SUPREME COURT OF INDIA

Messrs Pandey and Company Builders Private Limited

Vs

State of Bihar and Another

Appeal (Civil) 4780 of 2006 (Arising Out of Slp (C) No. 8861 of 2006)

(S. B. Sinha and Dalveer Bhandari, JJ)

10.11.2006

JUDGMENT

S. B. SINHA, J.

Leave granted.

The parties hereto entered into a contract in terms whereof Appellant herein undertook a contract for execution of canal repair work for Rs. 11, 33, 421/-. An additional agreement was entered into by and between the parties. The said contract contained an arbitration clause being Clause 23 of the contract.

Disputes and differences having arisen between the parties, Appellant invoked the said arbitration clause. The Superintending Engineer of the Circle who was the named Arbitrator entered into reference. There being alleged undue delay in conclusion of the proceedings of the arbitral tribunal, a notice was served by Appellant purported to be in terms of Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 (for short "the 1996 Act"). The named Arbitrator retired and his successor did not proceed with the reference for a long time. Another notice was issued by Appellant asking the then incumbent of the office of Superintending Engineer to proceed with the arbitration. He, however, instead of proceeding with the arbitration sought for directions in this behalf from his superior officers. On 23.8.2002, he expressed his inability to continue with the

proceedings. A notice under Section 14 of the 1996 Act was again served. A proposal was made thereunder to nominate another independent person as an Arbitrator. The Irrigation Department of the State of Bihar asked the Superintending Engineer to conclude the arbitration proceedings within three months by an office order dated 20th November, 2002.

An objection, however, was filed by Appellant questioning the jurisdiction of the said Arbitrator on the premise that his nomination has already been terminated. On the said plea that the named Arbitrator in terms of Clause 23 could not have functioned as such, an application under Section 11 of the 1996 Act was filed before the Chief Justice of the Patna High Court. Justice P.S. Sahay, a former Judge of the Patna High Court was appointed but the Superintending Engineer fixed a date for hearing on 12.2.2003 by an order dated 8.2.2003, to which an objection was raised by Appellant. Appointment of Justice P.S. Sahay was intimated to the said Superintending Engineer.

An award was passed by the Superintending Engineer on 20th February, 2003. In the meantime, Appellant had filed his claim before Justice P.S. Sahay. Respondents also appeared on 21.2.2004 and filed an application under Section 14 of the 1996 Act seeking termination of his mandate on the ground that the earlier Arbitrator has already given his award. The learned Arbitrator held that he had no jurisdiction to proceed with the matter.

A purported appeal was filed thereagainst by Appellant under Section 37 of the 1996 Act before the High Court. By reason of the impugned judgment, the High Court opined that it had no jurisdiction to hear the appeal as in terms of Sub-section (2) of Section 37 of the 1996 Act, the appeal lay before the District Court. A review application filed thereagainst was also dismissed.

It is not in dispute that in terms of Section 16 of the 1996 Act, the Arbitrator could have determined his own jurisdiction. The learned Arbitrator, nominee of the Chief Justice of the High Court, opined that there could not be two awards in one proceeding. It was held:

"19. Thus, on a careful consideration of the submission made on behalf of the parties and after going through the papers filed by them, I hold that I have no jurisdiction to continue with this proceedings for the reasons, mentioned above."

The High Court in passing the impugned judgment opined that the Patna High Court having no original jurisdiction, in view of the provisions contained in the Bengal, Agra and Assam Civil Courts Act, 1857 (for short "the 1857 Act"), the appeal filed under Section 37(2) of the 1996 Act was not maintainable before it stating:

"Accordingly, I am of the opinion that this Court being not a court of ordinary original civil jurisdiction to entertain the suit had the subject matter of the arbitration being the subject matter of the suit, the appeal is not maintainable.

Accordingly, I sustain the preliminary objection raised by Mr. Lalit Kishore. Appellant, if so desire may take recourse to the remedy available to it before the competent forum."

Two submissions were made on behalf of Appellant before us, viz, :

(i) Having regard to the definition of "court" as contained in Section 2(1)(e) of the 1996 Act, the court of the Principal Civil Court should be held to be not empowered to hear an appeal against an order of the arbitral tribunal insofar as if Section 37 of the 1996 Act is not construed, a second appeal being prohibited, no appeal shall ever lie against the order of the District Judge, Principal Civil Court before the High Court.

