The State of Punjab
v.
S. Sukhbans Singh

a penalty. In any case the provisions of Article 320 of the Constitution are directory and not mandatory.

For these reasons I would allow the appeal and set aside the order of the learned Single Judge. The parties will bear their own costs.

Bhandari, C. J.

Mehar Singh, J.

MEHAR SINGH, J.—I agree with my Lord the Chief Justice, for reasons given by him, that respondent Sukhbans Singh was officiating in the cadre of Extra Assistant Commissioners, while he was a permanent Tehsildar, and that the State Government had the power, having regard to his conditions of service in officiating capacity, to put him back to his permanent position. I would rest my judgment upon these considerations alone. I, therefore, agree that the appeal be allowed and the order of the learned Single Judge be set aside.

APPELLATE CIVIL

Before Bishan Narain, J.

UNION OF INDIA,—*Appellant*

versus

M/s AMERICAN STORES,—*Respondent*

F.A.O. No. 64-D of 1954.

1957

Feb. 12th

Arbitration Act (X of 1940)—Section 14—Whether a document forms part of an award or not—Whether a question of fact or law—Arbitrator, whether sole Judge of facts and law—Exceptions to the rule—Award by an Umpire giving no reasons for his conclusions—Contemporaneously with the award the Umpire writing a letter to one of the parties enclosing therewith his detailed reasons for his conclusions with a view to enable that party to take action against its officials—Whether the document containing reasons forms part of the award and whether can be looked into for holding that there is an error of law apparent on the face of the award.

Held, that whether a document is actually incorporated into the award and forms part of it is a question of fact and

is to be determined by the circumstances of each case. This matter cannot be decided as a matter of law.

Held further, that it is settled law that an arbitrator is the sole and final Judge of all facts and law and the only exceptions to this rule are cases where the award is the result of corruption or fraud or where the question of law necessarily arises on the face of the award or upon some papers accompanying and forming part of the award. A contemporaneous writing addressed by the Umpire to one of the parties with a view to bring the conduct of certain of its officers to the notice of that party to enable it to take action against them, if thought necessary, and not with a view to give reasons for his conclusions relating to the dispute between the parties, does not form part of the award and cannot be looked into for holding that there is an error of law apparent on the face of the Award.

Hodgkinson v. *Fernie* (1), *Champsey Bhare and Company* v. *Jivraj Balloo Spinning and Weaving Company, Ltd.* (2), *Leggo* v. *Young and another* (3), *Holgate* v. *Killick* (4), relied on; *Kent* v. *Elstob and others* (5), distinguished.

First Appeal from the Order of the Court of Shri G. R. Luthra, Sub-Judge Ist Class, Delhi, dated the 11th day of March, 1954, making both the awards rule of the Court and passing a decree for Rs. 6,05,215 with costs of Rs. 7,250 in favour of M/s American Stores, and dismissing the cross claim of the Union of India with costs of Rs. 1,000 in accordance with the awards.

BISHAMBAR DAYAL, for Appellant.

HANS RAJ SAWHNEY, for Respondent.

JUDGMENT.

BISHAN NARAIN, J.—In November, 1947, the Government of India invited tenders for the purchase of certain Amercian surplus foodstuffs Bishan Narain, J.

(1) 111 R.R. 614.
(2) A.I.R. 1923 P.C. 66.
(3) 100 R.R. 860.
(4) 126 R.R. 492.
(5) 6 R.R. 520.

Union of India v. M/s. American Stores

Bishan Narain, J.

which were lying at three depots viz., Northbrook Depot, Lybion Depot and Gangalbuoy Depot. The Amercian Stores, a partnership firm, offered Rs. 4,17,000-15-3 for the entire stock on the basis of certain valuations and calculations and this tender was accepted by the Government on the 22nd of December, 1947. Possession of the stock was delivered to the firm in due course. The firm removed certain quantities of these goods, but then the Medical Authorities, Calcutta, intervened and declared certain stores to be unfit for human consumption. Thereupon disputes arose between the purchasers and the Government and the parties by document, dated the 6th of July, 1950, entered into an arbitration agreement. Under the agreement the Government appointed Bakshi Shiv Charan Singh and the firm appointed Raizada Narsingh Das Bali as arbitrators. The latter, however, refused to act and Indar Singh was appointed an arbitrator in his place by the firm. Proceedings were taken by the arbitrators and the firm claimed Rs. 6,13,817 as damages. The arbitrators failed to agree and the case was forwarded on the 24th of September, 1951, to Diwan Hukam Chand, a retired Magistrate, who had been previously appointed as an umpire by the arbitrators. Thereafter, the Government counter-claimed rent for godowns and for this claim Diwan Hukam Chand was appointed as the sole arbitrator by the parties. The umpire entered into reference on both the matters and decided the disputes by separate awards given on the 28th of August, 1952. The umpire awarded Rs. 6,05,215 to the Amercian Stores and rejected the counter-claim of the Government. The umpire sent an intimation of the awards to the counsel for both parties. It is not necessary to refer to the proceedings relating to the Government's counter-claim as it is not before me and the Government has not filed an appeal against the order of the trial Court making that award a rule of the Court which allowed costs to the firm.

