

A STATE OF ANDHRA PRADESH & ANR. ETC.
v.
R.V. RAYANIM ETC. ETC.

JANUARY 15, 1990.

B [SABYASACHI MUKHARJI, CJ., M.M. PUNCHHI AND
K. JAYACHANDRA REDDY, JJ.]

*Arbitration Act, 1940: Sections 14, 17, 30 and 33—Award—
Challenge of—Error apparent on face of record—Arbitrator exceeded
jurisdiction—Only in speaking award Court can look into reasons.*

C The respondent-contractor had entered into an agreement with
the petitioner for formation of an earth dam. Disputes and difference
arose between the parties. A reference was made to the arbitrator
wherein the respondent made eleven claims out of which one claim was
later withdrawn. The arbitrator gave a non-speaking award in favour
D of the respondent amounting to a consolidated sum of Rs.19.39 lakhs.

The respondent filed a proceeding before the Court to make the
award rule of the Court. The petitioner preferred an application for
setting aside the award which was dismissed. The High Court dismissed
the appeal and the revision of the petitioner.

E Before this Court it was contended *inter alia* that the award
purported to grant damages on the basis of escalation of cost and prices,
and such escalation was not a matter within the domain of the bargain
between the parties. It was also contended that the fact that the
arbitrator had taken into consideration the question of escalation would
F make the award bad because it was not discernible whether he had
awarded any amount on account of exalation.

Dismissing the special leave petition, this Court,

HELD: (1) In matters of challenging an award, there are often
two distinct and different grounds. One is an error apparent on the face
G of the record and the other is that the arbitrator has exceeded his
jurisdiction. In the latter case the Court can look into the arbitration
agreement but under the former it cannot, unless the agreement was
incorporated or recited in the award. [58A-B]

H *M/s Sudarshan Trading Co. v. Government of Kerala & Anr.,*
[1989] 2 SCC 38, referred to.

(2) Only in a speaking award the court can look into the reasoning of the award. It is not open to the court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. [58D]

(3) It is not discernible on the face of the record that the arbitrator has exceeded his jurisdiction in awarding damages on account of escalation. All that the award states is that he has considered the claim on the basis of escalation. Such a consideration does not make the award, on the face of it, bad on the ground of error apparent on the face of the record. [58G-H; 59A-B]

(4) The Arbitrator does not state that he has awarded any amount on that account. There is neither any error apparent on the face of the record, nor any material to satisfy that the arbitrator has exceeded his jurisdiction in awarding the amount as he did. [59B-C]

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 8094 of 1988.

From the Judgment and Order dated 16.3.88 of the Andhra Pradesh High Court in (A.A.O.) No. 1152/86 & C.R.P. No. 2728 of 1986.

C. Sitaramiah and G. Prabhakar for the Petitioners.

R.F. Nariman, K. Prabhakar and R.N. Kishwani for the Respondent.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, CJ. The respondent R.V. Rayanim was, at all material times, a Class I contractor who had entered into an agreement with the Government of Andhra Pradesh for formation of earth dam in gorge portion from chainage 3360 to 3380-M of Raiwada Reservoir Project near Devarapalli village, Chodavaram Taluk, Distt. Visakhapatnam, Andhra Pradesh. Disputes and differences arose between the parties in respect of the aforesaid agreement. A reference was made to the arbitrator as per the arbitrator clause in the agreement between the parties. The respondent made eleven claims claiming various amounts, particulars whereof have been set out by the arbitrator as follows.

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| A | “I. Payment for forming cross bund and refund of the amount recovered. | (Rs. in lakhs) 15.89
(subsequently reduced to Rs. 14.89 lakhs) |
| | II. Refund of Seigniorage Charges | 2.071 (withdrawn) |
| | III. Escalation and damages | 14.00 |
| B | IV. Extra load for sand | 1.075 (subsequently reduced to Rs.0.575 lakhs). |
| | V. Payment for excavation under water for probing diaphragm wall | 1.030 |
| C | VI. Compensation for loss suffered due to partial prevention by the department. | 1.500 |
| | VII. Compensation for loss suffered due to non-payment for the work done. | 2.015 |
| D | VIII. Refund of excess hire charges recovered. | 0.730 |
| | IX. Overheads | 0.960 |
| | X. Costs | 0.100 |
| E | XI. (a) Interest on II and VIII at 24% from the date of recovery.
(b) On Rs.8.30 lakhs at 24% p.a. from 30.11.81 to 12.5.1982.
(c) Interest at 24% on the award amount except II and VIII from the date of petition.” | |
| F | The arbitrator gave a non-speaking award dated 27th July, 1985 in favour of the respondent, amounting to Rs.19.39 lakhs, wherein he stated as follows: | |
| G | “Claim II has been withdrawn by the petitioner himself on the ground it was subsequently refunded by the respondents. On the balance claims (I and III to X) according to my assessment, I award a consolidated amount of Rs.19.39 lakhs to the extent of the claims judged admissible. The respondents shall pay Rs.Nineteen lakhs and thirty nine thousand to the petitioner.” | |
| H | It is, therefore, apparent the claim No. II as mentioned above, | |

had been withdrawn. On the balance claims I and III the arbitrator had awarded a consolidated amount of Rs. 19.39 lakhs 'to the extent of the claims judged admissible'. The respondent filed a proceeding before the Court to make the award rule of the Court. The petitioner preferred an application for setting aside the award. By a common judgment dated 21st April, 1985, the Second Additional Judge, City Civil Court, Hyderabad, dismissed the petition of the petitioner for setting aside the award and allowed the judgment in terms of the award. The petitioner preferred an appeal and a civil review petition before the High Court of Hyderabad. By a judgment dated 16th March, 1988 the division bench of the High Court dismissed the appeal and the revision of the petitioner. It held that the non-speaking award of the arbitrator was not liable to be set aside by the Court.

