

A K.V. MOHAMMED ZAKIR

V.

REGIONAL SPORTS CENTRE
(Civil Appeal No. 2506 of 2004)

SEPTEMBER 16, 2009

B [MARKANDEY KATJU AND ASOK KUMAR
GANGULY, JJ.]

ARBITRATION:

C Award by arbitrator – Power of court to interfere with –
Order of trial court making the award rule of the court – Appeal
against – High Court setting aside a part of the award whereby
D arbitrator awarded a certain amount as compensation to
contractor for loss caused to him by way of gain prevented or
loss of profit because of delayed supply of material and
drawings to him by employer – Held: The settled position in
law is that court should not substitute its own view for the view
taken by the arbitrator while dealing with the proceedings for
E setting aside an award – It is equally well settled, where the
arbitrator acts within jurisdiction, 'the reasonableness of the
reasons' given by the arbitrator is not open to scrutiny by
courts – However, if the reasons are such as no person of
ordinary prudence can ever approve of them or if the reasons
are so 'outrageous in their defiance of logic' that they shock
F the conscience of the court, then it is a different situation, and
in an appropriate case court may interfere – However, the
degree of such unreasonableness must be greater than the
standard in a certiorari proceeding – In the instant case,
arbitrator has reached a finding of fact on the materials on
G record about the delay on the part of the employer and that
because of such delay the claimant was put in great difficulty
in completing the work in time – It is nobody's case that by
doing so the arbitrator has acted beyond his jurisdiction or
committed any legal misconduct – Therefore, there is no

reason to interfere with the award of the arbitrator, and the same is upheld.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2506 of 2004.

From the Judgment & Order dated 13.11.2002 of the High Court of Kerala at Ernakulam in Misc. First Appeal No. 821 of 1992.

B. Vijayalakshmi Menon, Ekta Kapila and Sadhanshu Goil for the Appellant.

C.N. Sree Kumar, P.R. Nayak and D. Parashar for the Respondent.

The following Order of the Court was delivered by

ORDER

1. Heard counsel for the parties.

2. This appeal has been filed impugning the judgment of the Division Bench of the Kerala High Court dated 13/11/2002 whereby the learned Judges of the High Court, on an appeal by the respondent from a judgment by the Subordinate Judge, Ernakulam dated 1/1/1991, were pleased to disallow part of the claims which were granted in favour of the appellant by the arbitrator. The relevant facts of the case are as under.

3. Tender was submitted by the claimant which was accepted by the respondent. An agreement dated 20/11/1986 was executed. In terms of the agreement, the work was to be completed within 12 months, i.e. within 19/11/1987. Work could not be completed by that time and the case of the claimant-appellant before us is that it could not be completed on account of delay on the part of the respondent in the supply of cement and steel, and also the delay in making available the drawings and for various other factors. The matter was referred to the

A arbitration of a Sole Arbitrator who was a retired Judge of Kerala High Court.

B 4. Claims and counter claims were raised before the arbitrator. After examining the rival contentions, the arbitrator gave an award dated 16/03/1990 for an amount of Rs.19,51,334.25 with interest at the rate of 10% on Rs.18,86,700.23, the principal amount, from the date of award to the date of decree. The claimant then applied for making the award into 'rule of the Court' and vide order dated 1/1/1991, the III Additional Sub-Judge, Ernakulam passed an order making the award 'rule of the Court'.

D 5. Challenging the same, an appeal was filed before the High Court by the respondent herein. In the said appeal, Division Bench of the High Court was pleased, inter alia, to hold that the claimant-appellant is not entitled to receive from the respondent an amount of Rs.3,63,344/- as compensation for the loss caused to the appellant by way of gains prevented or loss of profit. In other words it is a loss of profit of 15% of the cost of work. Learned Judges held that it is difficult to accept the reasoning of the arbitrator in granting the aforesaid part of the award of the arbitrator and, therefore, the learned Judges were pleased to set aside the award with regard to claim No.II. With the rest of the award, learned Judges, however, did not interfere.

F 6. We have heard counsel for the parties and we have perused the award. The award runs into considerable detail as it is a speaking award. While dealing with this part of the claim, the arbitrator in paragraph 5.11, 5.12 and 5.13 of the award has given detailed reasons. We are of the view that the settled position in law is that Court should not substitute its own view for the view taken by the arbitrator while dealing with the proceedings for setting aside an award. It is equally well settled, where the arbitrator acts within jurisdiction, 'the reasonableness of the reasons' given by the arbitrator is not open to scrutiny by Courts. However, if the reasons are such as no person of

ordinary prudence can ever approve of them or if the reasons are so 'outrageous in their defiance of logic' that they shock the conscience of the Court, then it is a different situation. And in an appropriate case the Court may interfere. However, the degree of such unreasonableness must be greater than the standard in a certiorari proceeding. We find that the arbitrator in this case has reached a finding of fact on the materials on record about the delay on the part of the respondent and it has also been held by the arbitrator that because of such delay the claimant was put in great difficulty in completing the work in time. It is nobody's case that by doing so the arbitrator has acted beyond his jurisdiction or committed any legal misconduct.

7. We, therefore, see no reason to interfere with the award of the arbitrator. We, accordingly, set aside the judgment of the High Court and uphold the award of the arbitrator. Appeal is allowed to the extent indicated above. No order as to costs.

R.P.

Appeal allowed.