

SUPREME COURT OF INDIA

Mohd. Usman

Vs.

Union of India

C.A.No.14 of 1968

(S. M. Sikri and R. S. Bachawat, JJ.)

26.09.1968

JUDGEMENT

BACHAWAT, J.:-

1. By a contract dated March 8, 1945, the appellant agreed to supply meat to the Government of India. The contract contained an arbitration clause for reference of disputes arising out of the contract to the officer named in the contract. The appellant claims that a sum of Rs. 8,38,994/10/6 is due to him in respect of the supplies of meat made by him during period between April 1, 1945 and March 31, 1946. He made representations to the Government for payment and for Arbitration of the disputes. On or about July 10, 1958, the Government refused to refer the matter to arbitration. On July 1961 the appellant filed an application in the Court of the District Judge, Jhansi under Ss. 8 and 20 of the Arbitration Act, 1940 for filing the arbitration agreement and for an order of reference of the disputes to an arbitrator appointed by the Court. The respondent contended that the application was barred by limitation. The District judge allowed the application. He held that there was no period of limitation for making an application under Ss. 8 and 20. The defendant filed an appeal against the order. The High Court dismissed the appeal as incompetent in so far as it challenged the order under S. 8, and allowed it in so far as it challenged the order under S. 20. The High Court held that the application was governed by Art. 181 of the Indian Limitation Act, 1908

and was barred by limitation as it was made more than three years after the disputes had arisen. The appellant has filed this appeal after obtaining a certificate from the High Court.

2. The point in issue is whether an application under S. 20 of the Arbitration Act, 1940 is governed by Art. 181 of the Indian Limitation Act. Since the decision in *Bai Manekbai v. Manekji Kavasji*, (1883) ILR 7 Bom 213 at p. 214 it is well settled that the operation of Art. 181 is limited to applications under the Code of Civil Procedure. In that case Westropp, C. J. after referring to the corresponding Art. 178 in the second schedule to the Limitation Act of 1877 observed:

"An examination of the other articles in the second schedule relating to "applications", that is to say, of the third division of that schedule, shows that the applications therein contemplated are such as are made under the Code of Civil Procedure. Hence it is natural to conclude that the applications referred to in Article 178, are applications *ejusdem generis*, i. e., applications under the Code of Civil Procedure. The preamble of the Act, moreover, purports to deal with "certain applications" only, and not with all applications."

This decision was followed in numerous cases and was approved in *Hansraj Gupta v. Official Liquidator, Dehra Dun Mussoorie Electric Tramway Co.*, 60 Ind App 13 at p. 20 = (AIR 1933 PC 63 at p. 64.) Having regard to these decisions, Das, J. said in *Sha Mulchand and Co, v. Jawabar Mills Ltd.*, 1953 SCR 351 at p. 371 = (AIR 1953 SC 98 at pp, 103-104): "This long catena of decisions may well be said to have as it were, added the words "under the Code" in the first column of that Article." The Court held that the amendment of Arts. 158 and 178 and the insertion of the words "under the Arbitration Act, 1940" in place of the words "under the Code of Civil Procedure, 1908" did not alter the settled meaning of Art. 181. To the same effect is the decision in *Bombay Gas Co. v. Gopal Bhiva*, 1964-3 SCR 709 = (AIR 1964 SC 752). Following these decisions the Court held in *Wazirchand Mahajan v. Union of India*, 1967-1 SCR 303 = (AIR 1967 SC 990) that an application under S. 20 of the Arbitration Act, 1940 not being an application under the Code of Civil Procedure was not governed by Art. 181.

3. The High Court has come to the conclusion that an application under S. 20 of the Arbitration Act is governed by Art. 181 for the following reasons: Article 181 should be construed as if the words "under the Code" were added in it. The Arbitration Act, 1940 repealed paragraph 17 of the second schedule to the Code and re-enacted it in S. 20 with minor modifications. That being so S. 8(1) of the General Clauses Act, 1897 applied and implied reference in Art. 181 to paragraph 17 of the second schedule to the Code should be construed as a reference to S. 20 of the Arbitration Act, 1940. No different intention is to be found in the Arbitration Act, 1940 and there is nothing to indicate that an application under S. 20 can be made at any time without any limitation.

4. The argument that the implied reference in Art. 181 to paragraph 17 of the second schedule to the Code should be construed as a reference to S. 20 of the Arbitration Act was not raised and

considered in Wazirchand Mahajan's case, 1967-1 SCR 303 = (AIR 1967 SC 990) (supra). It is, therefore, our duty to examine this contention.

5. Section 8 (1) of the General Clauses Act corresponds to the Interpretation Act, 1899 (52 and 53 vict. c. 63) and runs as follows:

"Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed, shall, unless a different intention appears, be construed as references to the provision so re-enacted."

