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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. No.154/2001

December 15, 2009.

INDIAN INSTITUTE OF YOUTH WELFARE

...Petitioner

Through: Mr. S.L.Gupta and Mr. Virender Singh,
Advocates

VERSUS

TRIBAL CO-OPERATIVE MARKETING DEVELOPMENT FEDERATION
OF INDIA LTD.

....Respondents

Through: Mr. Rajat Gaur, Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

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JUDGMENT (Oral)

VALMIKI J. MEHTA, J.

1. These are objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') challenging the award dated 19.2.2001 passed by the Sole Arbitrator. The disputes between the parties are with respect to an Agreement dated 28.12.1994 whereby the petitioner was

commissioned by the respondent to conduct a survey and study with regard to the minor forest produces.

2. By the Award, the Arbitrator has held that the report which is given by the petitioner is not in terms of the agreement and therefore, it is has directed refund of the monies paid by the respondent to the present petitioner.

3. I may straight away state that I am not going into the merits of the case as I am of the opinion that in the present case, the Award is liable to be set aside as the same not a reasoned Award and therefore violates Section 31 sub-Section 3 of the Act. Of course, an Arbitrator need not give detailed reasons, however, the reasons have definitely to be intelligible reasons in the eyes of law. General statements cannot be said to be reasons and nor can conclusions be said to be reasons. A reference to the Agreement shows that there were various requirements on which the report had to be given. The Award refers to the evaluation of the report by one Mr. Krishnamurthy to hold that the report given by the petitioner does not comply with the requirements and terms of the Agreement. The Agreement in question contains various requirements for the report required to be given and these are:-

“1. Objective of Study: To collect and compile complete data from primary and secondary sources on 100 items of Minor Forest Produce (list of items appended in Annexure-1) regarding various aspects like potentiality, extent of procurement, method of collection, preservation, uses,

value addition, demand and supply, consumption patterns, market practice/mechanism, product characteristic, marketability and commercialisation and to prepare and submit a comprehensive report to TRIFED.

2. Scope and Coverage of Study:

- (a) The study to be carried out in respect of 100 different Minor Forest Produce items of which list is given at Annexure-I.
- (b) The study to be carried out in 14 different States of which list is given at Annexure-II.
- (c) The information/data is to be collected, compiled and furnished in the report for each item are given at Annexure-III.
- (d) The instructions to be contacted besides other sources/agencies /target groups are given in Annexure-IV.
- (e) Submission of commoditywise comprehensive report along with the suggestions for development of items.
- (f) Presentation of the findings of the Study to the management of TRIFED.”

4. The relevant portion of the impugned Award which deals with the non compliance by the report submitted of the necessary requirements is as under:-

“I have taken into consideration and carefully examined the facts and circumstances of the case and material placed on record by both the parties and heard the arguments at length by both the Learned Counsels for the parties. The Claimant had produced Shri Krishnamurthy as a witness who was also cross examined by the Respondent. In the report of Shri Krishnamurthy the details have been given regarding the report submitted by the Respondent in terms of the Agreement between the parties. The reasons given by Shri Krishnamurthy regarding the report being of no use for the Claimant are correct in my opinion on the basis of reasons and findings given in the report. On the other hand the Respondent have failed to produce any satisfactory evidence showing that the report was prepared in terms of the Agreement and the fellow members have visited various Tribal areas for doing the research work for preparing the report in terms of the agreement between the parties. The

Respondents have failed to prove that their various research associates have visited and tribal areas for preparing the report. No documentary evidence to that effect has been produced by the Respondent, it appears that the report have been prepared and submitted by the Respondent without making any research as required in terms of the Agreement. Therefore, the Respondent have failed to prove or produce any satisfactory material contrary to the report of Sh. T. Krishnamurthy which has been relied and proved by the claimant in support of their claim.”

5. A reading of the aforesaid portion in the Award shows that except generalized reasons no specific reasons dealing with the necessary requirements as per the Agreement have been given to show as to how and why the report which is given by the petitioner under the subject Agreement fails to comply with each of the requirements of the subject Agreement. Except stating that tribal areas have not been visited the Award states nothing else. Reasons in law have to be reasons which are intelligible and legal reasons. It has been held by this court in the judgment dated 12.11.2009 in **CS (OS) 976/1996 titled as M/s Sukumar Chand Jain Vs. DDA** that the reasons which have to be given in law must be those which fall within the legal parameters and stage which show the conclusions have been justifiably arrived at. While passing this judgment, I have relied upon an earlier judgment of another learned Single Judge of this Court reported as **Jai Singh Vs. DDA (2008) 9 AD (Delhi) 453**. The relevant portion of the judgment in the case of **Sukumar Chand Jain(supra)** is as under:-

