Om Parkash v. Darogha Mal

Kapur, J.

also deals with something which is likely to deceive or cause confusion and therefore, is not distinctive. As the mark was registered it must be taken that the provisions of section 6(2) and (3) were complied with.

I am, therefore, of the opinion that the petition as framed does not come within section 24 of the Trade Marks Act, and, at any rate, it does not give any particulars which would be sufficient for the purpose of a proper trial of the issues which will arise.

I would, therefore, dismiss this petition as being incompetent, but leave the parties to bear their own costs in these proceedings.

APPELLATE CIVIL

Before Bhandari, C.J. and Falshaw, J.

UNIVERSITY OF DELHI,—*Appellant.*

versus

Dr. S. DUTT,—*Respondent.*

First Appeal from Order No. 119-D of 1954

1955

January, 15th

Delhi University Act (VIII of 1922) Sections 20 and 45—Executive Council—Power to institute legal proceedings—Such power if affected by the Amending Act (V of 1952)—Umpire appointed under section 45 by the Chancellor—Whether a third arbitrator only and not an umpire as contemplated by section 10(2) of the Indian Arbitration Act—Interpretation of Statutes—Analogous words used—Rule of interpretation—Specific Relief Act (I of 1877)—Section 21—Contract of personal service—Whether can be specifically enforced—Award—Error on the face of it—Whether renders the award invalid.

Held (1) that the power to institute or defend legal proceedings was included in the residuary powers of the Executive Council in Section 20(1) of the Delhi University Act. The amendments to the Act by the Delhi University Amendment Act (V of 1952) do not in any way affect the said powers of the Executive Council.

(2) that the third member of the Tribunal is specifically described in the section as an umpire and the section also in terms makes the provisions of the Arbitration Act as a whole applicable to the reference. The sense in which the word "Umpire" is used consistently in the Arbitration Act and indeed its generally accepted meaning in matters of this kind, is a person who is called on to adjudicate upon the matters in dispute after a disagreement between arbitrators. It must be quite obvious that the drafters of section 45 were well aware of the terms of the Arbitration Act, which they have themselves made applicable to references under that section, and they must also have been aware of the meanings attached to the words "Umpire" and "arbitrator" in the Act. It seems, therefore, impossible to believe that if they had meant a reference to three arbitrators such as is contemplated in section 10(2) of the Arbitration Act, they should not have clearly said so.

(3) that in Statutes where analogous words are used, each may be presumed to be susceptible of a separate and distinct meaning, for the Legislature is not supposed to use words without a meaning.

(4) that contracts involving personal services cannot be specifically enforced.

(5) that the arbitrator having decided that D had been wrongfully and illegally dismissed it was not open to him to grant D a declaration that he was still a professor in the University which no one could or would give him; and obviously all that the Arbitrator could then properly and legally have decided was the amount of compensation or damages to which D's wrongful dismissal entitled him. This part of the award and the decree based upon it are wholly unenforceable and amounts to an error on the face of the award which renders it invalid and liable to be set aside.

In re Eyre and Corporation of Leicester (1) *and I. M. Lal's case* (2), distinguished;

Mothey Krishna Rao v. *Grandhi Anjaneyulu and others* (3), relied on.

(Case referred to the above Division Bench by the Hon'ble Chief Justice).

(1) (1892) 1 Q.B. 136
(2) A.I.R. 1948 P.C. 121
(3) A.I.R. 1954 Mad. 113

First Appeal from the order of Shri P.R. Aggarwal, Sub-Judge III Class, Delhi, dated the 27th May 1954, holding the removal of the plaintiff from the Headship of the Chemistry Department as wrongful. (This appeal has been transferred to this Court from the Court of Senior Sub-Judge under the orders of Hon'ble the Chief Justice dated the 26th November 1954 in Civil Miscellaneous No. 797-D of 1954.)

MR. M. C. SETALVAD, Attorney-General with RANG BEHARI LAL and AVADH BEHARI LAL, *for Appellants.*

A. C. CHATTERJEE and N. D. BALI, *for Respondent.*

JUDGMENT

Falshaw, J.