(ii) As the order of the nominee of the Chief Justice of the Patna High Court under Section 11 of the 1996 Act is a judicial order, in view of the provisions contained in Section 42 thereof, a proceeding was maintainable only before the High Court.

The purport and object sought to be achieved by the 1996 Act vis-'- vis the Arbitration Act, 1940 (for short "the 1940 Act") is well known.

The 1996 Act makes a radical departure from the 1940 Act. It has embodied the relevant rules of the modern law but does not contain all the provisions thereof. The 1996 Act, however, is not as extensive as the English Arbitration Act.

Different statutes operated in the field in respect of a domestic award and a foreign award prior to coming into force of the 1996 Act, namely, the 1940 Act, the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. All the aforementioned statutes have been repealed by the 1996 Act. It makes provisions in two different parts, namely, matters relating to domestic award and foreign award respectively.

The Scheme of 1996 Act is absolutely distinct and different from the 1940 Act as also the 1961 Act.

In the 1940 Act, no reason was required to be stated in the award unless otherwise agreed upon. In the 1996 Act, reasons are required to be stated unless agreed to otherwise by the parties. The court's intervention is sought to be minimized under the provisions of the 1996 Act not only having regard to the concerns expressed in the international community as regards delay in the arbitration proceedings but also in view of the fact that an award under the 1996 is to be a reasoned one. In a large number of judgments, this Court has emphasized that the extent of power of the court's intervention in relation to a reasoned award and unreasoned one would be different. Whereas in relation to an unreasoned award, the court's jurisdiction to interfere with the award was absolutely limited, a greater latitude had been given in relation to a reasoned award.

After the 1996 Act came into force, under Section 16 of the Act the party questioning the

jurisdiction of the Arbitrator has an obligation to raise the said question before the Arbitrator. Such a question of jurisdiction could be raised if it is beyond the scope of his authority. Such a question was required to be raised during arbitration proceedings or soon after initiation thereof as a preliminary issue.

Unlike the 1940 Act, the Arbitrator is entitled to determine his own jurisdiction. In the event, the Arbitrator opines that he has jurisdiction in the matter, he may proceed therewith, which order can be challenged along with the award in terms of Section 34 of the 1996 Act. If the Arbitrator opines that he has no jurisdiction to hear the matter, an appeal lies before the court. 'Court' has been defined in Section 2(1)(e) of the 1996 Act in the following terms:

"Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;"

It is not disputed before us that the Patna High Court does not exercise any original civil jurisdiction. The definition of "court" as noticed hereinbefore means the Principal Civil Court of original jurisdiction in a district and includes the High Court which exercises the original civil jurisdiction. If a High Court does not exercise the original civil jurisdiction, it would not be a 'court' within the meaning of the said provision. Constitution of the courts vis-'-vis the hierarchy thereof is governed by the 1857 Act, Section 3 whereof reads as under:

"3. Classes of Courts - There shall be the following classes of Civil Courts under this Act, namely: -

(a) The Court of the District Judge;

(b) The Court of the Additional Judge;

(c) The Court of the Subordinate Judge; and

(d) The Court of the Munsif."

Chapter III of the 1857 Act relates to ordinary jurisdiction of the civil courts. Section 18 provides for extent of original jurisdiction of District and Subordinate Judge in the following terms:

"18. Extent of original jurisdiction of District or Subordinate Judge - Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of Section 15 of the Code of Civil Procedure, 1908 to all original

suits for the time being cognizable by Civil Courts."

The rules framed by the Patna High Court in exercise of its jurisdiction under Article 225 of the Constitution of India also do not authorize it to entertain a suit as a court of original jurisdiction.

Section 37 of the 1996 Act reads as under:

"37. Appealable orders. (1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:

(a) Granting or refusing to grant any measure under section 9:

(b) Setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a court from an order of the arbitral tribunal

(a) accepting the plea referred to in sub- section (2) or sub-section (3) of section 16; or

(b) Granting or refusing to grant an interim measure under section 17. Passed in appeal under this section, but nothing in this section shall affect or taken away any right to appeal to the Supreme Court."

An appeal in terms of Sub-section (2) of Section 37 is a statutory appeal. It may be true that Sub-section (3) of Section 37 of the 1996 Act debars a second appeal from an appellate order under Sub-sections (1) and (2) thereof but having regard to Section 5 of the 1996 Act, the provisions for second appeal may be held to be superfluous.

