

11/18  
Orient Journal of Law and Social Sciences

Volume V, Issue 1, December 2010

ISSN 0973 - 7480

Annual Subscription Rs. 1,200/-

**ORIENT**  
**JOURNAL OF LAW AND**  
**SOCIAL SCIENCES**  
(A MONTHLY JOURNAL)

VOLUME - V, ISSUE - 1

DECEMBER 2010

Edited, Printed and Published by  
Dr. A. M. ABDUL RUB

Owned by  
Dr. ABDUL RAYEES KHAN

From: -

R. K. PRINTING PRESS AND PUBLICATIONS CENTRE,  
# 12-13-103, Street No. 3, Tamaka, Secunderabad – 500 017,  
Andhra Pradesh – INDIA.

## **NON-CHALLENGEABILITY OF UNREASONABLENESS OF "REASON" IN ARBITRATION AWARDS (A Study in relation to Supreme Court's decision in M/s. Ravinder Kumar Gupta's Case)\***

By

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Parties to the contract have the right to choose their own forum to decide disputes, arising out of their contractual bargain. The deciding forum must necessarily be conceded the power to appraise the evidence and thereby the arbitrator becomes the sole Judge of the 'quality of evidence' as well as to the 'quantity of evidence'. This being so Courts cannot take up the function to judge the evidence before the arbitrator. Parties cannot challenge the award on the ground that the arbitrator has drawn his own conclusion and failed to appreciate the evidence.<sup>1</sup> In cases, where the arbitrator has given the reasons in making the award, the Court cannot examine the reasonableness of the reasons.<sup>2</sup> The Supreme Court stated that a distinction has to be made in disputes as 'to the jurisdiction of the arbitrator' and in what way the jurisdiction has to be exercised, and in the former case the award is non-reviewable on the grounds of reasonableness of the reason.<sup>3</sup>

Sec. 30 of the Indian Arbitration Act does not permit a 'reappraisal evidence' in arbitration proceeding and the Supreme Court ruled that 'reappraisal of the evidence' is unknown to arbitration proceedings under Sec. 30 of the Indian Arbitration Act. In Arason Enterprises Ltd.,<sup>4</sup> the Supreme Court ruled as follows:

- (i) In the event of their being no reasons in the award, question of interference of the Court would not arise at all;
- (ii) In the event, however, there are reasons the interference would still be not available within the jurisdiction of the Court, unless of course there exists a total perversity in the award or based on a wrong proposition of law;
- (iii) In the event, however, two views are possible on a question of law as well, the Court will not be justified in interfering with the award;

\* M/s. Ravinder Kumar Gupta & Co. v. Union of India AIR 2010 SC P. 972.

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<sup>1</sup> State of Rajasthan v. Puri Construction Co. Ltd., & Another 1994 AIR SCW 0.561 Paras 25 & 26 of AIR.

<sup>2</sup> Sudarshan Trading Co. v. Govt. of Kerala AIR 1999 SC P. 890.

<sup>3</sup> Ibid.

<sup>4</sup> Arason Enterprises Ltd. v. Union of India 1999 SCW p. 3872 paras 35 & 36 of AIR.



- (iv) "Error apparent on the face of record" does not itself, however, mean and imply closer scrutiny of the merits of the documents and materials on record;
- (v) The Court has a matter of fact cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties; and
- (vi) if the view of the arbitrator is a possible view the award or the reasoning contained therein cannot be examined.

The above proposition of law has been reiterated in Oil and Natural Gas Corporation Ltd., case.<sup>5</sup>

In Re Municipal Corporation of Delhi case,<sup>6</sup> the Supreme Court asserted that 'it is difficult to give an exact definition of the word 'reasonable' as it varies in its conclusion according to idiosyncrasies of the individual and the time and circumstance in which he thinks. The expression 'reasonable' in law would mean 'reasonable' in regard to those circumstances in which the actor, called upon to act reasonably knows or ought to know. The Court further ruled that an arbitrator acting as a Judge has to exercise a discretion informed by tradition, methodized by analogy, disciplined by system and subordinated to the primordial necessity or order in the social life. Therefore, where reasons germane and relevant for the arbitrator to hold in the manner he did, have been indicated, it cannot be said that the 'reasons are unreasonable'.<sup>7</sup>

The Court never questions and considers the appraisalment of evidence by the arbitrator. On the same evidence, the Court may arrive at a different conclusion than the one arrived at by the arbitrator. This cannot be a ground for interference. However, if the arbitral tribunal has committed mere error of fact/law in reaching its conclusion on the disputed question submitted by parties, even then there is no jurisdiction for the Courts to interfere, subject to the reference made by the parties to the arbitrator such as;

- (a) If there is a general reference for deciding the contractual dispute between the parties and if the award is based on erroneous legal proposition, the Court could interfere;
- (b) In the case of reasoned award, the Court can set-aside the same, if it is on the face of it erroneous on the provision of law or its application; and
- (c) If a specific question of law is submitted to the arbitration, erroneous decision in point of law, does not make it bad, so as to permit of its being set-aside, unless the Court is satisfied that the arbitration has proceeded illegally.<sup>8</sup>

<sup>5</sup> Oil and Natural Gas Corporation Ltd., v. SAW Pipes Ltd., (2003) AIR SCW P.304 see paras 54 and 55 of AIR.

<sup>6</sup> Municipal Corporation of Delhi v. Jagannath Ashok Kumar AIR 1987 sc p. 2316.

<sup>7</sup> Ibid.

<sup>8</sup> Supra Note 5.

It may be stated that there is no scope of interference by Courts in regards to arbitral awards on the ground of 'unreasonableness' of the reasons in the award. If fact, the Court considering an application under Sec. 30 or 33 of the Indian Arbitration Act does not sit in appeal over the findings and decisions of the arbitration. The Court can neither re-asserts nor re-appreciate the evidence before the arbitrator. The Court cannot go into the question of sufficiency or otherwise of the evidence. The award of the arbitrator is final and the grounds of challenge are limited to those mentioned in Sec. 30 and 33 of the Indian Arbitration Act. The grounds may be stated thus:-

- (i) When there is an error apparent on there face of record and
- (ii) When the arbitrator has misconduct himself or the proceedings.

In conclusion, it may be stated that 'unreasonableness' of the reasons, given by the arbitrator in his award is not open to challenge. The Supreme Court's decision in Madhya Pradesh Housing Board's case<sup>9</sup> paves the way for the final authoritative decision in M/s. Ravinder Kumar Gupta's case<sup>10</sup> which upholds the spirit of arbitration and the prestige and dignity of the forum set up by the parties. There cannot be a more respectable view than the parties should respect the decision of their arbitral tribunal and should not repeatedly challenge the decision on the mere ground of 'unreasonableness'. There is nothing which prevents the parties to choose an arbitrator, whom they consider as a person 'reasonable' or endowed with a reasonable mind. Parties may find ample choice in the business market of persons who enjoy respect frothier ethical qualities and known frothier experience, integrity and honesty in dealing with men and matters.

<sup>9</sup> Madhya Pradesh Housing Board v. Progressive Writers & Publications 2009 AIR SCW P. 2484.

<sup>10</sup> M/s. Ravinder Kumar Gupta & Co. v. Union of India AIR 2010 SCp.972.