The Municipal Committee, Pathankot v. Roshan Lal

Bhandari, C. J.

or tribunal. As pointed out in *Marbury v. Madison* (1), it is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted and does not create that cause. If the Committee actually authorised the defence of the suit and if Munshi Ram actually holds a power of attorney from the Municipal Committee it seems to me that it was open to him to represent the Municipal Committee at all stages of the litigation. I am aware of no provision of law which requires a Municipal Committee to accord a separate sanction at each separate stage. Sanction accorded to the defence of a suit is equivalent to a sanction accorded to the defence of the suit from the lowest to the highest Court.

For these reasons I would allow the petition set aside the order of the learned District Judge and direct the learned District Judge to hear and determine the appeal on merits. There will be no order as to costs.

The parties have been directed to appear before the learned District Judge on the 14th January, 1957.

LETTERS PATENT APPEAL.

Before Falshaw and Bishan Narain, JJ.

SHRI PREM NATH,—*Appellant.*

versus

THE UNION OF INDIA,—*Respondent.*

1957

Jan., 16th

Letters Patent Appeal No. 276 of 1955.

Arbitration Act (X of 1940)—Sections 14 and 17—Arbitrator—Whether can give himself jurisdiction by wrong decision on facts—Challenge to jurisdiction of arbitrator—Course to be followed by the arbitrator—Point, whether can be decided by the arbitrator or the court.

(1) 2 Lawyers Edition 60

Held, that an arbitrator cannot give himself jurisdiction by a wrong decision as to the facts upon which the limit of his jurisdiction depends and that the final decision on the question of jurisdiction rests with law Courts and not with the arbitrator.

Prince and Co. v. *G. G. in Council* (1) relied on.

Held, that at the beginning of any arbitration one side or the other may challenge the jurisdiction of the arbitrator. It is not the law that arbitrators, if their jurisdiction is challenged or questioned, are bound immediately to refuse to act until their jurisdiction has been determined by some Court which has power to determine it finally. Nor is it the law that they are bound to go on without investigating the merits of the challenge and to determine the matter in dispute, leaving the question of their jurisdiction to be held over until it is determined by some Court which had power to determine it, they might then be merely wasting their time and everybody else's. They are not obliged to take either of those courses. They are entitled to inquire into the merits of the issue whether they have jurisdiction or not, not for the purpose of reaching any conclusion which will be binding upon the parties—because that they cannot do—but for the purpose of satisfying themselves as a preliminary matter whether they ought to go on with the arbitration or not. If it became abundantly clear to them on looking into the matter, that they obviously had no jurisdiction as, for example, it would be if the submission which was produced was not signed, or not properly executed, or something of that sort, then they might well take the view that they were not going to go on with the hearing at all. They are entitled, in short, to make their own inquiries in order to determine their own course of action, and the result of that inquiry has no effect whatsoever upon the rights of the parties. A person who sues upon an award is obliged to prove not only the making of the award, but also that the arbitrators had jurisdiction to make the award. The principle *omnia praesumuntur rite esse acta* does not apply to proceedings of arbitration tribunals or, indeed, to the proceedings of inferior tribunals of any sort. There is no presumption that merely because an award has been made it is a valid award. It has to be proved by the party who sues upon it that it was made

(1) A.I.R. 1955 Punj. 240

by the arbitrators within the terms of their authority, that is, with jurisdiction. Jurisdiction has to be proved affirmatively.

Christopher Brown, Ltd. v. *Genossenschaft Oesterreichischer Waldbesizer Holzwirt* (1). relied on.

Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment, dated 29th April, 1955, delivered by Hon'ble Mr. Justice Harnam Singh, in Case First Appeal from Order No. 46-D of 1953, affirming that of Sh. Rameshwar Dayal, Commercial Sub-Judge, Delhi, Court No. 1, dated the 26th February, 1953, refusing the application of the appellant made under sections 14/17 of the Arbitration Act, X of 1940.

K. C. CHOPRA, for Appellant.

I. D. DUA, for Respondent.

JUDGMENT

Bishan Narain, J.

Bishan Narain, J.—On the 27th January, 1949 Prem Nath, the sole proprietor of Messrs Prem Nath Prannath of 10, Double Phatak Road, Kishan Ganj, Delhi, agreed to supply *Dal Moong* to the Government of India. After partly performing the contract he informed the Government that he was not in a position to supply the remaining portion of *Dal Moong*. Thereupon the Government withheld Rs. 16,585 on account of damages from the sums due to the contractor on the basis of other contracts. Prem Nath disputed his liability to pay the damages and wrote to the Government on the 15th December, 1951, that he had appointed Shri Girdhari Lal to act as his arbitrator and called upon the Government to appoint their arbitrator. This action was taken by Prem Nath under clause 21 of the General Conditions of the Contract. The Government by letter dated the 19th December, 1951, informed the contractor that clause 21 was not applicable to the case but that

(1) 1953 W.R. 689.

clause 11 of the contract applied under which the Secretary, Ministry of Food, or his nominee could act as an arbitrator and no body else and accordingly the Government refused to appoint an arbitrator under clause 21 of the General Conditions given in the pamphlet W.S.B. 133. Nevertheless Girdhari Lal constituted himself as sole arbitrator and issued notice to the parties to appear before him. Nobody appeared before him for the Government and after taking *ex parte* proceedings, the arbitrator passed a decree for Rs. 16,585 with interest and costs in favour of Prem Nath by his award dated the 15th of January, 1952. The contractor applied under section 14 of the Act to get this award made a rule of the Court, and then the Government filed objections on the 26th May, 1952, on the ground that clause 21 was not applicable to the case and that the arbitrator had no jurisdiction to decide the dispute arising out of the contract between the parties. This objection has been upheld by the trial Court as well as by a learned Single Judge of this Court. Prem Nath being dissatisfied with these judgments has come to this Court under clause 10 of the Letters Patent.