In The Law and Practice of Arbitration and Conciliation by O.P. Malhotra and Indu Malhotra, page 1270, it is stated:

"In the context of this Act, s 37(3) barring second appeal against an appellate order under s 37(1) and (2) is really superfluous. This Act has not enacted any provision analogous to s 41 of the previous Act. It is radically different from the Act of 1940. Therefore, the Code of Civil Procedure 1908 proprio vigore does not apply to the proceedings before the court in its original or appellate jurisdiction. Section 5 imposes a blanket ban on judicial intervention of any type in the arbitral process except 'where so provided under Part I' of this Act. Pursuant to this provision, s 37(1) provides appeals against certain orders of the court, while s 37(2) provides appeal against certain

orders of the arbitral tribunal. However, s 37(3) prohibits a second appeal against the appellate order under s 37(1) and (2). However, in view of the provisions of s 5, a second appeal against the appellate order under s 37(1) and (2) would not be permissible, even if s 37(3) had not been enacted. It was, therefore, not really necessary to enact this provision, and it seems to have been enacted by way of abundant caution."

In this case, it is not necessary for us to go into the question as to whether Sub-section (3) of Section 37 of the 1996 Act would debar an appeal from appellate order passed under Sub-section (2) of Section 37 thereof. The consequences of the statutory embargo would ensue but then the question will have to be considered as and when occasion arises therefor. Sub-section (2) of Section 37 of the 1996 Act prescribes for an appeal to a court. We do not see any reason as to why having regard to its plain language, the definition of "court" shall not be put into service. It may be true that the interpretation clause provides for "unless the context otherwise requires". If application of the interpretation clause contained in Section 2 of the 1996 Act shall lead to anomalous and absurd results, one may not stick to the definition but we do not think that such a case has been made out.

Section 42 of the 1996 Act, to which our attention has been drawn by the learned counsel appearing for Appellant, in the instant case has no application. The said provision reads, thus:

"42. Jurisdiction. Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court."

An order passed by a Chief Justice or his nominee under Sub-section (6) of Section 11 of the 1996 Act may be a judicial order, as has been held by a Seven-Judge Bench of this Court in SBP & Co. v. Patel Engineering Ltd. and another 2005 (8) SCC 618 but the same does not take away the effect of the appellate jurisdiction to be exercised by a court under Sub- section (2) of Section 37 of the 1996 Act.

Section 42 of the 1996 Act refers to applications and not to appeals.

Reliance placed by the learned counsel on M/s. Guru Nanak Foundation v. M/s. Rattan Singh and Sons is not apposite. Therein, the court was dealing with a provision of Sub-section (4) of Section 31 of the 1940 Act and as the appointment was made by the High Court, it was held that an application for setting aside of the award in terms of Sub-section (4) of Section 31 of the 1940 Act would lie before this Court. It is significant to note that therein also a contention of losing of a further right of appeal was raised and rejected in the following terms:

"Mr Narula lastly urged that if this Court were to arrogate jurisdiction to itself by the putting on sub- section (4) of Section 31 a construction as canvassed for on behalf of the 1st respondent it

would deprive the appellant of its valuable right to prefer an appeal under the letters patent and approach this Court under Article 136 of the Constitution. If this Court has jurisdiction to entertain the Award and this Court in view of Section 31(4) alone has jurisdiction for entertaining the Award meaning that the Award has to be filed in this Court alone and no other, the same cannot be defeated by a specious plea that the right of appeal would be denied"

Section 31(4) of the 1940 Act reads, thus:

"(4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in Court competent to entertain it, that court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that court and in no other Court."

In M/s. Guru Nanak Foundation (supra), analysing the said provision, this Court held:

