Before N.K. Sodhi, J

KRISHAN LAL,—*Petitioner*

versus

THE UNION OF INDIA,—*Respondent*

C.R. No. 556 of 1981

The 28th October, 1998

Arbitration Act, 1940—Judicial misconduct—Arbitrator performs quasi judicial functions must adhere to principles of natural justice—Give full opportunity to parties to file claims/ replies and adduce evidence—Arbitrator did not allow contractor to lead evidence—Acted in violation of rules of natural justice—Committed judicial misconduct.

Held that an Arbitrator who performs quasi-judicial functions is supposed to adhere to the principles of natural justice and should not make a farce of the inquiry before him. He must give full opportunity to the parties to file their claims/replies, if any, and allow them to adduce evidence in support of their respective pleas. Since the Arbitrator did not allow the contractor to lead his evidence, I agree with the trial Court that the Arbitrator acted in violation of the principles of natural justice and committed judicial misconduct.

(Para 2)

Viney Mittal, Sr. Advocate with Arvind Bansal, Advocate, for the petitioner.

Ms. Baljit Mann, DAG, Punjab, for the respondent.

JUDGMENT

N.K. Sodhi, J.

(1) On 23rd March, 1974 Krishan Lal petitioner (contractor) entered into an agreement with the Union of India through the Deputy Director of Military Farms for the supply of 900 tonnes of

loose white **bhoosa** to the Military authorities. The agreement contained an arbitration clause. The contractor supplied the requisite quantity within the stipulated period. The authorities, however, required the contractor to supply an additional quantity of 225 tonnes which he failed to supply and contended that he was not obliged to supply the same under the terms of the agreement. It is alleged that the Union of India made purchases of the additional quantity from the open market at the risk and responsibility of the contractor for which they suffered some loss. A notice was issued to the contractor for the recovery of Rs. 18625.50 p. on account of the loss allegedly suffered by the Union of India. Disputes having arisen between the parties the same were referred to the sole arbitration of Colonel G.S. Hundal. It is not in dispute that the Arbitrator issued notices to the parties to appear before him on 12th February, 1976. On this date the parties appeared before him at about 10.30 A.M. and the contractor appeared alongwith his counsel. The Arbitrator announced his award on the same day at a round 12.00 noon and awarded a sum of Rs. 18625.50 p. in favour of the Union of India which was a claimant before the Arbitrator. It was further ordered that the security of Rs. 7,900 deposited by the contractor may be forfeited towards the payment of the awarded amount and the balance amount of Rs. 10,725.50 p. be realised from him. The award was filed in the court on 26th February, 1976 for being made a Rule of the Court. Notice of the filing of the award was given to the parties and the contractor filed his objections challenging the validity of the award on various grounds. It was pleaded that he (the contractor) had not been given any opportunity to lead his evidence in support of his case and that under the agreement he was under no obligation to supply the additional quantity of **bhoosa** as demanded by the Military authorities. It was further pleaded that there was no evidence on the record to show as to what loss or damage was suffered by the Union of India by the non-supply of the additional quantity of **bhoosa** and that the Arbitrator decreed the claim of the Union of India as made by it without inquiring into the matter. The pleas of the contractor were controverted by the Union of India and the following issues were framed :—

> "(1)Whether the award is illegal, void and inoperative on the grounds of para No. 2 a.b.c.d. and e in the objection petition? Onus objector.
>
> (2) Relief."

(2) On a consideration of the evidence led by the parties the

trial Court was of the view that the contractor had not been afforded any opportunity to lead his evidence before the Arbitrator and that the latter had misconducted himself thereby rendering the award liable to be set aside. Consequently, the objection petition filed by the contractor was accepted and the impugned award set aside. On appeal, the learned District Judge reversed the findings recorded by the trial Court and came to the conclusion that as per the general conditions of the contract the contractor was liable to supply the additional quantity of 225 tonnes of **bhoosa** and that not having been done the Officer-in-charge, Military Farm, Ferozepore was entitled to purchase the same from other sources at the risk and expense of the contractor. The lower appellate Court also found that merely because the Arbitrator pronounced the award on the same day on which the contractor had been summoned was no ground to hold that the contractor had been denied an opportunity to lead his evidence. According to the learned District Judge, the contractor should have filed an application before the Arbitrator making his intention known that he wanted to lead evidence and not having done so it could not be held that any opportunity had been denied to the contractor. The appeal was allowed as per order dated 3rd December, 1980 and the impugned award made a Rule of the Court. It is against this order that the present revision petition has been filed.

(3) I have heard counsel for the parties and in my opinion the revision petition deserves to succeed. The disputes between the parties were referred to the Arbitrator as per letter of the Army Headquarters dated 23rd December, 1975. Colonel Hundal who was the sole Arbitrator issued notices to the parties to appear before him on 12th February, 1976. It is in evidence that the parties appeared between 10 and 10.30 A.M. on that day and that the award was pronounced by the Arbitrator at around 12.00 noon. It is true that the contractor who appeared alongwith his counsel did not file an application seeking permission to lead evidence in support of his case but that, to my mind, will not disentitle him to lead evidence which was otherwise his entitlement. The award of the Arbitrator does not make any mention that the contractor did not want to produce any evidence. It is not the case of the Union of India that the contractor admitted the claim as made by the respondent. That being so, the contractor should have been afforded an opportunity to file his reply and also lead evidence in support of his claim. An Arbitrator who performs quasi-judicial functions is supposed to adhere to the principles of natural justice and should not make a

farce of the inquiry before him. He must give full opportunity to the parties to file their claim/replies, if any, and allow them to adduce evidence in support of their respective pleas. Since the Arbitrator did not allow the contractor to lead his evidence, I agree with the trial court that the Arbitrator acted in violation of the principles of natural justice and committed judicial misconduct. In this view of the matter, the impugned order as well as the award dated 12th February, 1976 cannot be sustained.

(4) In the result, the revision petition is allowed and the impugned order dated 3rd December, 1980 passed by the District Judge, Ferozepore making the award a Rule of the Court set aside. Consequently, the award dated 12th February, 1976 is also set aside. It will, however, be open to the Union of India to appoint a fresh Arbitrator and if so appointed he shall proceed in accordance with law.

J.S.T.

Before G.C. Garg and N.K. Agarwal, JJ

B.M. PARMAR,—*Petitioner*

versus

THE COMMISSIONER OF INCOME TAX, AMRITSAR,—*Respondent*

I.T.R. Nos. 105 and 106 of 1986

The 27th October, 1998

Income Tax Act, 1961—Ss. 16 and 256—Incentive bonus—Regular employee of L.I.C.—Entitled to allowances and benefits in respect of his duties—Incentive bonus whether profit of business or profession—Held, no.

Held that a taxing statute is to be interpreted strictly. A provision has to be construed keeping in view the purpose and object for which it is enacted. The concept of commercial principles of business practice would not be relevant unless it is found to be inevitable. Deduction under Section 16 is actually meant to meet various expenses incurred by an employee in the course of his employment. The assessee has not been able to show that he was