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B.N. AGARWALLA

v.

STATE OF ORISSA

OCTOBER 16, 1995

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[J.S. VERMA AND K. VENKATASWAMI, JJ.]

*Arbitration (Orissa Amendment) Act, 1982 : Section 41-A(7)—Scope and Applicability of.*

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*Arbitration—Tribunal—Transfer to—Proceeding pending before Arbitrator—‘On the date of commencement of Amendment Act’ and in which ‘no award has been made by the said date’—Held, these two expressions must be construed harmoniously—So construed it means ‘in which no award has been made before the said date’ i.e. before commencement of the Act—Award made on the date of commencement of Act by Arbitrator—Held without jurisdiction.*

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*General Clauses Act, 1897 : Section 5(3)—Applicability of.*

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*Words & Phrases : ‘By’ in the expression ‘by the said date’—Section 41-A(7) of the Arbitration (Orissa Amendment) Act, 1982—Meaning of.*

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By the Arbitration (Orissa Amendment) Act, 1982 the Arbitration Act, 1940 was amended in its applicability to the State of Orissa. The Amendment Act came into force with effect from 26.3.1983. Section 41-A(7) of the said Act provides that "all arbitration proceedings relating to a dispute of the nature specified in sub-section (1) which are pending before any arbitrator on the date of commencement of the arbitration (Orissa Amendment) Act, 1982 and in which no award has been made by the said date, shall stand transferred to and disposed of by Arbitration Tribunal'.

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An award for a sum of Rs. 95,003 was made by an Arbitrator in favour of the appellant on 26.3.1983 i.e. the date on which Amendment Act came into force . The respondent-State challenged the award on the ground that the Amendment Act having come into force on 26.3.1983, an award made on that day was without jurisdiction in a pending arbitration proceeding which stood transferred to the Arbitration Tribunal by virtue of sub-section (7) of section 41-A. The Subordinate Judge, Bhubaneswar made the

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award rule of the Court. The respondent-state preferred appeal before the

High Court which held that the Arbitrator had no jurisdiction on 26.3.1983 to pass the impugned award. A

Against the decision of the High Court, an appeal was preferred before this Court.

Dismissing the appeal, this Court B

**HELD : 1.** The High Court's conclusion that the arbitrator in the present case had no jurisdiction on 26.3.1983 to make the award does not suffer from any infirmity. The award made on 26.3.1983 cannot be said to be an award made before 26.3.1983. The award in the present case having been made on 26.3.1983 and not before 26.3.1983, the date of commencement of the Arbitration (Orissa Amendment) Act, 1982, the arbitrator had no jurisdiction to make the award as it was a pending arbitration proceeding which automatically stood transferred to the Arbitration Tribunal. [377-E, 396-F] C

**2.** Sub-section (7) of section 41-A of the Act provides for automatic transfer to the Arbitration Tribunal of all Arbitration proceedings of the kind specified in sub-section (i) which were "pending before any arbitrator on the date of commencement" of the said Act and "in which no award had been made by the said date". Obviously, the expression "by the said date" here means by the date of commencement of the Arbitration (Orissa Amendment) act, 1982. The First expression clearly means an arbitration proceeding pending before any arbitrator on the date of commencement of the Act, namely 26.3.1983. The meaning of the second expression should be consistent with that of the first expression since the two could not be used to create a conflict. [394-F-G] D

