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ARBITRATORS AND REASONED AWARDS

CERTAIN QUESTIONS in the sphere of law have a habit of raising their heads again and again. This is particularly so in the field of arbitration law where an ill-drafted Act, not adequately understood by the business community and not properly appreciated by some government officers, constitutes the ruling law. This Act was conceived at some time during the period when the shadows of the Second World War were looming large on the horizons of India. It has all the demerits of an imperfect statute. To this not very happy situation, some courts make not very helpful contribution in their judicial pronouncements. It is, therefore, a very pleasant surprise to come across a judgment that takes a wise and mature view of the law. The judgment in *Raipur Development Authority* v. *Chokhamal Contractors*,[1] pronounced on 4 May 1989 by the Supreme Court, speaking through Justice Venkataramiah (as he then was), prmoises to be the judgment of the decade in arbitration law.

The short question that arose for consideration in the case was whether the court should take the view that an award passed under the Arbitration Act 1940 was liable to be remitted or to be set aside merely on the ground that no reasons had been given by the arbitrator or umpire, as the case might be, in support of the award. After a learned discussion, the court held that the award could not be set aside or remitted on the above ground. Of course, there was a string of decisions of the pre-Independence as well as post-Independence era, which had already taken the above view. Before Independence, it was well established that the fact that there is an unreasoned award is not a ground for setting it aside.[2] After Independence, the same view was taken by the court.[3] Barring situations where agreement or statute made a different provision, it was well settled that the arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him and the award cannot be set aside or remitted merely on the ground that it does not contain reasons in support of the conclusions or decisions reached in it.

But, before the court in the case under discussion, it was sought to be argued that an arbitrator or umpire discharged a judicial function and must observe natural justice. This argument was further elaborated by contending that giving of reasons was an essential component of natural justice. It was also contended that since the legality of an award could be questioned

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1. J.T. 1989 (2) S.C. 285.
2. *Champsey Bhara Co.* v. *Jivraj Balloo Spinning and Weaving Co. Ltd.* A.I.R. 1923 P.C. 66.
3. *Jivarajbhai Ujamshi Sheth* v. *Chintamanrao Balaji* A.I.R. 1965 S.C. 214; *State of Rajasthan* v. *R.S. Sharma & Co.*, (1988) 4 S.C.C. 353.

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on the basis of an error apparent on the face of the award, the only way of ensuring that an award was in accordance with law, was by insisting upon the arbitrator or umpire to give reasons for the award. It was urged that if no reasons were disclosed, then it would not be possible for the court to find out whether the award had been passed in accordance with law or not. Neither of these arguments appealed the court. It said that natural justice does not imply that reasons must be given by the arbitrator or umpire, and that what applies generally to the settlement of disputes by authorities governed by public law need not be extended to all cases arising under private law, such as those arising under the law of arbitration, which is intended for the settlement of private disputes.

In this context, the court quoted extensively from a report of the Law Commission of India on the Act.[4] The commission, while reviewing the Act, had devoted detailed consideration to this question and examined the several considerations that are relevant. At the very outset, it pointed out that the very scheme of the Act is to provide a domestic forum for speedy and substantial justice, untrammelled by legal technicalities, by getting the dispute resolved by a person in whom the parties have full faith and confidence. The award given by such a person can be assailed only on very limited grounds, like those mentioned in its section 30. At present, most awards are made rules of the court despite objections raised by the defeated party. To have a provision making it obligatory for the arbitrator to give reasons would be asking for the introduction of an infirmity in the award which, in most cases, is likely to prove fatal. Many honest awards would thus be set aside. The commission further pointed out that, in many cases, the arbitrators would be lay persons. Although their final award may be an honest and conscientious adjudication of the controversies and disputes, they may not be able to insert reasons in the awards as may satisfy the legal requirements and the scrutiny of courts. If Parliament provides that reasons shall be given, that will clearly be read as meaning that proper and adequate reasons must be given and that the same must not only be intelligible but also can reasonably be said to deal with the substantial points raised. An award, not complying with the statutory provision, would be challenged as an award bad on the face of it. The commission added, with reference to the argument, that there should be some means of ensuring that the arbitrator applied the law correctly, that parties resort to arbitration voluntarily and select, or agree to, a particular arbitrator because, *inter alia*, they have faith in him and because the proceedings will be more speedy and free from technicalities than in the court. The object of achieving speed and informality was likely to be largely frustrated, had the statute made it compulsory to give reasons for the award. This reasoning of the commission was quoted extensively by the court which also took note of the fact that nearly a decade had passed since the report was forwarded to the government.

4. *Report on Arbitration Act, 1940* at 37-40 (76th report, 1978).

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The argument that there should be means of ensuring that the arbitrator had applied the law correctly had also been dealt with by the commission as stated above. In this context, the court also pointed out that the people in India, as in other parts of the world, such as the United Kingdom, United States and Australia, have become accustomed to the system of settlement of disputes by private arbitration and accepted awards made against them as binding, even without reasons in support of the award for a long time. Of course, if the parties introduce a term requiring reasons to be given, the obligation would arise. The court pointed out:

> [T]here may be many arbitrations in which parties to the dispute may not relish the disclosure of the reasons for the award. In the circumstances and particularly having regard to the various reasons given by the Indian Law Commission for not recommending to the Government to introduce an amendment in the Act requiring the arbitrators to give reasons for their awards, we feel that it may not be appropriate to take the view that all awards which do not contain reasons should either be remitted or set aside.[5]

Finally, it may be mentioned that the competition here is between finality and strict legal propriety. In this context, the remark of Chief Justice Barwick is instructive, *viz.*, "[f]inality in arbitration in the award of the lay arbitrator is more significant than legal propriety in all his processes in reaching that award...."[6]

In the end, the court held that an award is not liable to be remitted or set aside merely on the ground that reasons have not been given in its support, except where the arbitration agreement or the deed of submission or an order made by the court, such as the one under section 20, 21 or 34 of the Act, or the statute governing the arbitration requires that the arbitrators or umpires should give reasons for their awards. But the court made an exception in the case of arbitration awards in disputes to which the state or its instrumentalities are parties. It will not be justifiable for governments or their instrumentalities to enter into arbitration agreements which do not expressly stipulate the rendering of reasoned and speaking awards. In such cases, the public interest is involved.

The judgment is noteworthy not only for its comprehensive learning, but also for the impact which it is bound to have on a correct appreciation of the legal position by all concerned. One hopes that the question finally decided by a five-judge bench of the court will not be re-agitated again and again by the litigating community in India.

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5. *Supra* note 1 at 306.

6. *Tuta Products Pty. Ltd.* v. *Hutcherson Bros. Pty. Ltd.*, (1971-72) 127 C.L.R. 253 at 258.

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