

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

**FMA 835 of 2019
With
CAN 1-4 of 2021**

**The State of West Bengal & Ors.
Vs.
Soharab Ali Sardar**

Appearance:

For the Appellant	:	Mr. Ashim Kumar Ganguly, Sr. Govt. Adv. Mr. Pritam Chakraborty, Adv. Mr. Mukul Biswas, Adv.
For the Respondent	:	Mr. Samik Bagchi, Adv.

Judgment On : **28.04.2023**

Prasenjit Biswas, J. :

The appellants have preferred this appeal being aggrieved by and dissatisfied with the order dated 20.09.2018 passed in connection with an application filed under sections 30 and 33 of the Arbitration Act, 1940 by the learned Civil Judge (Senior Division), 1st Court at Baruipur.

Mr. Ashim Kumar Ganguly, learned Senior Counsel appearing for the Appellants is very much vocal on the point that the impugned arbitral award is

bereft of any reasons and as such it cannot stand under the provisions of law. He further submits that court below erred in law and fact in rejecting the application filed under sections 30 and 33 of the Arbitration Act, 1940 filed by these appellants as the parties went into arbitration with clear understanding and belief that the proceedings was conducted under the 1996 Act.

Any award made by an arbitrator can be set aside only if one or the other term specified in sections 30 and 33 of the Arbitration Act, 1940 is attracted. It is submitted that the award passed by the arbitrator is bereft of reasons and as such the award passed by the arbitrator should be nullified. Section 30 of the Arbitration Act, 1940 provides for setting aside an award which is restrictive in its operation. Unless one or the other condition contained in section 30 is satisfied, an award cannot be set aside. Even in a case where the award contains reasons the interference therewith would still be not available within the jurisdiction of the court unless, of course, the reasons are totally perverse or the judgment is based on a wrong proposition of law. Once it is found that the view of the arbitrator is a plausible one, the court will refrain itself from interfering in it.

We would refer to section 85 of the New Act, which reads as under-

“85.Repeal and savings.

(1) the Arbitration (Protocol and Convention) Act, 1937 (6 of 1937), the Arbitration Act, 1940 (10 of 1940) and the Foreign Awards (Recognition and Enforcement) Act, 1961 (45 of 1961) are hereby repealed.

(2) Notwithstanding such repeal.

(a) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force;

(b) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act.”

It appears from section 85(2) (a) that (1) the provisions of the old Act shall apply in relation to arbitral proceedings which commenced on or before the new Act came into force, unless otherwise agreed by the parties (2) it also provides that the New Act shall apply in relation to arbitral proceedings which commenced on or after the New Act came into force.

In this case pursuant an agreement the appellant issued work order in favour of the respondent and as per agreement the tender work was ought to be completed within 90 days i.e. from 26.12.1988 to 25.03.1989 but the respondent failed to complete the said contractual work within the said period. Thereafter show cause notices were issued to the respondent but as the reply to that show cause notice was not convincing the executive engineer issued a letter to the respondent for imposition of penal action as per clause 2 of the contractual agreement. Ultimately the dispute travelled to the court of the learned and Civil Judge (Sr. Division) at Baruipore by filing a suit being T.S. No.211/1994 by the respondent under section 20(4) of the Arbitration Act, 1940 for referring the dispute to the arbitrator but the court rejected the prayer of the respondent for appointment of Arbitrator. Against that order appeal was

preferred being no. FA/2912004 before this court and direction was given by this court upon the appellant to appoint an arbitrator to adjudicate the dispute raised by the respondent. Arbitrator passed the impugned arbitral award on 21.01.2015 and the respondent prayed for decree in terms of the said arbitral award in Title Suit No. 211/1994. The Appellant filed an application under sections 30 and 33 of the Arbitration Act, 1940 praying for setting aside the arbitral award dated 21.01.2015 before the learned Civil Judge (Sr. Division) 1st Court at Baruiopore but it was rejected by the court by passing the impugned order dated 20.09.2018.