FALSHAW, J. These are two appeals (F.A.O. Nos. 119-D and 120-D of 1954), filed by the University of Delhi against the order of a Sub-Judge at Delhi which have been withdrawn from the Courts of the District Judge and Senior Sub-Judge in which they were filed and transferred to this Court under Section 24, Civil Procedure Code. Only one order is challenged in the appeals which were apparently duplicated in different Courts by way of caution as the appellant was not sure in which Court the appeal lay.

The case has a long and complicated history. The respondent, Dr. S. Dutt was appointed by the University as Professor of Chemistry on the 10th of May 1944. As there was only one Professor of this subject he automatically became Head of Department of Chemistry. On the 24th of February 1949, a second Professor of Chemistry, Dr. Seshadri was appointed by the University and after only a month, on the 28th of March 1949, Dr. Seshadri was appointed as Head of the Chemistry Department thus superseding Dr. Dutt. This appointment was challenged by Dr. Dutt who instituted a suit on the 18th of October 1949, claiming a declaration that his removal from the headship of the Chemistry Department was illegal.

University of Delhi
v.
Dr. S. Dutt
———
Falshaw, J.

It appears that there were other matters in dispute between Dr. Dutt and the University besides the headship of the Chemistry Department such as the question of his selection grade and certain allegations of misconduct which had been made against him, and on the 26th of October, 1950, at a meeting of the Executive Council of the University an offer by Dr. Dutt to withdraw his suit and allow the charges levelled against him by the University authorities and certain charges made by him against the University authorities to be referred to Sir Vardhachariar and Bakshi Sir Tek Chand was accepted and embodied in a resolution of the Council, according to which all disputes between Dr. Dutt and the University were referred to the two gentlemen named above for their investigation and findings, and their decision was to be final and binding. In pursuance of this undertaking Dr. Dutt withdrew his suit on the 3rd of November 1950.

An inquiry was duly held by the two former learned Judges according to whose report dated the 1st of March 1951, certain charges of misconduct levelled against Dr. Dutt, including some quite serious ones, were found to be established while Dr. Dutt's counter-charges were virtually held to be without foundation.

The next step was taken by Dr. Dutt, who filed an application under section 33 of the Arbitration Act in the Court of a Sub-Judge at Delhi challenging what he described as the award mentioned above and on the following day, the 27th of March he obtained a temporary injunction *ex parte* restraining the University from holding a meeting of the Executive Council for discussing

University of Delhi *v.* Dr. S. Dutt

Falshaw, J.

his case. The District Judge was moved to transfer the case to his own file which he did on the 9th of April, and on the 20th of April 1951, he vacated the temporary injunction. A few days later, on the 26th of April, the Executive Council passed a resolution dispensing with the services of Dr. Dutt as Professor of Chemistry in view of the findings of the report of Sir Vardhachariar and Bakshi Sir Tek Chand. On the 11th of February 1952, the District Judge dismissed Dr. Dutt's application under section 33 of the Arbitration Act as both parties were agreed that the investigation of the charges had not been a reference to arbitration and he therefore held that there was no award to be set aside. It is not clear why Dr. Dutt appealed against this order but he apparently did so and his appeal was dismissed on the 22nd of April 1953, by Khosla, J.

Almost immediately after this Dr. Dutt initiated the proceedings which have given rise to the present appeals. He sent a letter dated the 28th of April 1953, to the University for the appointment of a Tribunal of Arbitration under Section 45 of the Delhi University Act. It is agreed that if there was to be a reference under section 45 of the Delhi University Act the form of the section applicable would be as it stood before it was amended by Act V of 1952. It then read—

> "Any dispute arising out of a contract between the University and any officer or teacher of the University shall, on the request of the officer or teacher concerned, be referred to a Tribunal of Arbitration consisting of one member appointed by the Executive Council, one member nominated by the officer or

University of Delhi
v.
Dr. S. Dutt
———
Falshaw, J.

> teacher concerned, and an umpire appointed by the Chancellor. The decision of the Tribunal shall be final, and no suit shall lie in any Civil Court in respect of the matters decided by the Tribunal. Every such request shall be deemed to be a submisison to arbitration upon the terms of this section, within the meaning of the Arbitration Act, 1940, and all the provisions of that Act, with the exception of section 2 thereof shall apply accordingly."