**3.** The second expression, namely, "in which no award had been made by the said date" was further used in sub-section (7) *ex abundante cautela* to clarify the meaning of pending proceedings by indicating that only those arbitration proceedings in which the award also had been made "by the said date" were excluded from the operation of sub-section (7) and that every other arbitration proceeding including those in which the award alone remained to be made "by the said date" stood transferred to the Arbitration Tribunal. In other words, if the arbitration proceedings had been closed but the arbitrator had not made the award till the midnight between 25th and 26th March, 1983 when the Act came into force, it was a pending arbitration proceeding governed by sub-section (7). [395-E-F] E  
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A 4. The meaning of the word 'by' is both 'before' as well as 'on or  
before' and therefore, the context in which it has been used becomes  
decisive. Where the context does not exclude the date specified and permits  
its inclusion the word 'by' can be construed to mean 'on' and not 'before'  
and in that situation, specification of the limit of time by saying "by that  
B date" would require including the specified date upto the expiry of that  
date for computation of the permitted period. In the context of the  
provision made in sub-section (7) of section 41-A meaning of the word 'by'  
must be 'before' and not 'on' in order to harmonise with the meaning of  
the earlier part of sub-section (7) and to promote the object of its enact-  
ment. So construed, the second expression would read as "in which no  
C award has been made before the said date" i.e. in which no award has been  
made before the date of commencement of the Act namely, 26.3.1983. This  
would be the harmonious construction of the two expressions in the  
provision. [396-H, 397-A-D, 396-E]

D *R.C. Muthu Chettiar v. Narayanan Chettiar & Ors.*, AIR (1928) Mad.  
528; *Sheikh Nuroo v. Seth Meghraj Ramkaran Marwadi*, AIR (1937) Nagpur  
139; *T.A. Janakuara Nainar v. Periaswamy Goundan and Ors.*, AIR (1949)  
Mad. 376 and *Dharamraj Mahadeo v. Additional Deputy Commissioner  
Akola and Ors.* AIR (1957) Bom. 154, held inapplicable.

E *Eastagh and Ors. v. Macpherson*, (1954) 3 All ER 214, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9413 of  
1995.

F From the Judgment and Order dated 25.11.89 of the Orissa High  
Court in Misc. A. No. 305 of 1984.

Vinoo Bhagat for the Appellant.

Jayant Das, P.N. Mishra and A.K. Panda for the Respondent.

G The Judgment of the Court was delivered by

J.S. VERMA, J. Leave granted.

H By the impugned judgment the High Court allowed the appeal  
against the judgment of the Subordinate Judge, Bhubaneswar making an  
award dated 26.3.1983 the rule of the Court, by which a sum of Rs. 95,003

was directed to be paid to the appellant by 24.6.1983 failing which it was to carry interest at the rate of 12 per cent per annum from 27.3.1983 till the date of payment. On behalf of the respondent, the award was challenged on the ground that the arbitrator was incompetent to make the award in view of section 41A(7) of the Arbitration (Orissa Amendment) Act, 1982 (Orissa Act 3 of 1983) which came into force w.e.f. 26.3.1983 and had the effect of amending the Indian Arbitration Act, 1940. Since the date of the award and the date of the enforcement of the amending Act are the same, the question is of the applicability of the said amendment. This is the only question involved for decision in this appeal by special leave.

The Arbitration (Orissa Amendment) Act, 1982 was an Act to amend the Arbitration Act, 1940 in its application to the State of Orissa. It received the assent of the President of India on 21.3.1983 and came into force on publication in the Orissa Gazette, Extraordinary, No.358 dated 26.3.1983. A new section 41-A was inserted in the principal Act relating to constitution of and references to the Arbitration Tribunal. Sub-section (1) of section 41-A provided that notwithstanding anything contained in the Act or any contract or any other instrument, in all cases where the State Government, a local or other authority controlled by the State Government, statutory corporation or a Government company is a party to the dispute, all references to arbitration shall be made to the Arbitration Tribunal. Sub-section (2) provided for constitution of an Arbitration Tribunal by the State Government in the manner provided therein. Sub-sections (3), (4), (5) and (6) relate to ancillary matters pertaining to constitution of the Arbitration Tribunal. Sub-section (7) relates to pending proceedings and it is the construction of this provision which is involved in this appeal. Sub-section (7) is as under :

"All arbitration proceedings relating to a dispute of the nature specified in sub-section (1) which are pending before any arbitrator on the date of commencement of the Arbitration (Orissa Amendment) Act, 1982 and in which no award has been made by the said date, shall stand transferred to and disposed of by Arbitration Tribunal."