The provisions of the old Act (Arbitration Act, 1940) shall apply in relation to arbitral proceedings which have commenced before the coming into force of the New Act (the Arbitration and Conciliation Act, 1996). It is clear to us that the phrase in relation to arbitral proceedings cannot be given a narrower meaning to mean only pendency of the arbitration proceedings before the arbitrator but also cover the proceedings before the court and any proceedings which are required to be taken under the old act for the award becoming a decree under section 17 and also appeal arising thereunder.

It is profitable to quote the observation of the Hon'ble Apex Court in ***Indian Rare Earths Ltd. Vs. Unique Builders Ltd.***, reported in **(2016) SCC 700**.

In the above referred case of ***Indian Rare Earths Limited (supra)*** Hon'ble Court observed as follows-

"8. A five-Judge Constitution Bench of this Court in the case of Raipur Development Authority etc. etc. vs. M/s Chokhamal Contractors etc. etc. - AIR

1990 SC 1426, considered the scope of section 30 of the Arbitration Act, 1940 and held as under :

“It is now well settled that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. The arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submission he is required to give such reasons and if the arbitrator or umpire chooses to give reasons in support of his decision it is open to the Court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the face of the record on going through such reasons. The arbitrator or umpire shall have to give reasons also where the court has directed in any order such as the one made under section 20 or section 21 or section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so.

9. A three-Judge Bench of this Court in another case of *S. Harcharan Singh vs. Union of India* – (1990) 4 SCC 647, reiterated its earlier view that the arbitrator's adjudication is generally considered binding between the parties for he is a tribunal selected by the parties and the power of the court to set aside the award is restricted to cases set out in section 30 of the Act.”

The Hon'ble Court observed in that case that although the award is a nonspeaking award till it is not permissible for the court to probe into the mental process of the learned arbitrator at the time of passing of the award.

The award can be set aside on the ground specified in clauses (a), (b) and (c) of the Arbitration Act, 1940 and the scope of challenge under section 30 of the arbitration Act, 1940 is very limited. This court finds that the examination of the award under the provisions of the Arbitration Act, 1940 should be confined on the grounds mentioned in section 30 of the Act. On the perusal of the award itself, it does not appear to be an award based on no evidence.

So, an award can be set aside only on the grounds supplied in section 30 of the arbitration Act, 1940 and on no other grounds. The inadequacy of reasons in support of an award, error committed by the arbitrator on facts, alternate and/or more plausible view could be taken than what is taken by the arbitrator, improper appreciation of evidence done by the arbitrator in recording any finding, etc. are not the grounds on which an award much less a reasoned award can be set aside. Structure of both the Acts is different and when arbitral proceedings commenced under the old Act it would be in the mind of arbitrator and the parties that the award given could not fall foul of sections 30 of the Act. So, we can safely hold that none of these grounds can be made the foundation for setting aside the award because they do not fall within the four corners of any of the three sub-clauses of section 30 of the 1940 Act.

Therefore, it is settled law that an arbitrator need not give a reasoned award and the award cannot be set aside because it is vague or cryptic. In dealing with an application under Section 30 the Court is not sitting in appeal over the decision of the arbitrator. When the award is silent, it is not open to the Court to probe the mental process by which Arbitrator has reached his conclusion. Under the Act of 1940, it was a settled principle of law that an

arbitral award could be interfered with on the ground of an error apparent on the face of the record: where a proposition of law contained in the award or in a document embodied in the award was found to be erroneous.

As a cumulative effect of the aforesaid findings this court does not find any illegality or perversity in the impugned arbitral award passed by the arbitrator.

In this view of the matter, there is no substance in the appeal and all connected applications and those are liable to be dismissed.

Accordingly, FMA/835/2019 together with CAN No. 1 of 2021, CAN No.2 of 2021, CAN No.3 of 2021 and CAN No. 4 of 2021 are hereby dismissed.

Impugned order dated 20.09.2018 (Order No.68) passed in connection with Misc. Case No.44/15 is hereby affirmed.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)