On the 14th of October, 1952, the Amercian Stores made an application in Court under section 14 of the Arbitration Act for a direction to the umpire to file the award in Court with all the documents and record of proceedings and, thereafter, to make it a rule of the Court. After the award, etc., had been filed in Court, the Government filed objections to the award *inter alia* on the grounds that (1) the umpire was guilty of misconduct as he had been approached by the claimants, (2) the umpire had not produced the real award in Court which he had already sent to the Government, and (3) in any case the award is against law on the face of it. The other objections raised by the Government before the trial Court were not pressed and were also ignored in this Court. The trial Court over-ruled all these objections and ordered the award to be made a rule of the Court. The Government has filed this appeal in this Court to get the award set aside.

The learned counsel for the Government frankly conceded before me that there is no evidence in support of issue No. 2, which relates to the misconduct of the umpire. The Government had only questioned the umpire on this matter who denied that he had been approached by the respondent firm or its partners. This issue was, therefore, rightly decided against the Government by the trial Court.

The learned counsel for the Government strenuously urged before me that the umpire had not produced the real award in Court and that another document had been produced in Court which was not the real award. This objection arises in the following circumstances. The umpire has filed a short award bearing a stamp of Rs. 75 (Exhibit 0.2). It is dated the 28th of August, 1952. It is proved on the record that on the 2nd of September, 1952, the umpire sent a letter (Exhibit 0.3) to the Government, which was

Union of India v. M/s. American Stores

Bishan Narain, J.

signed on the 28th of August, 1952, and therewith was enclosed a document, dated the 28th August, 1952, (Exhibit 0.1) which runs into 82 typed pages and discusses the merits of the case in detail. The argument is that Exhibit 0.1 is the real award and that after the umpire had signed it he had become *functus officio* and could not give another award (Exhibit 0.2), which he has filed in Court. It is, therefore, necessary to determine whether the umpire's real award was the document Exhibit 0.1 or the document Exhibit 0.2.

Now, the covering letter recites the fact that he had been appointed an umpire in one case and the sole arbitrator in Government's counter-claim and gives the amounts that he had awarded to the firm. The letter then proceeds to say—

> "These awards were formal and short. Besides, I am sending informally my findings in each of the two cases, covering 82 pages and four pages respectively. I know I was not bound to write these lengthy findings, but still I have done it, as I felt I was duty bound to bring to the notice of the authorities the misconduct of some of the Disposal Officers, who made these awards inevitable against the Union of India, so that if you think fit you might make enquires into the whole affairs."

It is clear that this letter was signed by the umpire on the 28th of August, 1952, i.e., on the date that the stamped award was given and on that date the umpire had written that the formal award was a short one and that the accompanying document was being sent to enable the Government to hold an inquiry into the conduct of the Disposal Officers. Therefore, as far as this letter is concerned, it is clear that the umpire intended the short award to be the real and formal

award. Moreover, it is admitted in the parties' pleadings that on making the award the umpire had informed their counsel that the award had been made in accordance with section 14(1) of the Act. It is not suggested that in this intimation there was any reference that the award was being or was intended to be forwarded to the Government for necessary action.

It has, however, been urged on behalf of the Government that there is intrinsic evidence in Exhibit 0.1, which shows that it was the real award. I have carefully gone through this document. It is headed as "order". It deals with the present claim and discusses the pleadings of the parties, the issues and evidence in this case. Separate findings are given on the 23 issues, which had been framed by the arbitrators and also reasons for his conclusions on these issues. The document then says—

> "Thus the claimant is entitled to Rs. 5,14,470 on account of North Brook Depot, and Rs. 90,745 on account of Lybian Depot; total Rs. 6,05,215 as compensation and I give award of this amount."

