

CASE NO.:
Appeal (civil) 5456-5457 of 2000

PETITIONER:
Satna Stone & Lime Co. Ltd., M.P. etc.

RESPONDENT:
Union of India & Another etc

DATE OF JUDGMENT: 08/05/2008

BENCH:
Tarun Chatterjee & Dalveer Bhandari

JUDGMENT:
JUDGMENT

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPEALLTE JURISDICTION

CIVIL APPEAL NOS.5456-5457 OF 2000.

Satna Stone & Lime Co. Ltd., M.P. etc. .. Appellant(s)

Versus

Union of India & Another etc. .. Respondent(s)

JUDGMENT

Dalveer Bhandari, J.

1. These appeals are directed against the judgment of the Division Bench of the High Court of Madhya Pradesh at Jabalpur dated 6.7.1999 delivered in Misc. Appeal No. 1058 of 1995 and Misc. Petition No.1 of 1991.

2. Brief facts relevant to dispose of these appeals are as under:-

The appellant Satna Stone & Lime Company Ltd., Satna entered into an agreement with the General Manager, G.I.P. Railway, Government of India, on 23.3.1897, whereby a siding was provided to the company for clearance of its goods. The agreement was revised from time to time and the last such agreement was executed on 1.10.1942 (hereinafter called "the agreement").

3. The Railway administration on 24.8.1968 informed the appellants that the maintenance charges would be levied at the rate of 4% per annum instead of 2%. The respondent Railway administration raised the bills for the period 1.11.1963 to 31.3.1975. The appellants paid the bill under protest on 22.6.1976. The appellants filed an application under section 20 of the Arbitration Act, 1940. On the request of the appellants, the matter was referred to the Arbitration. The Arbitrator decided the claim in favour of the appellants. The objections raised by the Railways under section 30 of the

Arbitration Act, 1940 were rejected by the learned District Judge and the award was made the rule of the court.

4. The miscellaneous application was preferred by the Railways before the Division Bench of the Madhya Pradesh High Court against the said order of the District Judge. The respondent Railways submitted that the claim of the appellants was clearly barred by limitation because the demand crystallized on 1.5.1975 and the claim was made on 8.8.1978.

5. This Court in Union of India v. L.K. Ahuja & Co. (1988) 3 SCC 76 that the arbitrator would decide unless, however, if on admitted facts a claim is found at the time of making an Order under Section 20 of the Arbitration Act, to be barred by limitation.

6. In Union of India v. Indian Sugar Mills Association, Calcutta & Another AIR 1968 SC 22, the court dealt with this aspect and came to the conclusion that Railway administration was competent to increase the rate chargeable for the services rendered.

7. This aspect of the matter was also ignored by the arbitrator and the High Court rightly concluded that the award is based on wrong principles of law. If the decision of the arbitrator is contrary to law laid down by this Court then it would be justified in interfering with the award.

8. The learned counsel for the appellants has placed reliance on the judgment of this Court in B.V. Radha Krishna v. Sponge Iron India Ltd. (1997) 4 SCC 693 to demonstrate that the High Court was not justified in substituting its own view in place of arbitrator's view as if it was dealing with an appeal. This is forbidden by a series of judgments of this Court.

9. Learned counsel for the appellants has also placed reliance on Food Corporation of India v. Joginderpal Mohinderpal & Another (1989) 2 SCC 347. In this case, the court relying on earlier judgment of this court in Puri Construction Pvt. Ltd. v. Union of India (1989) 1 SCC 411 reiterated the legal position that the court cannot sit in appeal

over the views of the arbitrator by reexamining and reassessing the material.

10. In Hindustan Construction Co. Ltd. v. Governor of Orissa & Others (1995) 3 SCC 8 the court observed as follows:-

"It is well known that the Court while considering the question whether the award should be set aside, does not examine that question as an appellate court. While exercising the said power, the court cannot reappraise all the materials on the record for the purpose of recording a finding whether in the facts and circumstances of a particular case the award in question could have been made. Such award can be set aside on any of the grounds specified in Section 30 of the Act."

11. There is no quarrel with the proposition canvassed by the learned counsel for the appellants. This scope of interference by the court is limited and the court would not be justified in reappraising the material on record and substituting its own view in place of arbitrator's view. This exercise is not permissible by the court in view of the settled legal position.

