF JUDGMENT: 17/01/2007

BENCH:
Dr.AR.LAKSHMANAN & V.S. SIRPURKAR

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO.266 OF 2007
(Arising out of SLP(C) No.4129/2005)

Dr.AR.LAKSHMANAN, J.

Leave granted.

The case on hand arise under the Arbitration Act, 1940.

This appeal is directed against the final judgment dt.30.09.2004 passed by the High Court of Judicature at Patna in C.R.No.2035 of 2001.

The short facts leading to the filing of this appeal are as under :-

The appellant made an agreement No.58 F-2 of 1980-81 with respondent No.2 acted on behalf of respondent No.1 for the construction of 'C' type six blocks quarters at Sherpur Colony Gandak Project Muzaffarpur for the total consideration of an amount of Rs.19,02,428.21. Since there is dispute between the parties, the appellant had to resort to the court of Subordinate Judge, Muzaffarpur to invoke the arbitration clause of the aforesaid agreement. The 1st Subordinate Judge vide its order dt. 02.04.1988 in Misc. Case No. 5/86 appointed the

respondent No.4 as an arbitrator to arbitrate and adjudicate the dispute and to pass the award. The appellant laid the total claim of Rs.15,77,073/- before the arbitrator.

The arbitrator made the award on 04.07.1988 in favour of the appellant for Rs.8,53,837/- only as consolidated and lump sum amount for all claims of the appellant and against the respondents along with interest at the rate of 12% per annum till the date of realisation.

The High Court on 30.09.2004, affirmed the award passed by the Subordinate Judge and rejected the appeal filed by the respondents against which the respondent preferred an appeal in this Court. This Court vide its Order dt.16.08.1996, directed the learned Subordinate Judge to dispose of the objection of the State (the respondent herein) on merits. Pursuant to this Order, the learned Subordinate Judge set aside the impugned order on the ground that the award was non-speaking and the award failed to refer the claim item wise and objection of the respondents. The High Court affirmed the impugned judgment of the learned Subordinate Judge. Aggrieved against the said order, the appellant has come before this Court by way of a SLP.

We have heard Mr.U.U.Lalit, learned senior counsel appearing for the appellant and Mr.Nishakant Pandey, learned counsel for the respondents. Mr.Lalit, learned senior counsel submitted that the order passed by the learned Subordinate Judge as affirmed by the High Court is not correct and that the

award can be set aside on the ground of error of law apparent on the face of the record under Section 30 of the Act but it qualified the above legal position that the court while dealing with the application for setting aside an award has no power to consider whether the view of the arbitrator on the evidence was justified.

In support of the said contention, the learned senior counsel placed strong reliance on the Judgment of this Court in Raipur Development Authority

and others vs. M/s Chokhamal Contractors and others reported in (1989) 2 SCC 721 (Five Judges Bench). The learned senior counsel invited our attention to some of the Judgments referred to in the said Judgment and in particular para 14, 16, 17, 19 and 38 also. This Court, in the above Judgment has categorically held that it was not open to the High Court to speculate where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. The court declined to recognise the power of the court to attempt to probe the mental process by which the arbitrator had reached his conclusion where it was not disclosed by the terms of his award. It is also further observed in the said judgment that the court in dealing with an application to set aside an award has not to consider whether the view of the arbitrator on the evidence is justified and that the 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. It is also further observed that it is not open to the court to speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. This Court in para 19 of the above Judgment has also observed as under :-

"It is now well settled that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. The arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submission he is required to give such reasons and if the arbitrator or umpire chooses to give reasons in support of his decision it is open to the court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the face of the record on going through such reasons. The arbitrator or umpire shall have to give reasons also where the court has directed in any order such as the one made under Section 20 or Section 21 or Section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so."

The learned senior counsel then relied upon the Judgment of this Court in Rajendra Construction Co. vs. Maharashtra Housing & Area Development Authority and others reported in (2005) 6 SCC 678 in which similar question arose for consideration by this Court. In the said case, the High Court concluded that the awards were vitiated under Section 30 of the Act and observed that the view taken by the sole arbitrator which has been made rule of the court by the trial court is unsustainable on the ground that it suffers from errors

apparent on the face of the record and the sole arbitrator misdirected the proceedings, in as much as, he was required to adjudicate upon the issues framed by the trial court and give reasons thereof in respect of the claims allowed by him. The said observation made by the High Court was not countenanced by this Court as could be seen from para 23 of the said Judgment at page 687. This Court also observed that the present awards are not under the new Act but under the old Act and it is, therefore, obvious that they could not have been set aside by the High Court on the ground that they were not supported by reasons and were not speaking awards.

Learned counsel appearing for the respondents placed his reliance on a Judgment in Bharat Coking Coal Ltd. vs. Annapurna Construction reported in (2003) 8 SCC 154. This judgment was rendered on 29.08.2003 by a Division Bench comprising of two Judges of this Court. Before the Bench, the Judgment reported in (1989) 2 SCC 721 (supra) was also cited. However, the Court has not followed the said principle laid down in (1989) 2 SCC 721 (supra) on the ground that the case on hand reported in (2003) 8 SCC 154 stands on a different footing, namely, that the arbitrator while passing the award in relation to some in terms failed and/or neglected to take into consideration the relevant clauses of the contract, nor did he take into consideration the relevant materials for the purpose of arriving at a correct finding and that such an order

would amount to misdirection in law. The said question was not

involved in the present case. The Judgment reported in (2003) 8 SCC 154 is not a case of silent or non-speaking award. Following the principles laid down in (1989) 2 SCC 721, we allow the appeal filed by the appellant herein and set aside the order passed by the learned Subordinate Judge and as affirmed by the High Court. In the result, the award passed by the arbitrator dt.04.07.1988 is restored and the appellant will be entitled to the amount awarded by the said award. The award of the arbitrator dt.04.07.1988 is made a rule of court.

No costs.

JUDIS