The petitioner has preferred this special leave petition challenging the said decision of the High Court. The main contention which was sought to be urged on this case was that the award was a non-speaking award and, as such, was bad. On this ground, on or about 9th December, 1988 this Court directed that the matter should be taken up along with civil appeal No. 5645 and 5645A of 1986 pending before a larger bench. At that time, the question was pending consideration by the Constitution Bench of this Court. This Court further directed on 9th December, 1988 that the entire amount of award, if not deposited in the trial court, should be deposited in the trial court within two months from that date, and upon the deposit being made the respondent will be at liberty to withdraw 50% of the amount which has not been withdrawn on furnishing security to the satisfaction of the trial court. It was further recorded that 50% had already been withdrawn.

As mentioned hereinbefore, the main contention sought to be urged was that the award being a non-speaking award, was bad in law. In view of the decision of this Court in *Raipur Development Authority etc. v. M/s Chokhamal Contractors etc.*, Jmt. Today 2 SC 285, this contention is no longer sustainable. It was then contended that the award has purported to grant damages on the basis of escalation of cost and prices; and such escalation was not a matter within the domain of the bargain between the parties and having taken that factor into consideration the award was bad. We have set out the relevant portion of the award. From reading the award, as set out hereinbefore, it is clear that the arbitrator has considered the claim made on the basis of 'escalation and damages' but he has awarded a total sum of Rs. 19.39 lakhs insofar as he finds admissible in respect of the claims which the arbitrator has adjudged. It speaks no further. In such a situation it is

- A not possible to contend that there was any exercise of jurisdiction by the arbitrator beyond his competence. It is well-settled that in matter of challenging the award, there are often two distinct and different grounds. One is an error apparent on the face of the record and the other is that the arbitrator has exceeded his jurisdiction. In the latter's case the Court can look into the arbitration agreement but under the
- B former it cannot, unless the agreement was incorporated or recited in the award. An award may be remitted or set aside on the ground that the arbitrator, in making it, had exceeded his jurisdiction and evidence of matters not appearing on the face of it, will be admitted in order to establish whether the jurisdiction had been exceeded or not, because the nature of the dispute is something which has to be determined
- C outside the award—whatever might be said about it in the award or by the arbitrator. See the observations of this Court in *M/s Sudarshan Trading Co. v. Government of Kerala & Anr.*, [1989] 2 SCC 38.

- Only in a speaking award the court can look into the reasoning of the award. It is not open to the court to probe the mental process of
- D the arbitrator and speculate, where no reasons are given by the arbitrator; as to what impelled the arbitrator to arrive at his conclusion.

- In the instant case the arbitrator has not awarded any amount on account of escalation of costs and expenses. At last the arbitrator has
- E not expressly awarded any amount on the ground of such escalation and if so, what amount, is not apparent on the face of the record. In these circumstances, in our opinion, on the basis of well-settled principles of law such an award, especially in view of the fact that excluding item No. III the remaining items would also be well over Rs.19.33 lakhs, it is not discernible on the face of the record that arbitrator has
- F exceeded his jurisdiction in awarding damages on account of escalation of charges and expenses which were beyond the arbitration ambit. The fact that the arbitrator has considered the claim made by the respondent on account of escalation, does not make *per se* the award to be bad.

- G Mr. C. Sitaramiah, learned counsel appearing for the appellant contended that the fact that the arbitrator has taken into consideration the question of escalation would make the award bad because it is not discernible whether he has awarded any amount on account of escalation. We are of the opinion that this argument is not open. In case of an error apparent on the face of the record, it has to be established
- H that an item or an amount which the arbitrator had no jurisdiction to

take into consideration, has been awarded or granted. That is not apparent on the face of the award in this case. All that the award states is that he has considered the claim on the basis of escalation. Such a consideration does not make the award on the face of it, bad on the ground of error apparent on the face of the record. Indeed, the arbitrator, when a claim is made, has to take that into consideration either for acceptance or rejection of the claim made. The award states that he has taken the claim made, into consideration. The award does not state that he has awarded any amount on that account. There is neither any error apparent on the face of the record, nor any material to satisfy that the arbitrator has exceeded his jurisdiction in awarding the amount as he did.

In that view of the matter the special leave petition has no merit made must, therefore, fail, and is accordingly dismissed. The petitioners were allowed to withdraw the awarded sum on furnishing security but in view of the decision now rendered, they will be entitled to take back the security. We order accordingly. The application is dismissed with aforesaid directions.

R.S.S.

Petition dismissed.