

PETITIONER:
UNION TEXTILE TRADERS,

Vs.

RESPONDENT:
SHRI BHAWANI COTTON MILLS LTD.

DATE OF JUDGMENT:
15/09/1969

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHAH, J.C.

CITATION:
1970 AIR 1940 1970 SCR (2) 429
1970 SCC (1) 1

ACT:

Indian Arbitration Act, 1940 (10 of 1940), ss. 5, 11, 30--These sections whether violated by r. III(3) of the Rules of Arbitration of the Indian Chamber of Commerce Calcutta--Said Rule empowering Registrar of Tribunal of Arbitration not to disclose names of arbitrators appointed by Chamber to a party who was not member of Chamber--Appointment of arbitrator whether not complete if name of arbitrator not disclosed to party-Commercial practice of not disclosing names--Justification for.

HEADNOTE:

A contract was entered into between the appellant and the respondent in 1964 for sale of 200 bags of Cone yarn. The contract inter alia contained the condition that in case of any dispute arising out of the contract "the matter in dispute shall be referred to the arbitration of the Indian Chamber of Commerce whose decision shall be binding on both the parties". The appellant was not a member of the said Chamber of Commerce; the respondent was. On dispute arising between the parties and being referred to the Chamber for arbitration the appellant wrote to the Registrar of the Tribunal of Arbitration of the Chamber to intimate to it the names of the persons constituting the court to enable the appellant to ascertain whether they were independent and disinterested persons. The Registrar refused to disclose the names on the ground that under the rules of the Chamber they could not be disclosed to a non-member. On persistent refusal to disclose the names the appellant filed an application under s. 33 of the Indian Arbitration Act, 1940 before the Calcutta High Court the application was dismissed, whereupon appeal by special leave was filed in this Court. It was urged that the non-disclosure of the names of the arbitrators by the Registrar was violative not only of the rules of natural justice but also infringed the provisions of the Arbitration Act. It was contended that there was a conflict between r. III(3) of the Rules of Arbitration of the Chamber of Commerce and ss. 5 and 11 or s. 30' of the Act.

HELD: The appeal must be dismissed.

(i) The power given to the Registrar not to disclose

names of the members of the arbitration court to non-members is discretionary 'and he is not bound in every case to refuse to disclose the names. At any rate as soon as the proceedings commence the parties will know the names of the arbitrators and objection can be taken at that stage. Under s. 5 of the Arbitration Act it is not essential that the authority of an appointed arbitrator should be got revoked before the commencement of the arbitration proceedings. Section 11 contemplates a stage subsequent to the arbitrator entering on the reference. There is thus no conflict between r. 11(3) of the Rules of Arbitration of the Chamber and ss. 5 and 11 and 30 of the Act. These Rules do not interfere with or take away the powers and jurisdiction of the court under the aforesaid provisions. The appellant itself had agreed to submit to the arbitration of the Chamber which meant that it was bound by all the Rules of Arbitration of the said body. No illegality or invalidity could be projected into the agreement by the presence of r. III(3). [434 C-F].

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(ii) The statement in Russel on Arbitration (17th Edn. p. 207) that the appointment of an arbitrator by a party is not complete without communication hereof to the other party could be of no avail to the appellant since in the present case the appointment of the arbitrator, namely, the Chamber of Commerce, was in every sense complete. [434 G-H]

(iii) The rule objected to by the appellant is part of the long standing practice of Chambers of Commerce in this country its justification being the elimination of all possibility or chance of a party trying to influence the members of the Arbitration court before they enter upon or proceed with the reference. [435 C-D]

Unreported judgment of Calcutta High Court in Suraj Ratan Birany v. Hindustan Motors Ltd. decided on April 10, 1964, disapproved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1658 of 1966.

Appeal by special leave from the judgment and order. dated November 19, 1965 of the Calcutta High Court in Matter No. 213 of 1964.

D.N. Mukherjee, for the appellant.

A.N. Sinha and B.P. Jha, for the respondent.

The Judgment of the Court was delivered by

Grover, J. This is an appeal by special leave from a judgment of the Calcutta High Court dismissing a petition filed under s. 33 of the Indian Arbitration Act, hereinafter called the Act.

A contract was entered into between appellant and the respondent on January 28, 1964 for sale of 200 bags of Cone yarn. The contract inter alia contained the following terms and conditions:

"(a) In case of any dispute arising out of this contract the matter in dispute shall be referred to the arbitration of the Indian Chamber of Commerce whose decision shall be binding on both the parties.

(b) The Court at Calcutta alone and no other court whatsoever shall have jurisdiction to entertain and try suits in respect of any claim or disputes arising out of or under this contract or in any way relating to the same".

Certain disputes arose between the parties relating to the

supply of goods and the respondent demanded a payment of Rs. 25,658.90 as price of the goods alleged to have been supplied. The appellant maintained that the said goods were not according to the contract and had been rightly rejected.