" It opens with a non-obstante clause and is comprehensive in character. The non-obstante clause excludes anything anywhere contained in the whole Act or in any other law for the time being in force if it is contrary to or inconsistent with the substantive provision contained in sub- section (4). To that extent it carves out an exception to the general question of jurisdiction of the court in which Award may be filed elsewhere provided in the Act in respect of the proceedings referred to in sub-section (4). The provision contained in sub-section (4) will have an overriding effect in relation to the filing of the Award if the conditions therein prescribed are satisfied. If those conditions are satisfied the court other than the one envisaged in Section 14(2) or Section 31(1) will be the court in which Award will have to be filed. That is the effect of the non- obstante clause in sub-section (4) of Section 31. Sub-section (4) thus invests exclusive jurisdiction in the court, to which an application has been made in any reference and which that court is competent to entertain as the court having jurisdiction over the arbitration proceedings and all subsequent applications arising out of reference and the arbitration proceedings shall have to be made in that court and in no other court. Thus sub-section (4) not only confers exclusive jurisdiction on the court to which an application is made in any reference but simultaneously ousts the jurisdiction of any other court which may as well have jurisdiction in this behalf. To illustrate the point, if an Award was required to be filed under Section 14(2) read with Section 31(1) in any particular court as being the court in which a suit touching the subject-matter of Award would have been required to be filed, but if any application in the reference under the Act has been filed in some other court which was competent to entertain that application, then to the exclusion of the first mentioned court the latter court alone, in view of the overriding effect of the provision contained in Section 31(4), will have jurisdiction to entertain the Award and the Award will have to be filed in that court alone and no other court will have jurisdiction to entertain the same."

In Mukesh K. Tripathi v. Senior Division Manager, LIC and Others , this Court observed:

"The interpretation clause contained in a statute although may deserve a broader meaning having

employed the word "includes" but therefor also it is necessary to keep in view the scheme of the object and purport of the statute which takes him out of the said definition. Furthermore, the interpretation section begins with the words "unless the context otherwise requires". In Ramesh Mehta v. Sanwal Chand Singhvi, it was noticed: (SCC p. 426, paras 27-28) "A definition is not to be read in isolation. It must be read in the context of the phrase which would define it. It should not be vague or ambiguous. The definition of words must be given a meaningful application; where the context makes the definition given in the interpretation clause inapplicable, the same meaning cannot be assigned. In State of Maharashtra v. Indian Medical Assn. one of us (V.N. Khare, C.J.) stated that the definition given in the interpretation clause having regard to the contents would not be applicable. It was stated: (SCC p. 598, para 8) 'A bare perusal of Section 2 of the Act shows that it starts with the words "in this Act, unless the context otherwise requires ". Let us find out whether in the context of the provisions of Section 64 of the Act the defined meaning of the expression "management" can be assigned to the word "management" in Section 64 of the Act. In para 3 of the Regulation, the Essentiality Certificate is required to be given by the State Government and permission to establish a new medical college is to be given by the State Government under Section 64 of the Act. If we give the defined meaning to the expression "management" occurring in Section 64 of the Act, it would mean the State Government is required to apply to itself for grant of permission to set up a government medical college through the University. Similarly it would also mean the State Government applying to itself for grant of Essentiality Certificate under para 3 of the Regulation. We are afraid the defined meaning of the expression "management" cannot be assigned to the expression "management" occurring in Section 64 of the Act. In the present case, the context does not permit or requires to apply the defined meaning to the word "management" occurring in Section 64 of the Act.'"

In M/s. Raval and Co. v. K.G. Ramachandran and Others , whereupon reliance has been placed by the leaned counsel, the question arose as to whether the landlord can file an application for fixation of fair rent under Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. In that context, it was held:

"As the object of the statute was to protect those inhabitants who had previously no access to the rates (which the churchwardens had), the meaning of the term "inhabitants" was limited to them. The same approach in interpretation must be adopted by us in the present case. We must not allow ourselves to be unduly obsessed by the meaning of "landlord" given in the definition or by its ordinary etymological meaning but we must examine the scheme of the relevant provisions of the statute, the contextual setting in which Section 4, sub- section (1) occurs and the object which the legislation is intended to achieve, in order to determine what is the sense in which the word "landlord" is used in Section 4, sub-section (1) whether it is intended to include contractual landlord."

No such anomaly arises in the instant case.

To the similar effect is the decision of this Court in Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others wherein it was stated:

"Now, the principle is that all statutory definitions have to be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or context. That is why all definitions in statutes generally begin with the qualifying words, similar to the words used in the present case, namely "unless there is anything repugnant in the subject or context". Thus there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word had been used and that will be giving effect to the opening sentence in the definition section, namely "unless there is anything repugnant in the subject or context". In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words "under those circumstances".

There exists a distinction between an appeal and an application. Whereas Section 31(4) of the 1940 Act or Section 42 of the 1996 Act provides for an application, Sub-section (2) of Section 37 of the 1996 Act provides for a statutory appeal. A forum of an appellate court must be determined with reference to the definition thereof contained in the 1996 Act.

We, therefore, see no reason to differ with the High Court. The appeal is dismissed. No costs.