It is signed as an umpire and is dated 28th August 1952. If this was all and the document stood by itself without any collateral document, then it could be said with justification that it was the umpire's award. There are, however, other circumstances which militate against this conclusion. At page 5 of this document (Exhibit 0.1) occurs a paragraph which reads—

> "The claimant has laid his entire case in his petition and the respondent in the written statement. I have separately given my award as an umpire. At the same time I consider it my duty to briefly discuss the entire case of both the parties and give my

Union of India
v.
M/s. American Stores

Bishan Narain, J.

own finding on it for the consideration of the Government for any action they deem fit to take on it and send the file to the Director of Administration and Co-ordination for the purpose."

It is not the Government's case that this paragraph was a subsequent interpolation in the document, nor does it so appear to the naked eye. This paragraph is in complete harmony with the covering letter and is in consonance with the umpire's conduct in not stamping it as an award and also in sending it to the Government alone. The umpire has stated in Court that he had purchased the stamp paper on the 27th of August, 1952, and that by that time the document, Exhibit 0.1, was completed, but he is definite in his cross-examination that he had signed the award, Exhibit 0.2 (the stamped document) before he had signed Exhibit 0.1, and there is no reason to disbelieve him on this point. He is a retired Magistrate and is aware of the formalities of law. He has complied with the provisions of section 14 to the letter. It is, further, clear that he did and purported to sign the award, Exhibit 0.2, as a formal award, although he signed many other documents at that time. Besides the two awards, he signed two notes which were forwarded to the Government as also two letters intimating the parties' counsel that the awards had been made and signed. In these circumstances, I agree with the trial Court that the document, Exhibit 0.2, is the real award and the document, Exhibit 0.1, was intended by the umpire to be a detailed resume of the case with his findings to enable the Government to take any action that it considers fit and proper. This contention of the Government, therefore, fails and is rejected.

It was then argued on behalf of the Government that in any case the document, Exhibit 0.1, relates to

the case and was written and signed contemporaneously with the stamped award, Exhibit 0.2, and, therefore, it should be read as part of the award. The object of this argument is that if Exhibit 0.1 is read as incorporated into Exhibit 0.2, then any conclusion Exhibit 0.1, which is contrary to law may be held to be an error of law on the face of the award. Whether a document is actually incorporated into the award and forms part of it is a question of fact and is to be determined by the circumstances of each case. This matter cannot be decided as a matter of law. The legal position regarding the circumstances in which an error of law can be considered to be a reason for setting aside an award is well established. It was held in *Hodgkinson* v. *Fernie* (1), that the law has for many years been settled, and remains so at this day, that an arbitrator is the sole and final judge of all facts and law, and in that case William, J., observed—

> "The only exceptions to that rule are cases where the award is the result of corruption or fraud, and one other, which though it is to be regretted, is now, I think, firmly established, viz., where the question of law necessarily arises on the face of the award or upon some paper accompanying and forming part of the award. Though the propriety of this latter may very well be doubted, I think it may be considered as established."

This observation was cited with approval in *Champsey Bhare and Company* v. *Jivraj Balloo Spinning and Weaving Company, Ltd.*, (2), by their Lordships of the Privy Council and this legal principle has been accepted by our Supreme Court also. It is, therefore, necessary to consider in the present case whether the

(1) 111 Revised Reports 614.
(2) A.I.R. 1923 P.C. 66.

Union of India v. M/s. American Stores

Bishan Narain, J.

document, Exhibit 0.1, accompanied and formed part of the award, Exhib 0.2.

Shri Bishambar Dayal in support of his contention has strenuously relied on the decision given in *Kent* v. *Elstob and others* (1). In that case the arbitrator delivered with his award a certain paper containing observations on the evidence led before him and his reasons for making the award. Grose, J., considered that the two documents should be taken as one instrument, while Blanc, J., held that as the papers were delivered together with the award as containing reasons for coming to the conclusion, it must be taken as if those reasons were inserted in the award itself. The present case is entirely different. The document, Exhibit 0.1, was not delivered with the award as giving reasons for the award. It was sent to the Government with the object of enabling it to take any action against its officers that it considered fit and it was not sent with the object of giving reasons for the conclusions of the umpire as far as they related to the rights of the parties in the disputed claim. It is true that this distinction is fine, but it is quite possible for an arbitrator to consider reasons which should prevail in a dispute between the parties to be irrelevant when reasons are to be given for any action to be taken against officers of one of the parties. Moreover, this judgment of 1802 has not been accepted in subsequent decisions. In *Leggo* v. *Young and another* (2), the umpire made an award in favour of the defendants. The award was accompanied by a letter of the umpire as such. It bore the date of the award itself and it was addressed to the plaintiff and it stated that if the reference had empowered him to award costs, then he would have ordered the defendants to pay costs to the plaintiff. That case comes quite near to the present case, but the letter in that