“6. It is quite clear therefore that the contractor/non-objector has itself said that he has not suffered any losses on account of prolongation of the work and therefore this issue ought to have been dealt with by the Arbitrator in the Award. What is a reasoned Award is no longer res integra and in this regard I may refer to a recent Division Bench Judgment of this Court reported as **DDA Vs. Sunder Lal Khatri 157(2009)DLT 555** and also two judgments of the Learned Single Judges of this Court reported as **Jai Singh Vs. DDA(2008)9 AD(Delhi) 453** and **Saroj Bala Vs. Rajive Stock Brokers Ltd. and Anr. 2005(81)DRJ 143**. The judgment in **Jai Singh’s case (Supra)** deals basically with the aspect as to what is a reasoned Award and what are reasons to be given in an Award which has to be a reasoned Award. In **Jai Singh’s case** reference has been made to various dictionaries as also various earlier judgments of this Court as also of the Supreme Court. In this lucid judgment, the learned Single Judge has in great detail gone into the issue as to the requirements of a reasoned Award. I may also reproduce the observations of the Supreme Court in case of **Mc . Dermott International Inc. Vs. Burn Standard Co.Ltd. (2006) 11 SCC 181** and as referred to in **Jai Singh’s case (supra)** and which are as under:

“17. Reasons is a ground or motive for a belief or a course of action, a statement in justification or explanation of belief or action. It is in this sense that the award must state reasons for the amount awarded.

The rationale of the requirement of reasons is that reasons assure that the arbitrator has not acted capriciously. Reasons reveal the grounds on which the Arbitrator reached the conclusion which adversely affects the interests of a party. The contractual stipulation of reasons means, as held in Poyser and Mills’ Arbitration In Re, “proper adequate reasons”. Such reasons shall not only be intelligible but shall be a reason connected with the case which the Court can see is proper. Contradictory reasons are equal to lack of reasons.

The meaning of the word “reason” was explained by the Kerala High Court in the context of a reasoned award.....

“Reasons are the links between the materials on which certain conclusions are based and the actual conclusions.....”

A mere statement of reasons does not satisfy the requirements of Section 31(3). Reasons must be based upon the materials submitted before the arbitral tribunal. The Tribunal has to give its reasons on consideration of the relevant materials while the irrelevant material may be ignored.....

Statement of reasons is mandatory requirement unless dispensed with by the parties or by a statutory provision”.

7. I may also note that the learned Single Judge in *Jai Singh's case (supra)* has referred to the Constitutional Bench Judgment of the Supreme Court in *S.N. Mukherjee Vs. Union of India (1990) 4 SCC 594* wherein the Supreme Court in paragraph 36 has laid down that for a judgment to be a reasoned judgment it is necessary that the judgment must deal with the points in controversy.....”

6. Tested on the ratio of the aforesaid two judgments which require that the Award has to be an appropriately reasoned Award containing intelligible reasons, I find that the impugned Award in fact amounts to a non-speaking Award. I may at this stage hasten to clarify that I am not expressing any view one way or the other on merits as to whether the report submitted by the petitioner does or does not comply with the requirements under the agreement. All that I am stating is that the Award fails in complying with the basic aspect of giving the reasons which are required in law.

7. I may at this stage also state that the report which is given by the petitioner runs into two volumes and the contention of the counsel for the petitioner is that the said two volumes of the report have not even been filed before the Arbitrator and Arbitrator therefore has not considered the report in arriving at the conclusion as to how the report submitted by the petitioner does not meet the terms and conditions of the subject agreement. A reference to the arbitration record filed before me shows that the two volumes of the report which the petitioner has given are not available in the Arbitration record. Since I am remanding the matter, as stated above, nothing much needs to be stated on

this aspect today because the Arbitrator on the matter being remanded to him is now required to pass a reasoned and a speaking Award which specifically and in detail gives the reasons as to how the report given by the petitioner does not comply with the requirements/conditions/terms of the Agreement dated 28.12.1994 between the parties if the Arbitrator arrives at the same conclusion as in the presently impugned Award.

8. Accordingly, this matter is remanded back to the Arbitrator who shall after hearing both the parties, in accordance with law, pass a reasoned Award as per Section 31(3) of the Arbitration and Conciliation Act, 1996. The original Arbitration record which is in this Court be sent to the Arbitrator through a special messenger.

9. With these observations, the present petition is disposed of.

VALMIKI J.MEHTA, J

December 15, 2009
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