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The appellant did not happen to be a member of the Indian Chamber of Commerce, Calcutta, whereas the respondent was a member. The dispute having been referred to the Chamber the appellant wrote to the Registrar of the Tribunal of Arbitration of the Chamber of Commerce to intimate the names of the persons constituting the court to enable the appellant to ascertain whether they were independent and disinterested persons. The Registrar sent a reply saying that the names of the arbitrators constituting the court could not be disclosed to the appellant as it was a nonmember. Later on a list of the office-bearers and committee members was sent but according to the appellant the names of the arbitrators were not disclosed. In September 1964 the Registrar intimated that the meeting of the court of the arbitrators would be held on September 24, 1964. There was further correspondence.. The appellant's attorney again sought information regarding the names and particulars of the arbitrators but without success. Ultimately the appellant filed an application under s. 33 of the Act. The case of the appellant was that the arbitration agreement contained in the contract was void and ineffective as clauses (a) and (b) reproduced above were in conflict with each other and that the Rules of the Tribunal of Arbitration of the Indian Chamber of Commerce were illegal and void. The High Court repelled all the contentions raised before it and dismissed the application.

The main emphasis before us has been laid by learned counsel for the appellant on R. III of the Rules of Arbitration of the Indian Chamber of Commerce which, according to him, comes into conflict with the provisions of the Act. That Rule provides that the Tribunal shall consist of such persons as may be selected by the Committee of the Chamber from time to time. Sub-Rule (3) reads:

"The Committee may, at any time if they think proper so to do, add to the said list the names of other persons qualified as aforesaid. A list of the members of the Tribunal complete for the time: being shall be kept by the Registrar, and shall always be open for inspection by members on application and at the discretion of the Registrar, also by persons other than members".

It is urged that the non-disclosure of the names of the arbitrators by the Registrar is violative not only of the rules of natural justice but also infringes the provisions of the Act. Before the High Court and before us reliance has been placed on an unreported judgment of the Calcutta High Court in Matter No. 95 of 1963 (Suraj Ratan Binany v. Hindustan Motors Ltd.)(1). In that

Decided on C--4-964.

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case a similar contention had been raised and it was held that if the names of the arbitrators were not known to the parties until the award was filed the parties would not be in a position to know whether the arbitrators had misconducted themselves entailing removal under s. 11 of the Act or a case had arisen for moving the court under s. 5 of the Act for leave to revoke the authority of an appointed arbitrator. In the judgment under appeal, however, that view was not followed and it has been held that the

Arbitration Rules of the Chamber of Commerce did not offend any of the sections of the Act as the powers of the court under ss. 5 and 11 remained unaffected by the aforesaid Rules.

In our judgment there is no merit in the challenge to the validity of the arbitration agreement on the ground that the Rules of the Indian Chamber of Commerce which is to be the arbitrator, enable the Registrar of that Chamber to withhold disclosure of the names of the Arbitration Court to a party which does not happen to be a member of the Chamber. The power given to the Registrar is discretionary and he is not bound in every case to refuse to disclose the names. At any rate, as soon as proceedings before the arbitrators commence both parties are in a position to know the names and particulars of the arbitrators and if there is any objection on well known grounds to their conducting the arbitration the same can be taken at that stage. Under s. 5 it is not essential that the authority of an appointed arbitrator should be got revoked before the commencement of the arbitration proceedings. Section 11 contemplates a stage subsequent to the arbitrators entering on the reference. We can see no conflict between Rule III (3) of the Rules of Arbitration of Chamber of Commerce and ss. 5 and 11 or s. 30 of the Act. These Rules do not interfere with or take away the powers and the jurisdiction of the court under the aforesaid provisions. It must be remembered that the appellant agreed to submit to the arbitration of Indian Chamber of Commerce which meant that it was bound by all the Rules of Arbitration of the said body. No illegality or invalidity can be projected into the agreement by the presence of Rule III(3).

Our attention has been drawn to a statement in Russell on Arbitration, 17th Edn., at page 207 that the appointment of an arbitrator by a party is not complete without communication thereof to the other party. This Rule can be of no avail to the appellant because in the present case the arbitrator was known, the arbitrator being the Chamber of Commerce. Under its Rules the Chamber is authorised to delegate its power to a smaller body. As the Rules were expressly or by necessary implication incorporated into the contract the Chamber would have the power to appoint a court, by its Registrar, to decide the dispute. The appointment of the arbitrator was thus complete in every sense in

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the present case. It could not be said that it would become complete only when the names of persons constituting the court of arbitration were communicated. Those persons only discharge the duty which lay on the Chamber in the matter of arbitration.

It is noteworthy that the Rules of Chamber of Commerce in various parts of the country contain provisions similar to the one the validity of which has been impugned. For instance Rule V(4) of the Rules of Bengal Chamber of Commerce provides that the names or name of the persons or person constituting the court shall not ordinarily be disclosed to the parties nor shall the parties be entitled to such information as of right. A similar rule is to be found in bye-law 8 of the Bombay Chamber of Commerce and Rule V(5) of Arbitration Rules of Madras Chamber of Commerce. It appears that the aforesaid Rule which has been framed by all these bodies of long standing and experience in the field of business is based on the elimination of all possibility or chance of a party trying to influence the members of the Arbitration Court before they enter upon or

proceed with the reference. It is axiomatic that as soon as a party appears before them or the arbitration proceedings commence the names of the arbitrators can no longer remain a secret and it is always open to a party to initiate proceedings on the ground of bias or prejudicial interest even at that stage or after the award is made. The appeal fails and it is dismissed. There will be no order as to costs.

G.C.

Appeal dismissed.

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JUDIS