In his letter Dr. Dutt informed the Registrar that he had nominated Professor M. N. Saha, Director of the Indian Association for the Cultivation of Science, Calcutta, his arbitrator in accordance with the terms of the section. His letter came up for consideration at a meeting of the Executive Council held on the 30th of April 1953, and it was decided that as he had taken up the matter in the Courts no action was necessary, and that he should be informed that the University did not propose to take any action in the matter. On the 19th of May 1953, Dr. Dutt sent a notice to the Registrar informing him that since the University had failed to appoint its arbitrator within 15 days his own arbitrator would become the sole arbitrator. A few days after that Dr. Saha, the arbitrator nominated by Dr. Dutt, sent a notice to the University directing it to appear before him on the 15th of June, 1953. On the date fixed the Registrar appeared before the arbitrator and again on the following day a counsel on behalf of the University appeared before the arbitrator. On that day the University's objections to the jurisdiction of the sole arbitrator on the matters under reference were overruled and the University thereupon ceased to be represented in the arbitration proceedings.

University of Delhi v. Dr. S. Dutt

Falshaw, J.

Dr. Saha delivered his award on the 17th of June 1953. In the award Dr. Saha set out the points requiring determination by him as follows:—

(1) Whether the selection grade of Professors was rightly withheld in the case of Dr. S. B. Dutt, when it was given to all other Professors of his standing and seniority ?

(2) Whether Dr. S. B. Dutt was appointed Professor and Head of the Chemistry Department of the University and rightly removed from the headship. This involves the termination of the terms of his appointment as Head.

(3) Whether the dismissal of Dr. Dutt by resolution passed by the Executive Council on the 26th of April, 1951, was *mala fide* and illegal and therefore wrongful and ineffectual ?

(4) Whether Dr. Dutt was harassed by the officials of the University and its effect.

Then he simply said that he had gone through the documents produced by Dr. Dutt and heard all the evidence that he wanted to produce, and after mentioning that the University representatives had withdrawn after he had overruled their objections to his jurisdiction, he gave his findings all of which were in favour of Dr. Dutt. He concluded by mentioning that in his memorandum, dated the 9th of June 1953. Dr. Dutt had claimed certain sums which would be payable to him by the University in case they refused to reinstate him, but he left the question open and did not give any decision thereon because this matter was not referred to him in the original reference. The award

University of Delhi v. Dr. S. Dutt

Falshaw, J.

was filed in Court on the 24th of June 1953, and in response to a notice from the court objections were filed by the University to the award. Ultimately these objections were practically all overruled by the order now under appeal, dated the 27th of May 1954. The award was made a rule of the Court except for that portion of it which referred to the removal of Dr. Dutt from the headship of the Department of Chemistry, his right to claim which he was held to have waived by the unconditional withdrawal of the suit he had filed regarding it in 1949.

In its objections the University challenged the jurisdiction of the sole arbitrator and pleaded that Dr. Dutt had waived his right to claim arbitration under section 45 of the Act. It was also pleaded that the award was perverse and partial and improperly procured and that the arbitrator had misconducted himself. Finally it was pleaded that the award was infructuous and unenforceable and that the Court could not pass an infructuous and unenforceable decree.

On the other hand Dr. Dutt maintained that the award was valid and should be made a rule of the Court and also raised the plea that the objections filed by the University had not been properly authorised. The lower Court framed the issues—

(1) Whether the appointment of the arbitrator and reference made to him are invalid and *ultra vires* in law?

(2) Whether Dr. Dutt had waived his right to claim arbitration for the reasons stated in para. 2 of the objection petition?

(3) Whether the award cannot be enforced as being illegal and against law?

(4) Whether the arbitrator misconducted himself in the proceedings?

University of Delhi
v.
Dr. S. Dutt

Falshaw, J.

(5) Whether the award has been improperly procured.

(6) Whether the procedure for filing the award is followed, if not, what is its effect?