The section embodies the rule of construction that where the provision of an Act is repealed and re-enacted with or without modification, a reference to the repealed provision in any other enactment should be regarded as a reference to the provision re-enacted in the new form unless it appears that the legislature had a different intention.

6. The Arbitration Act, 1940 was passed with a view to consolidate and amend the law relating to arbitration. Formerly the general law relating to arbitration was to be found in the Indian Arbitration Act, 1899 and the Code of Civil Procedure 1908. Paragraphs 1 to 16 of the second schedule to the Code applied to all arbitrations in suits. As to arbitrations otherwise than in suits, the Indian Arbitration Act 1899 applied to cases where, if the subject-matter submitted to arbitration were the subject of a suit, the suit could be instituted in a Presidency town: in other cases, the Code of Civil Procedure 1908 applied. The Arbitration Act, 1940 repealed both the enactments. It extends to the whole of India except the State of Jammu and Kashmir, and save as provided in Section 47 applies to all arbitrations. As to the provisions of the new Act under which applications can be made to Court, Ss. 8, 14, 16, 28 and 30 correspond to provisions which are found in both the repealed enactments, Ss. 5 and 9 correspond to similar provisions in the Indian Arbitration Act, 1899, and Ss. 15 and 20 correspond to similar provisions in the second schedule to the Code and some sections such as Section 11, are entirely new. In the circumstances, a question may arise whether the provisions of the new Act can be regarded as reenactments of the repealed provisions of the Indian Arbitration Act, 1899 or of the Code. But for the purpose of this case we shall assume that S. 20 of the new Act is a re-enactment with modification of paragraph 17 of the second schedule to the Code. We shall also assume that Art. 181 of the Limitation Act as construed by the Courts should be regarded as containing a reference to the Code of Civil Procedure including paragraph 17 of the second schedule thereof. Even after making those two assumptions it appears to us that the implied reference in Art. 181 to the Code of Civil Procedure cannot be construed as a reference to the Arbitration Act, 1940.

7. Before their amendment by the Indian Arbitration Act, 1940, Art. 158 of the Limitation Act applied to applications "under the Code of Civil Procedure, 1908 to set aside an award" and Art. 178

applied to applications "under the same Code for the filing in Court of an award" The Arbitration Act, 1940 amended Arts, 158 and 178. The amended Art. 158 applies to applications "under the Arbitration Act, 1940 to set aside an award or to get an award remitted for consideration", that is to say, to applications under Ss. 16 and 30 of the Act. The amended Art. 178 applies to applications "under the Arbitration Act, 1940 for the filing in Court of an award", that is to say to application under S. 14 of the Act. In amending Arts. 158 and 178 the legislature acted upon the view that the references to the Code of Civil Procedure, 1908 in the second schedule to the Limitation Act could not in the absence of the amendment be construed as references to the Arbitration Act, 1940. At the same time the legislature refrained from amending Art. 181 and providing that the article will apply to other applications under the Arbitration Act, 1940. It is manifest that the legislature intended that save as provided in articles 158 and 178 there would not be any limitation for other applications under the Act. Take the case of an application under S. 28 of the Act for enlargement of the time for making the award. A similar application under paragraph 8 of the second schedule to the Code was governed by Art. 181 but a like application under S. 12 of the Indian Arbitration Act, 1899 was not subject to any period of limitation. There is nothing to indicate that for the purpose of limitation S. 20 of the new Act should be regarded as a re-enactment of the corresponding provision of the Code and not of the Indian Arbitration Act, 1899. An application under S. 8 of the new Act corresponding to paragraph 5 of the second schedule to the Code and S. 8 of the Indian Arbitration Act, 1899 stand on the same footing. In the circumstances, it is not possible to construe the implied reference in Art. 181 to the Code of Civil Procedure as a reference to the Arbitration Act, 1940, or to hold that Art. 181 applies to applications under that Act. The rule of construction given in S. 8 (1) of the General Clauses Act cannot be applied, as it appears that the legislature had a different intention. It follows that an application under Ss. 8 and 20 of the Arbitration Act, 1940 is not governed by Art. 181. The Limitation Act does not prescribe any period of limitation for such an application. It follows that the present application under Ss. 8 and 20 is not barred by limitation.

8. In conclusion we must observe that the appellant's claim relates to supplies during the period between April 1, 1945 and March 31, 1946. There is a serious contention whether the claim is barred by limitation. It will be the duty of the arbitrator to consider this matter carefully and to decide whether or not the claim is so barred.

9. In the result, the appeal is allowed, the order of the High Court is set aside and the order of the District Judge, Jhansi, is restored. In the circumstances of the case there will be no order as to costs in this Court.

Appeal allowed.