(1) 6 R.R. 520.
(2) 100 R.R. 860.

case was ignored and it was held that it did not form part of the award. The case *Kent* v. *Elstob* and *others* (1), was distinguished, and then it was observed by Maule, J., when referring to this matter—

> "It lies at the very root of the motion, that the Court can look at the arbitrator's letter for the purpose of seeing that he was wrong in point of law. The principal case upon this subject is *Kent* v. *Elstob* (1), which is sought to be shaken by the subsequent case of *Doed Oxenden* v. *Cropper* (2). But *Kent* v. *Elstob* (1), was a very different case from this. There the arbitrator delivered with his award a paper containing observations upon the evidence laid before him, and his reasons for making the award as he did. That, therefore, was a paper which subsequently formed part of the award, and was intended so to do. Here, however, there is no document delivered with the award to both the parties; but merely a letter addressed to one of them, intimating the umpire's regret that he could not give him the costs. I do not think that is a sort of thing that should be taken notice of, or permitted to operate against the deliberate decision to which the umpire has come. We are rather more scrupulous now than the Courts formerly were as to these explanatory papers given out by arbitrators. One can easily conceive that an arbitrator might write to one of the parties, and express his regret that he cannot award him costs, without holding him

(1) 6 R.R. 520.
(2) 50 R.R. 378.

Union of India
v.
M/s. American Stores

Bishan Narain, J.

to be pledging himself that he would have decided otherwise than he did, if he thought the authority under which he acted permitted him to do so."

This matter again came up before the English Judges *in Holgate* v. *Killick* (1). In that case the award was made on the 23rd of August, 1861 and on the same day and contemporaneously with the award the arbitrator wrote a lettter to the defendant's attorney and gave it to the plaintiff's attorney to deliver it to the addressee. This letter disclosed the ground on which the decision in the award was given. Wilde, B. observed—

> "By, 'contemporaneous writing', is meant some writing attached to and forming part of the award. The question here is whether the Master's letter substantially forms part of his certificate. The affidavit does not state that the letter was delivered contemporaneously with the certificate. It was written, not so much for the purpose of giving the reasons for the conclusion at which the Master arrived as for facilitating a settlement of all disputes between the parties."

Applying these reasons, it is obvious that in the present case the umpire has written this document, Exhibit 0.1, with a view to bring the conduct of certain officers to the notice of the Government and not with a view to give reasons for his conclusions relating to the dispute between the parties. For these reasons this contention of Shri Bishambar Dayal also fails and must be rejected.

It was conceded on behalf of the Government that if the document, Exhibit 0.1, is not to be read as incorporated in the award, Exhibit 0.2, then the award

(1) 126 R.R. 492.

cannot be impeached as the umpire had given no reason in this award for his conclusions which can be considered to be error of law apparent on the face of the award. Indeed, there is no decision on this matter in the judgment of the trial Court as that matter was left to be decided after the other two matters discussed above had been decided.

The result is that this appeal fails and is dismissed with costs.

CIVIL REFERENCE.

Before Bhandari, C.J., and Tek Chand, J.

THE COMMISSIONER OF INCOME-TAX, PUNJAB, ETC.,—
Appellant.

verses

SHREE JAGAN NATH MAHESHWARY, AMRITSAR,—
Respondent

Civil Income-tax Reference 24 of 1953.

1957

Feb. 18th

Income-Tax Act (XI of 1922) Section 34—Notice issued to assessee based on a certain item of income that had escaped assessment—Whether permissible for Income-tax authorities to include other items in the assessment in addition to the item which had initiated and resulted in the notice—"definite information", "discovers" and "such income, profits or gains"—Meaning of Notice, whether should specify the income or source that has escaped assessment—Liability to pay tax—Whether depends on assessment—Section 34—Who can act under—Fiscal Statutes—Interpretation of—Rule as to beneficial interpretation in favour of the subject—Whether subject to the rule against an impairment of obligation—Section 34—Interpretation of.

Held, that when a notice is issued under section 34 based on a certain item of income that had escaped assessment, it is permissible for the Income-tax authorities to include other items in the assessment in addition to the tem which had initiated and resulted in the notice under ection 34.