(6-A) Whether the objections filed by the University are not properly authorised by the University in view of the resolution filed today by the objectors?

As I have said, the lower Court decided on all points in favour of Dr. Dutt except the question of one item of waiver in his claim.

The first finding which has been attacked by the learned Attorney-General for the University is that on issue 6-A, that the objections were not properly filed on behalf of the University. In this matter the University rely on two resolutions of the Executive Council passed on the 21st of April 1951 and the 3rd of July 1953. The first of these resolutions was passed at the time when Dr. Dutt was seeking to invalidate the report of Sir Vardhachariar and Bakshi Sir Tek Chand which he was attacking as being an award in arbitration proceedings. The report of the proceedings of the meeting shows that the Vice-Chancellor had drawn attention to the fact that some expenditure would be necessary on account of lawyers' fees and court-fees which would have to be incurred by the University in connection with the suits filed by Dr. Dutt and some other persons, and it was resolved that the Vice-Chancellor was authorised to incur expenditure in connection with the payment of lawyers' fees and other expenses, and also that the Vice-Chancellor and the Registrar should be empowered jointly and individually to perform all the necessary actions in connection with any suit or proceedings in which the University was involved

University of Delhi
v.
Dr. S. Dutt
———
Falshaw, J.

as a party. The second resolution, dated the 3rd of July 1953, was after the present award had been filed in Court, but before notice had been issued by the Court to the University. The record of the proceedings of the Council shows that the Registrar placed before the Council the correspondence between Dr. Dutt and the University after the meeting of the 30th of April 1953 regarding his demand for arbitration, and also placed Dr. Saha's award before the Council and reported that on the strength of it Dr. Dutt had obtained an injunction from the Court in which a suit filed by the University to eject him from a University house was pending. The Registrar sought the directions of the Council regarding arrangements for the conduct of the case in Court. It was decided that in addition to Mr. Avadh Behari, the junior counsel, some senior counsel should be engaged to conduct the case and the Vice-Chancellor was authorised to engage a suitable lawyer for the purpose. The lower Court held that the first of these resolutions was bad, because it was in far too wide terms even if the Executive Council had power to authorise the institution or defence of legal proceedings, which was doubtful, and that in any case this resolution must be deemed to have been cancelled when the University Act was amended in 1952 and a new body called the Finance Committee was constituted thereby, without the authority of which the Executive Council could not incur any expenditure. The second resolution was also held to be bad for the latter reason. The points for determination in this connection are thus—

(1) Whether the Executive Council had power under the Act and Statutes before they were amended in 1952 to incur expenditure on instituting or defending cases in order to protect the interests of the University;

University of Delhi
v.
Dr. S. Dutt
———
Falshaw, J.

(2) If the Council possessed that power, has it in any way been taken away or diminished by the creation of a Finance Committee in the amended Act and Statutes; and

(3) Is the original resolution of the 21st of April 1951 *ultra vires* or otherwise invalid though being couched in too wide terms?

Under the unamended Act only two bodies require consideration, the Court of the University and the Executive Council. It may be stated at once that neither in those parts of the Act and Statutes which deal with the functions and powers of the Court nor those that deal with the functions and powers of the Executive Council is the power to institute or defend legal proceedings specifically mentioned. There does not, however, appear to me to be any doubt that such matters fall within the functions and powers of the Executive Council. In fact the powers and duties of the Court are confined to those mentioned in section 20 of the Act, namely—

(a) of making Statutes, and of amending or repealing the same,

(b) of considering and cancelling Ordinances, and

(c) of considering and passing resolutions, on the annual report, the annual accounts and the financial estimates,

together with such powers and duties as may be conferred or imposed upon it by the Act or the Statutes. On the other hand in section 22 regarding the Executive Council a number of powers and duties are specified and at (i) there appears—

"shall exercise all other powers of the University, not otherwise provided for by this Act or the Statutes."

No further functions or duties are assigned to the Court in the Statutes but Statute 4 sets out some further powers of the Executive Council including at (f)—

> "to manage and regulate the finances, accounts, investments, property and all administrative affairs whatsoever of the University, and, for that purpose, to appoint such agents as it may think fit."

