

Harnam Singh the constitutional right of the constituency, the election-contest not being a mere private dispute between the parties to the election petition.

v.
Tirath Ram

Dua, J.

The history of this case discloses that the Tribunal was certainly seized of the election petition in June, 1962. A copy of the election petition must, therefore, have been published in the Official Gazette under section 86(1) of the Act much earlier. Even computing six months from June, 1962, the Tribunal should have endeavoured to conclude the trial by December, 1962; whereas it was decided on 10th July, 1963. Had the Presiding Officer of the Election Tribunal been relieved from the Sessions cases and other important criminal cases, then this election petition would perhaps have been decided somewhat earlier. We consider it our duty to bring the aspect mentioned above to the notice of the authorities concerned for appropriate action.

In the result this appeal fails and is hereby dismissed with costs.

JINDRA LAL, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before A. N. Grover, J.

H. L. JAIN,—Appellant.

versus

PUNJAB STATE,—Respondent.

First Appeal from order No. 34 of 1961

1963

Nov., 20th.

Arbitration Act (X of 1940)—Ss. 13(d), 14(1), 15, 16(1)(b) and Rule 3 of First Schedule—Award made by arbitrator not on a stamped paper and not specifying the amount due but amount due ascertainable by arithmetical calculation—Whether can be remitted—Order of remittal on grounds not

provided in S. 16—Whether liable to be set aside—Order of remittal not fixing time within which arbitrator to submit his decision—Award—Whether becomes void.

Held, that an award cannot be said to be indefinite merely because the figure or the amount for which a decree has been made is not stated, provided that the amount can be ascertained according to the operative part of the award. So far as the remission on the ground that the award was not on a stamped paper is concerned, that would not fall under section 16. Such an order could not be supported under sections 13(d), 14(1) or 15 of the Arbitration Act or section 151 of the Code of Civil Procedure.

Held, that where there is no ground whatever for remitting the award under section 16(1) of the Arbitration Act, the order of remittal is altogether illegal and has to be set aside. No Court is entitled to add to the grounds of remittal set forth in section 16 and where the order of remittal is made on grounds not provided therein, the remittal must accordingly be held to be invalid. As there is no appeal against that order, because none is provided for by the statute, it is competent for the aggrieved party to plead irregularity of the remittal in an appeal against the order of the Court upholding the award.

Held, that rule 3 of the First Schedule to the Arbitration Act applies up to the stage of the award when originally made and not when the award is remitted under section 16 of the Act. In the latter case the provisions contained in sub-sections (2) and (3) of that section come into play. They are essentially of a mandatory nature and the Court is bound to fix some time within which the arbitrator shall submit his decision. In the absence of any time having been fixed or extended by order of the Court, it is not possible to see how the award will not become void. It is not conceivable that the Legislature would have left it to the whim or caprice of the Court not to fix any time under section 16(2) when a definite provision has been made in Rule 3 of the First Schedule with regard to the time for making the award after the arbitrator has entered on the reference initially.

Appeal from the decree of the Court of Shri Sarup Chand Goel, Subordinate Judge 1st Class, Ambala, dated the

8th day of October,, 1960, making the award a rule of the Court and directing the defendant to pay the plaintiff the sum of Rs. 1,61,020 with interest thereon at the rate of 6 per cent per annum from 30th May, 1953 to date of realization of the said sum and also ordering the defendant to pay Rs. 303.75 nP., the costs of the suit.

D. D. KHANNA AND S. K. JAIN, ADVOCATES, for the Appellant.

H. L. SONI, ADVOCATE, for the ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

GROVER, J.—This is an appeal against an order dismissing the objections filed by the appellant to an award.

The appellant had purchased from the Director of Industries, Punjab, who acted on behalf of the Punjab State, the Button Making Work Centre at Panipat (District Karnal), including machinery, equipment, manufactured goods and raw material, for a total consideration of Rs. 1,63,520 by means of a registered agreement, dated the 30th of May, 1953. A sum of Rs. 2,500 was paid by way of earnest money and the balance of the amount was to be paid by instalments. As he failed to pay any of the instalments a dispute arose between the parties out of the transaction. It was referred by virtue of clause II, in the agreement to the Secretary to Government, Punjab, Industries Department, who was Shri Mangat Rai, at the material time. The arbitrator made an award on the 31st of October, 1957, the operative portion of which was as follows:—

“I accordingly conclude that the respondent has committed breach of the contract. The petitioner (Punjab State) is entitled to recover the outstanding

amount, together with interest, still due from the respondent, in terms of the sale-deed. The respondent can take possession of the sealed ghora sets at his pleasure, as there is no hindrance whatever in the way."