12. In the instant case, where there is an error apparent on the face of record or where the arbitrator has not followed the statutory legal position, the court would be justified in interfering with the award of the arbitrator.

13. Learned counsel for the respondents placed reliance on Trustees of the Port of Madras v. Engineering Constructions Corporation Limited (1995) 5 SCC 531 wherein this court observed as under:-

"In the case of a reasoned award, the court can interfere if the award is based upon a proposition of law which is unsound in law. The error apparent on the face of the award contemplated by Section 16(1) (c) as well as Section 30 (c) of the Arbitration Act is an error of law apparent on the face of the award and not an error of fact. An error of law on the face of the award means an error of law which can be discovered from the award itself or from a document actually incorporated therein. The erroneous proposition of law must be established to have vitiated the decision. The arbitrator being a creature of the contract must operate within the four corners of the contract. It is not permissible to travel beyond and consider material not incorporated in or appended to the award."

14. The learned counsel for the respondents has also placed reliance on the case of Indian Sugar Mills Association (supra). In this case, this court laid down that the local

administration was competent to increase the 'rates of charges'. The arbitrator ignored the settled legal position and consequently the High Court was justified in interfering with the award based on wrong principles of law.

15. The learned counsel for the respondents also placed reliance on Bungo Steel Furniture Pvt. Ltd. v. Union of India (1967) 1 SCR 633. In this case, the court observed as under:-

"The arbitrator in fixing the amount of compensation had not proceeded to follow any principles, the validity of which could be tested on the basis of laws applicable to breaches of contract. He awarded the compensation to the extent that he considered right in his discretion without indicating his reasons. Such a decision by an Arbitrator could not be held to be erroneous on the face of the record."

In that case, the court further held as under:-

"It is now a well settled principle that if an arbitrator, in deciding a dispute before him, does not record his reasons and does not indicate the principles of law on which he has proceeded, the award is not on that account vitiated. It is only when the arbitrator proceeds to give his reasons or to lay down principles on which he has arrived at his decisions that the court is competent to examine whether he has proceeded contrary to law and is entitled to interfere if such error in law is apparent on the face of the award itself."

16. The Privy Council in *Champsey Bhara & Co. v. Jivraj Balloo Spg. & Wvg. Co. Ltd.* AIR 1923 PC 66 observed as under:-

"An error in law on the face of the award means, in their Lordships' view, that you can find in the award or a document actually incorporated thereto, as for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous."

17. In *Raipur Development Authority & Others v. M/s. Chokhamal Contractors & Others* (1989) 2 SCC 721, a Constitution Bench of this Court clarified that "the ground arising out of an error of law apparent on the face of the award prima facie appears to fall either under Section 16(1) (c) of the Act, which empowers the Court to remit the award to the arbitrator where an objection to the legality of the award which is apparent upon the face of it is successfully taken, or under Section 30 (c) of the Act which empowers the Court to set aside an award if it is 'otherwise invalid'."

18. From the discussion of the aforementioned cases, it is clear that the error apparent on the face of the award

contemplated by Section 16(1)(c) as well as Section 30(c) of the Arbitration Act is an error of law apparent on the face of the award and not an error of fact. Same principle has been

reiterated in *Thawardas Pherumal v. Union of India* (1955)

2 SCR 48. The court reiterated the legal position that an arbitrator cannot ignore the law or misapply it in order to do what he thinks is just and reasonable. The legal position has been crystallized in a series of judgments of this Court that the arbitrator has got ample power in giving an award. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself a task of being a judge of the evidence before the arbitrator. The court should approve the award with the desire to support it, if that is reasonably possible rather than to destroy it, by calling it illegal. This court has very limited jurisdiction to interfere with the reasoned award. Only when the award is based upon a proposition of law which is unjustified in law, the error of law must appear from the award itself or from any document or note incorporated in it or appended to it. It is not permissible to travel beyond and

consider material not incorporated in or appended to the award.

19. In view of the clear legal position which has been correctly appreciated by the High Court in the impugned judgment, in our considered view, no interference is called for.

20. The appeals are accordingly dismissed being devoid of any merit. In the facts and circumstances of the case, we direct the parties to bear their own costs.

.....J.
(Tarun Chatterjee)

.....J.
(Dalveer Bhandari)

New Delhi;
May 8, 2008.