It seems to me that if the power to institute or defend legal proceedings is not covered by the later clause it is certainly included in the residuary powers referred to in sub-section (1) and I, therefore, consider that the Executive Council was fully empowered to authorise the Vice-Chancellor to incur expenses and the Vice-Chancellor and Registrar took actions necessary for fighting out the litigation in which the University became involved with Dr. Dutt.

The amending Act of 1952, added the Finance Committee to the various bodies which are described as the authorities of the University and section 18 of the amended Act which deals with the Court reads—

> "The Court shall be the supreme authority of the University and shall have the power to review the acts of the Executive Council and the Academic Council (save when these authorities have acted in accordance with the powers conferred upon them under this Act, the Statutes, or the Ordinances) and shall exercise all the powers of "the University not otherwise provided for by this Act or the Statutes."

University of Delhi
v.
Dr. S. Dutt

Falshaw, J.

The new section 21 relating to the Executive Council does not mention any of its functions or powers but merely provides that it shall be the executive body of the University and its constitution and the terms of office of its members, other than *ex-officio* members shall be prescribed by the Statutes. The new Statute 2 relating to the Court merely describes how it is constituted and does not deal at all with its functions or powers. Statute 5 provides for the constitution of the Executive Council and Statute 6 sets out its functions.

The first part of this Statute reads:—

> "The Executive Council shall, subject to the control of the Court, have the management and administration of the revenue and property of the University and the conduct of all administrative affairs of the University not otherwise provided for."

The second part contains a detailed list in which item No. (iv) is worded exactly as was item (f) in the Statute 4 of the old Statutes. The new authority, the Finance Committee, is dealt with in Statute 10-A where its constitution and functions are set out. It is quite evident from these that the Finance Committee is in no sense a body intended to interfere with the day-to-day administration of the affairs of the University. It is, for instance, provided that the Finance Committee shall meet at least twice every year to examine accounts and to scrutinise proposals for expenditure, and in a sense it appears to be subordinate to the Executive Council, since in sub-section (7) it is provided that the annual accounts and financial estimates of the University prepared by

University of Delhi
v.
Dr. S. Dutt
———
Falshaw, J.

the Treasurer shall be laid before the Finance Committee for consideration and comments and thereafter submitted to the Executive Council for approval. In other words the relation of the Finance Committee to the Executive Council appears to be similar to that of the Chancellor of the Exchequer or the Finance Minister to the Government. It, therefore, seems quite impossible to hold that the creation of the Finance Committee has taken anything away from the powers of the Executive Council and all has been done is to make the Old Finance Sub-Committee of the Executive Council a separate body.

The question which remains is, therefore, whether it was the Executive Council or only the University Court which could authorise expenditure on litigation by the University, and even in spite of the fact that some residuary powers are given to the Court in section 18 of the amended Act, I am still of the opinion that the conduct of litigation was left in the hands of the Executive Council. A mere consideration of the Constitution of the Court appears to leave no doubt in my mind that the Court was never intended to interfere in matters of this kind, and quite evidently its main functions are to enact and revise or amend the Statutes. The constitution of the Court includes *ex-officio* members such as the Chancellor, Pro-Chancellor, Treasurer and so on, representatives of Departments and Colleges, representatives of University Teachers other than Professors, representatives of Legislatures including the Parliament of India and the Delhi State Assembly, nominated members for whom no qualifications of any kind are prescribed, and also other persons not connected with the University who are to be chosen to represent the learned professions and Industry and Commerce. The very idea that

University of Delhi
v.
Dr. S. Dutt

Falshaw, J.

such a body should be consulted about the institution or defence of legal proceedings for the University appears to be absurd. I am therefore of the opinion that the amendments to the Act do not in any way affect the previously existing powers of the Executive Council to embark on litigation to protect the interests of the University.