The only question in the present case is: Whether the arbitration proceeding in the present case was such a pending proceeding before the

A arbitrator to be governed by sub-section (7) of section 41-A? The controversy really relates to the meaning of the expression "by the said date" occurring in sub-section (7).

B The contention of learned counsel for the appellant is that the arbitration proceeding in the present case was not pending before the arbitrator on 26.3.1983 which is the date of commencement of the Act as the award had been made on that day. He submits that the date of commencement of the Act is to be included in the expression "by the said date" and, therefore, the arbitrator was not divested of jurisdiction to make the award on 26.3.1983. On the other hand, learned counsel for the  
 C respondent contends that the Act having come into force on 26.3.1983, an award made on that day was without jurisdiction in a pending arbitration proceeding which stood transferred to the Arbitration Tribunal by virtue of sub-section (7) of section 41-A. Learned counsel for the respondent further submitted that the object of the enactment was to prevent the  
 D mischief for which the provision was enacted and, therefore, the contemplated legislation being widely publicised with the assent of the President being given on 21.3.1983, the construction which he suggests would promote the object of the legislation. It is well known that this amendment was made in the Arbitration Act because of the realisation on account of strong observations by the courts in several arbitration cases from Orissa suggesting the desirability of an Arbitration Tribunal to decide the arbitra-  
 E tion disputes in which the State Government, its instrumentalities or other public bodies were parties.

F Sub-section (7) of section 41-A provides for automatic transfer to the Arbitration Tribunal of all arbitration proceedings of the kind specified in sub-section (1) which were "pending before any arbitrator on the date of commencement" of the said Act and "in which no award had been made by the said date". Obviously, the expression "by the said date" here means by the date of commencement of the Arbitration (Orissa Amendment) Act, 1982. The first expression clearly means an arbitration proceeding pending  
 G before any arbitrator on the date of commencement of the Act, namely, 26.3.1983. The meaning of the second expression should be consistent with that of the first expression since the two could not be used to create a conflict. The purpose of sub-section (7) is to divest the arbitrator of authority to make the award in all such arbitration proceedings which were  
 H pending before the arbitrator on the date of commencement of the said

Act and to provide for their automatic transfer to the Arbitration Tribunal. The General Clause Act, 1897 provides that unless the contrary is expressed, an Act shall be construed as coming into operation immediately on the expiration of the day preceding its commencement. There being no contrary indication in the Act, it must be held that the said Act came into force on the midnight on the expiration of the day preceding its commencement, i.e., the midnight between 25th and 26th March, 1983. There can be no doubt that if the second expression "in which no award has been made by the said date" was not also present in sub-section (7), then the undoubted result of the first expression would be that an arbitration proceeding in which no award had been made upto the midnight between 25th and 26th March, 1983 would be a pending arbitration proceeding which automatically stood transferred to the Arbitration Tribunal. The question, therefore, is whether the further words used in the second expression in sub-section (7) must lead to a different conclusion. The construction of the first expression being unambiguous, the second expression must be construed harmoniously unless that is not a permissible construction of the expression "by the said date".

It does appear to us that the second expression, namely, "in which no award has been made by the said date" was further used in sub-section (7) *ex abundante cautela* to clarify the meaning of pending proceedings by indicating that only those arbitration proceedings in which the award also had been made "by the said date" were excluded from the operation of sub-section (7) and that every other arbitration proceeding including those in which the award alone remained to be made "by the said date" stood transferred to the Arbitration Tribunal. In other words, if the arbitration proceedings had been closed but the arbitrator had not made the award till the midnight between 25th and 26th March, 1983 when the Act came into force, it was a pending arbitration proceeding governed by sub-section (7). Acceptance of the appellant's contention would amount to holding that even though the Act had come into force on the midnight between 25 and 26th March, 1983, an award made thereafter, on 26th March, 1983 was not a pending arbitration proceeding on the date of commencement of the Act. Unless meaning of the expression "by the said date" used in sub-section (7) be only that suggested by learned counsel for the appellant, the construction which would harmonise with the meaning of the earlier expression, must be given to the provision.