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The Punjab State filed a petition under section 16 and 17 of the Arbitration Act in which it was stated that the award was indefinite and the arbitrator did not give any definite amount, principal or interest, which was recoverable by the State from H. L. Jain. It was, therefore, prayed that the award be got filed in Court by the arbitrator and remitted to him under section 16 "for deciding the definite sum, principal and interest, recoverable by the petitioner from the respondent". "It was further prayed that after the award had been refiled, it be made a rule of the Court and a judgment and decree pronounced in accordance with it. An objection petition under section 30 of the Arbitration Act, dated the 4th of July, 1958 was filed by the present appellant on the 14th of July, 1958. A written reply, dated the 18th of July, 1958, was given by the State. It is unnecessary to state the other proceedings, but ultimately an order was made by the Court on the 4th of August, 1958 as follows:—

"I have heard the counsel for the parties. I find that the arbitrator has left the outstanding amount undetermined. An award ought to be certain, so that no reasonable doubt can arise upon the face of it. I, therefore, remit the award to the arbitrator under section 16, Arbitration Act, to find out the exact outstanding amount and resubmit the award on a stamped paper stating the definite amount due inclusive of interest, etc.,

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and from whom. Parties shall bear their own costs.”

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As apparently no date was fixed for resubmission of the award, the file was consigned to the record-room on the 11th of August, 1958. After re-mission, the award, which was written on a stamped paper and was dated the 16th of April, 1959, was refiled in Court in May, 1959, although it is stated in the judgment that it was submitted in July, 1959. Notices were issued to the parties for filing objections, the notice on the appellant having been served on the 11th of September, 1959. He filed an objection^s petition on the 21st of October, 1959. The objections were opposed and the following issues were framed:—

- (1) Whether the objections are within time?
- (2) Whether the objections filed on the 4th of July, 1958 can be gone into even now?
- (3) Whether the arbitrator has misconducted himself or the proceedings?

The Court below has found that the objections were not within time, that the previous objections, dated the 4th of July, 1958, could not be taken into consideration and that the arbitrator had not misconducted himself in any way. The result was that the objections were rejected and the award was ordered to be made a rule of the Court.

Mr. D. D. Khanna, who appears for the appellant, has raised certain points, some of which do not appear to have been raised before the Court below but which go to the root of the matter and relate to the powers and jurisdiction of the Court. The first question agitated is that the previous order remitting the award under section 16 was wholly null and void for two reasons (1) because

no ground existed for remission under the aforesaid provision and (2) the only ground on which the remission could be said to have been based was that it was not on a stamped paper. A careful perusal of the award read with the sale agreement or sale-deed left no room for doubt with regard to the amount which had been awarded as also the interest and the party or parties from whom the same was to be realised. It could not, therefore, be said that the award, dated the 31st of October, 1957, which had originally been given, suffered from any such infirmity as would justify its remission under section 16. It is common ground that it would be remitted only under section 16(1) (b) of the Arbitration Act which is to the effect—

“where the award is so indefinite as to be incapable for execution.”

Mr. Soni, who appears for the Punjab State, has not been able to show in what manner the original award, dated the 31st of October, 1957, was so indefinite as to be incapable of execution. On the contrary, as has been observed before, it was quite definite and the amounts could be easily worked out by arithmetical calculation. An award cannot be said to be indefinite merely because the figure or the amount for which a decree has been made is not stated, provided that the amount can be ascertained according to the operative part of the award. So far as the remission on the ground that the award was not on a stamped paper is concerned, that would not fall under section 16. Such an order could not be supported under sections 13 (d), 14(1) or 15 of the Arbitration Act or section 151 of the Code of Civil Procedure. This has been held in *Rikhabdas v. Ballabhdas*, (1), where it has been further laid down that when an award

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had been made the arbitrator had become *functus officio*. In that case the orders of the Courts below remitting the award were set aside. In the present case also as there was no ground whatever for remitting the award under section 16(1), the order of the Court, dated the 4th of August, 1958, was altogether illegal and has to be set aside. Furthermore it has been held in *Vengu Ayyar v. Yegyam Ayyar* (2), that no Court is entitled to add to the grounds of remittal set forth in section 16 and where the order of remittal is made on grounds not provided therein, the remittal must accordingly be held to be invalid. As there is no appeal against that order, because none is provided for by the statute, it is competent for the aggrieved party to plead irregularity of the remittal in an appeal against the order of the Court upholding the award. Once the order, dated the 4th of August, 1958, is set aside, all the subsequent proceedings and the award, which has now been ordered to be made a rule of the Court, would be *coram non iudice* and wholly invalid.