Finally there is the question whether the original resolution of the Executive Council, which still remained in force, was bad on account of being framed in too wide terms. On this point the lower Court relied on two decisions of the Lahore High Court in *Secretary, Notified Area Committee, Okara* v. *Kidar Nath and others* (1), and *Notified Area Committee, Okara* vs. *Kidar Nath and others* (2). The first was a decision by Dalip Singh, J., and it was upheld by Addison and Din Mohammad, JJ., in Letters Patent Appeal. The facts in that case were that Notified Area Committee had by a general resolution delegated its powers to its Secretary to institute all civil suits. It was held that a statutory Notified Area Committee could not delegate the general power to institute suits to any person, though it could delegate the power to bring a particular suit. It could not, however, be left to the person to whom delegation was made to decide whether a particular suit or not should be brought.

It does not seem to me that these decisions are at all applicable in the present case, in which although by resolution, dated the 21st of April 1951, very wide powers were given to the Vice-Chancellor and Registrar in the terms of the actual resolution, these wide powers are clearly connected by the passage which precedes the actual resolution with the litigation in which the University was involved, or was likely to be involved in

(1) A.I.R. 1932 Lah. 388
(2) A.I.R. 1935 Lah: 345

University of Delhi
v.
Dr. S. Dutt
———
Falshaw, J.

the future, with Dr. Dutt, and therefore, I am of the opinion that the lower Court wrongly decided that the filing of objections to the award by the University was not properly authorised.

The next question to be considered is whether as was contended on behalf of the University but overruled by the lower Court, Dr. Dutt could be said to have waived his right to a submission to arbitration under section 45 of the Act. The argument is that when Dr. Dutt agreed to withdraw his suit and to allow the charges and counter-charges to be enquired into by the two former learned judges and subsequently took proceedings under the Arbitration Act to get the finding of these gentlemen set aside as if it had been an award in arbitration, he thereby waived his right to have recourse to the provisions of section 45. The Lower Court has dealt with this contention by saying that under the terms of section 45 Dr. Dutt was clearly entitled as of right to have any dispute between himself and the University referred to the Tribunal of Arbitration mentioned in that section, and that he has not waived his right by allowing certain charges and counter-charges to be investigated otherwise than under section 45, since the points that were raised for determination by the arbitrator are different from the matters then investigated. It is in fact quite clear from the report of Sir Vardhachariar and Bakshi Sir Tek Chand that nowhere had the questions of the denial of selection grade to Dr. Dutt, his supersession by Dr. Seshadri as Head of the Department of Chemistry or his dismissal been raised before them. In fact his dismissal could not have been since it followed the report. His counter-charges against the Vice-Chancellor and other officers of the University might be said to be covered by his

University of Delhi
v.
Dr. S. Dutt

Falshaw, J.

reference to the arbitrator on the question of his alleged harassment, but otherwise the matters submitted to the arbitrator are different, although admittedly their decision might have been affected by the findings of fact of the inquiry committee if they had been taken into consideration, which of course became unlikely when the University withdrew from the proceedings before the arbitrator after their unsuccessful challenge to his jurisdiction. On the whole I am of the opinion that the finding of the Lower Court on this point is correct and that Dr. Dutt was entitled to refer to arbitration under section 45 of the Act at least his disputes regarding the denial of selection grade to him and his dismissal. The Lower Court has already held that by withdrawing his suit challenging his supersession as Head of the Department of Chemistry Dr Dutt has waived his right to refer this particular dispute to the arbitrator, and to this I would only add the fourth of the points which were submitted to the arbitrator, namely the allegation that Dr. Dutt had been harassed by the University Officers, which in my opinion was one of the points specifically referred to the Committee of Inquiry and a finding on which is in my opinion almost meaningless in an arbitration award.

Perhaps the most difficult part of the case is the question whether when Dr. Dutt had asked for submission to arbitration under section 45, and the University had refused to take any part in the proceedings and to nominate its own arbitrator, it was legal for the sole arbitrator to decide the matter and submit an award. The contention of the learned Attorney-General for the University is that the case is not covered by section 9 of the Arbitration Act and that what section 54 of the University Act contemplates is that the Tribunal

of Arbitration consisting of arbitrators nominated by the teacher and the University and an umpire appointed by the Chancellor should sit together and decide the case as a Tribunal.