The learned counsel for the appellant has argued only two points before us, namely that under the circumstances of this case arbitration clause 21 of the General Conditions applies, and (2) that in any case the arbitrator having decided this disputed point of jurisdiction, it is not open to the Courts to interfere with that decision.

There is no substance in either contention.

The special contract under which the contractor agreed to supply *Dal Moong* expressly states—

> "Where the General Conditions of Contract referred to above are at variance with

Shri Prem Nath
v.
Union of India

Bishan Narain, J.

the terms and conditions given in the schedule and the special conditions attached thereto the latter shall apply."

In this contract there is clause 11 under which in the event of any dispute arising out of the contract it shall be referred to the sole arbitration of the Secretary, Government of India, Ministry of Food, or his nominee. On the other hand, under clause 21 of the General Conditions each party had to nominate an arbitrator and in case of difference between the two arbitrators an umpire had to decide their dispute. It is, therefore, clear that clause 21 of General Conditions is at variance with clause 11 of the Special Contract, and, therefore, the former clause has no application to the disputes arising under this particular contract.

It is true that the arbitrator has held that clause 21 applies to the dispute, but I have already held this conclusion to be erroneous and therefore the arbitrator has no jurisdiction to act as an arbitrator to decide this particular dispute. This matter was previously argued before me when I was sitting alone and I held that an arbitrator cannot give himself jurisdiction by a wrong decision as to the facts upon which the limit of his jurisdiction depends and that the final decision on the question of jurisdiction rests with law Courts and not with the arbitrator,—*vide Prince and Co.* v. *G. G. in Council* (1). The learned counsel for the appellant has relied upon *A. M. Mair and Co.* v. *Gordhandas Sagarmull* (2), but I have already held in *Prince and Co's. case* (1), that this Supreme Court judgment is of no assistance in the matter. Today the learned counsel for the respondent has brought to our notice an English judgment

(1) A.I.R. 1955 Punj. 240
(2) A.I.R. 1951 S.C. 9

Christopher Brown Ltd. v. *Genossenschaft Oesterreichisher Waldbesitzer Holzwirt* (1). Devlin J. in that judgment has observed at page 693—

> "It is clear that at the beginning of any arbitration one side or the other may challenge the jurisdiction of the arbitrator. It is not the law that arbitrators, if their jurisdiction is challenged or questioned, are bound immediately to refuse to act until their jurisdiction has been determined by some Court which has power to determine it finally. Nor is it the law that they are bound to go on without investigating the merits of the challenge and to determine the matter in dispute, leaving the question of their jurisdiction to be held over until it is determined by some Court which had power to determine it. They might then be merely wasting their time and everybody else's. They are not obliged to take either of those courses. They are entitled to inquire into the merits of the issue whether they have jurisdiction or not, not for the purpose of reaching any conclusion which will be binding upon the parties—because that they cannot do—but for the purpose of satisfying themselves as a preliminary matter whether they ought to go on with the arbitration or not. If it became abundantly clear to them, on looking into the matter, that they obviously had no jurisdiction as, for example, it would be if the submission which was produced was not signed, or not properly executed, or something of that sort, then they might well

(1) 1953 W.R. 689.

Shri Prem Nath
v.
Union of India

Bishan Narain, J.

take the view that they were not going to go on with the hearing at all. They are entitled, in short, to make their own inquiries in order to determine their own course of action, and the result of that inquiry has no effect whatsoever upon the rights of the parties. (That is plain, I think, from the burden that is put upon a plaintiff who is suing upon an award. He is obliged to prove not only the making of the award, but also that the arbitrators had jurisdiction to make the award. The principle *omnia praesumuntur rite esse acta* does not apply to proceedings of arbitration tribunals or, indeed, to the proceedings of inferior tribunals of any sort. There is no presumption that merely because an award has been made it is a valid award. It has to be proved by the party who sues upon it that it was made by the arbitrators within the terms of their authority, that is, with jurisdiction. Jurisdiction has to be proved affirmatively."

I am in respectful agreement with these observations.

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

Falshaw, J.

Falshaw, J.—I agree.

CIVIL REFERENCE.

Before Bhandari, C. J., and Chopra, J.

BIPAN LAL KUTHIALA,—*Petitioner.*

versus

THE COMMISSIONER OF INCOME-TAX,—*Respondent.*

1957

Jan., 21st

Civil Reference No. 11 of 1956.

Income-tax Act (XI of 1922)—Sections 31 and 33—Powers of Assistant Commissioner and Appellate Tribunal