The other serious question that has been raised is that the award which has been ordered to be made a rule of the Court was void because the Court while remitting the first award failed to specify the date by which the arbitrator was to return the award after complying with the Court's order. In this connection it is necessary to refer sub-sections (2) and (3) of section 16, which are as follows:—

“16(2) Where an award is remitted under sub-section (1) the Court shall fix the time within which the arbitrator or umpire shall submit his decision to the Court:

Provided that any time so fixed may be extended by subsequent order of the Court.

(2) A.I.R. 1951 Madras 441.

- (3) An award remitted under sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed."

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Admittedly in the present case the Court never fixed any time within which the arbitrator or the umpire was to submit his decision to the Court. Normally, according to Rule 3 of the First Schedule to the Arbitration Act, the arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow. In *Hari Shanker Lal v. Shambhu Nath* (3), it has been held that "on a proper interpretation of Rule 3, the legal position may be formulated thus : (a) A notice to act may be given before or after the arbitrators entered upon the reference. (b) If notice to act is given before they entered upon the reference, the four months would be computed from the date they entered upon the reference. (c) If a party gives notice to act within four months after the arbitrators entered upon the reference, the arbitrators can make an award within four months from the date of such notice. And (d) in that event, after the expiry of the said four months the arbitrators become *functus officio*, unless the period is extended by Court under section 28 of the Act". This is the position when the award has to be made by the arbitrator and Rule 3 would have been applicable up to the stage of the award when originally made on the 31st of October, 1957. When the award is remitted under section 16, the provisions contained in sub-sections (2) and (3) of that section come into play. They are essentially of a mandatory

(3) A.I.R. 1962 S.C. 78.

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nature and the Court is bound to fix some time within which the arbitrator shall submit his decision. In the absence of any time having been fixed or extended by order of the Court, it is not possible to see how the award will not become void. It is not conceivable that the Legislature would have left it to the whim or caprice of the Court not to fix any time under section 16(2) when a definite provision has been made in Rule 3 of the First Schedule with regard to the time for making the award after the arbitrator has entered on the reference initially. In *Raja Har Narain Singh v. Chaudhrain Bhagwant Kaur* (4), and order referring a suit was made by the Court under section 508, Civil Procedure Code, without fixing a time within which the award should be made. Subsequent orders, under section 514, corrected this mistake, the last of them extending the time to the 20th of March, 1885. The award was delivered on the 24th of March, 1885. It was held that under section 521 the award was invalid. It is clear that no award shall be valid unless made within the period allowed by the Court and their Lordships observed that section 521 would be rendered inoperative if section 508 was to be merely treated as directory. Section 508 laid down that the Court shall by order refer to the arbitrator the matter in difference, which he was required to determine; and shall fix such time as it thought reasonable for the delivery of the award and specify such time in the order. In the case before their Lordships also the Court did not specify, directly, any time. The principle which had been laid down would clearly be applicable to the present case. Mr. Soni has not very properly supported the order of the Court below on this point, since that is on the face of it wholly erroneous.

(4) 18 I.A. 55.

Mr. Khanna sought to argue that the objections which had been filed on the 21st of October, 1959 to the award after remission were within time. It is wholly unnecessary to go into that matter inasmuch as Mr. Soni quite fairly has not contended that the points which had been raised by Mr. Khanna went to the root of the matter and their decision would conclude the present appeal.

In the result the appeal is allowed and the order of the Court below is set aside. Nothing that has been said in this judgment will affect the right of the parties to take such steps, if any are available to them at law, for further proceedings in the matter. Taking into consideration the entire circumstances, the parties are left to bear their own costs.

B.R.T.

FULL BENCH

Before Inder Dev Dua, J. S. Bedi and Shamsher Bahadur, JJ.

SAT PAL SEHGAL,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS;—Respondents.

Civil Miscellaneous No. 795 of 1961

Advocates Act (XXV of 1961) and Advocates (Removal of Difficulties) Order; 1963—Clause 3—Proceedings for professional misconduct pending against advocate on the appointed day—Report of enquiry held by District Judge under orders of High Court received—High Court—Whether can decide the application or must refer it to State Bar Council.

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Held, that where proceedings for professional misconduct were pending against an Advocate on the appointed day, that is, 1st September, 1963, and the report of the enquiry held by the District Judge under the orders of the