The use of the word 'Tribunal' taken by itself certainly leaves this impression, since in the ordinary sense of the word one would expect the members of a Tribunal to sit together. The difficulty, however, arises by reason of the fact that the third member of the so-called Tribunal to be nominated by the Chancellor in addition to the arbitrators appointed by the parties is specifically described in the section as an umpire and the section also in terms makes the provisions of the Arbitration Act as a whole applicable to the reference. The sense in which the word 'umpire' is used consistently in the Arbitration Act and indeed its generally accepted meaning in matters of this kind, is a person who is called on to adjudicate upon the matters in dispute after a disagreement between arbitrators. In other words the interpretation which the learned Attorney-General wishes us to place on the section is that so-called umpire is not an umpire at all in the accepted sense of the term, but merely a third arbitrator who is to sit with the arbitrators appointed by the parties to the dispute as is contemplated by section 10(2) of the Arbitration Act.

It must be quite obvious that the drafters of section 45 were well aware of the terms of the Arbitration Act, which they have themselves made applicable to references under that section, and they must also have been aware of the meanings attached to the words 'umpire' and 'arbitrator' in the Act. It seems, therefore, impossible to believe that if they had meant a reference under section 45 to be a reference to three arbitrators

University of Delhi v. Dr. S. Dutt

Falshaw, J.

such as is contemplated in section 10(2) of the Arbitration Act, they should not have clearly said so. The learned Attorney-General has drawn our attention to the case *In re Eyre and Corporation of Leicester* (1), in which the words 'arbitrator' and 'umpire' were held in a certain context to be synonymous, but that was a peculiar case in which certain disputes between a building contractor and the Corporation were in the terms of the contract itself to be referred to "an arbitrator or umpire" and quite evidently in that particular case the contract was somewhat loosely drafted without any proper consideration of the meaning of the terms. The case certainly cannot be regarded as an authority for treating the terms as synonymous in a section to which the provisions of the Arbitration Act have been made applicable when the Arbitration Act itself draws a clear distinction between the functions of umpire and arbitrators. The word 'Tribunal' is not a word which is capable of any very strict definition and in my opinion a Tribunal of Arbitration appointed in the manner provided in section 54 may nonetheless constitute a Tribunal in spite of the fact that two of its members are first of all to take proceedings, and the necessity for the intervention of the third one only arises in the event of a disagreement between them. Apart from this there is the ordinary rule of construction stated by Maxwell on page 322 of the Ninth Edition of his Interpretation of Statutes—

> "Where analogous words are used each may be presumed to be susceptible of a separate and distinct meaning, for the Legislature is not supposed to use words without a meaning."

(1) (1892) 1 Q.B. 136

University of Delhi
v.
Dr. S. Dutt

Falshaw, J.

I therefore consider that this matter was rightly decided by the lower Court and that once Dr. Dutt had requested a submission to arbitration under section 45 and appointed his arbitrator and the University failed to appoint its arbitrator within 15 days, the arbitrator appointed by Dr. Dutt could lawfully proceed as sole arbitrator.

There thus only remains for consideration the question whether the award is bad on account of any misconduct on the part of the arbitrator. The only point on which the award is attacked in this connection is that it contains on the face of it a serious error of law in that the portion which relates to the dismissal of Dr. Dutt amounts to a decree which no Court could pass and which is unenforceable. This part of the award reads:—

> "Dr. Dutt was wrongfully dismissed. His dismissal was *ultra vires, mala fide* and has no effect on his status. He still continues to be a Professor of the University."

It is contended that the decree based on this part of the award contravenes the provisions of section 21 of the Specific Relief Act. This is the section which specifies what contracts cannot be specifically enforced and item (b) reads—

> " A contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms."