We may now consider the meaning of the word 'by' for ascertaining

- A the meaning of the expression "by the said date". Meaning of the word 'by' in some of the dictionaries is :

*Black's Law Dictionary (Sixth Edition)*

- B "Before a certain time ; ..... not later then a certain time; on or before a certain time; ....."

*The New Shorter Oxford English Dictionary*

".....On or before, not later than ....."

- C No doubt the word 'by' means 'before a certain time' as well as 'on or before a certain time'. The question is : whether, the word 'by' in the expression "by the said date" would mean in other words 'before' or 'on' 26.3.1983 in the present context? We have already indicated the meaning of the first expression "pending before any arbitrator on the date of commencement" to mean clearly and unambiguously pending upto the midnight between 25th and 26th March, 1983, i.e., before commencement of the date 26.3.1983 or at the time of expiry of preceding day i.e. 25.3.1983. The other expression must, therefore, be construed in this context and since the word 'by' means 'before' also, in this context it must be held to mean 'before' and not 'on' the date of commencement of the Act. So
- D construed, the second expression would read as "in which no award has been made before the date" i.e. in which no award have been made before the date of commencement of the Act, namely, 26.3.1983. This would be the harmonious construction of the two expression in the provisions.
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- F Obviously, an award made on 26.3.1983 cannot be said to be an award made before 26.3.1983 and, therefore, the award in the present case having been made on 26.3.1983 and not before 26.3.1983, the date of commencement of the Act, the arbitrator had no jurisdiction to make the award as it was a pending arbitration proceeding which automatically stood transferred to the Arbitration Tribunal.

- G Learned counsel for the appellatant has referred to some decisions where in the word 'by' has been construed to mean that it includes the end or the expiry of the date or period indicated. As we have indicated, the meaning of the word 'by' is both 'before' as well as 'on or before' and, therefore, the context in which it has been used becomes decisive. Where
- H the context does not exclude the date specified and permits its inclusion,

the word 'by' can be construed to mean 'on' and not 'before'; and in that situation, specification of the limit of time by saying "by that date" would require including the specified date upto the expiry of that date for computation of the permitted period. P.C. Muthu Chettiar v. *Narayanan Chettiar and Others*, AIR (1928) Madras 528; *Sheikh Nuroo v. Seth Meghraj Ramkaran Marwadi*, AIR (1937) Nagpur 139; *T.A. Janakuara Nainar v. Periaswamy Goundan and Others*, AIR 1949 Madras 376; and *Dharamraj Mahadeo v. Additioal deputy Commissioner Akola and Others*, AIR (1957) Bombay 154 are all decisions in which the context required the word 'by' to be read as 'on' and not 'before' to permit inclusion of the period upto the expiry of the date specified. We have already indicated that the context in the present case excludes the date specified and, therefore, excludes the meaning 'on' and requires the word 'by' to be read as 'before'.

*Eastaugh and Others v. Macpherson*, (1954) 3 All E.R. 214 supports the view we have taken that the meaning of the word 'by' in the phrase 'by the date' can mean 'on or before the date' or 'before the date' depending on the context in which the word 'by' has been used and the meaning to be preferred should be that which it has in the given context. We have indicated that in the context of the provision made in sub-section (7) of section 41-A meaning of the word 'by' must be 'before' and not 'on' in order to harmonise with the meaning of the earlier part of sub-section (7) and to promote the object of its enactment. The High Court's conclusion that the arbitrator in the present case had no jurisdiction on 26.3.1983 to make the award does not suffer from any infirmity.

Consequently, the appeal fails and is dismissed.

T.N.A.

Appeal dismissed.