In the light of the illustrations under item (b) the relevant portion of this is summed up as meaning that contracts involving personal services

University of Delhi
v.
Dr. S. Dutt
———
Falshaw, J.

cannot be specifically enforced either by the employer or the employee. It certainly seems to be true that no Court could possibly have granted such a decree. The learned counsel for Dr. Dutt has relied on the decision of the Privy Council in *I. M. Lall's case* (1), in which their Lordships gave the plaintiff a decree for a declaration that the order purporting to dismiss him from the Indian Civil Service was void and inoperative and that he remained a member of the Indian Civil Service on the date of the institution of the suit, but that was a decision which was based on the provisions of the Government of India Act for the protection of servants of the Crown, which are not applicable to the University in Delhi, which is not a Government Department, and Dr. Dutt is not, or was not, holding a civil post under the Union or a State within the meaning of Article 311 of the Constitution which has now taken the place of the Government of India Act. The dicision in *I. M. Lall's case* (1), was relied on in *Mothey Krishna Rao* v. *Grandhi Anjaneyulu and others* (2), by a plaintiff who brought a suit for a declaration that he was still the Secretary and Treasurer of the certain company which had dismissed him. The suit was held to be barred by Mack and Krishnaswami Nayudu, JJ., on the ground that it contravened the provisions of section 42 of the Specific Relief Act as the plaintiff had sued simply for a declaration and not for consequential relief by way of damages for wrongful dismissal or breach of the contract, and *I. M. Lall's case* (1), was distinguished on the ground that the plaintiff had no statutory right to institute a suit for the recovery of arrears of salaries and emoluments, and there were special circumstances in the case, in which the Court

(1) A.I.R. 1948 P.C. 121
(2) A.I.R. 1954 Mad. 113

proceeded on the presumption that the Secretary of State for India and the Government of India would abide by and act upon the Court's declaration reinstating Mr. Lall without any consequential relief by way of a specific Court order against them.

University of Delhi *v.* Dr. S. Dutt

Falshaw, J.

On behalf of Dr. Dutt it was contended that although the decree might be one which the Court would not pass in the ordinary course it was nevertheless not an error of law on the face of the award which would vitiate it. The argument was that where the arbitrator is appointed to decide a dispute involving a question of law, and he gives his decision without giving any reason for it the fact that his decision is wrong in law is not a ground for setting aside the award, and an award can only be set aside on account of an error of law apparent on the face of it where the arbitrator has given reasons for coming to his conclusion and that these reasons are manifestly wrong. The law on the point is stated by Russell on pages 270 and 272 as being that where an error, whether of fact or of law, appears on the face of an award, the award will be remitted or set aside, unless the error is immaterial to the decision, and the rule that an error of law if it appears on the face of the award is a ground for setting it aside, is an exception to the general rule that an award is final as to both fact and law, and will not be applied where the parties have specifically referred a question of law to arbitration. The instances cited on these pages from which the propositions are drawn, however, do not appear to bear any resemblance to the present case, in which it is quite apparent that the Court has passed the decree based on the award which on the face of it appears to be contrary to law. There is no doubt that the legality

University of Delhi v. Dr. S. Dutt

Falshaw, J.

or propriety of the dismissal of Dr. Dutt was a matter which could be referred to the arbitrator for decision, but having decided that Dr. Dutt had been wrongfully and illegaly dismissed I cannot see how it was open to the arbitrator to grant Dr. Dutt a declaration that he was still a Professor in the University which no Court could or would give him, and obviously all that the arbitrator could then properly and legally have decided was the amount of compensation or damages to which Dr. Dutt's wrongful dismissal entitled him. This part of the award and the decree based upon it are in my opinion wholly unenforceable and I consider that this amounts to an error on the face of the award which renders it invalid and liable to be set aside. I would accordingly accept the appeal of the University and set aside the award of the sole arbitrator, but in view of the fact that Dr. Dutt has succeeded on at least one important point and I consider that the University would have been better advised if it had entered on the submission under Section 45, I would leave the parties to bear their own costs.

Bhandari, C.J.

Bhandari, C.J.—I agree.

CIVIL APPELLATE

Before Kapur, J.

MESSRS. KASTOOR CHAND-PHOOL CHAND,—*Appellants.*

versus

THE LIQUIDATOR OF THE CAPITAL TALKIES AND GENERAL INDUSTRIES, LTD. (IN LIQUIDATION),—*Respondents.*

First Appeal from Order No. 94-D of 1954

1955

January, 18th

*Indian Companies Act (VII of 1913) Section 186—Payment order—*Ex parte *order—Whether should be made—Notice to contributory, if necessary.*