

**SUPREME COURT OF INDIA**

Punjab Agro Industries Corpn. Ltd.

Vs.

Kewal Singh Dhillon

C.A.No.5226 of 2008

(R.V.Raveendran and P Sathasivam JJ.)

25.08.2008

**JUDGMENT**

**R.V.Raveendran, J.**

1. Leave granted. Heard the learned counsel for parties.
2. The appellant entered into a collaboration agreement dated 23.7.1986 with the respondent for setting up of a project through a company to be jointly promoted by them. Clause 36 of the agreement provided for reference of all disputes and differences arising out of or in relation to the said agreement to an arbitral tribunal consisting of three members that is one to be appointed by each party and an umpire to be appointed by the two arbitrators.
3. Certain disputes arose between the parties and the appellant by notice dated 19.3.1997 appointed its arbitrator and called upon the respondent to appoint his arbitrator. As respondent failed to comply, the appellant filed a petition under section 11(4) of the *Arbitration & Conciliation Act, 1996* ('Act' for short) on 13.6.1997 in the court of the Principal Civil Judge, Senior Division, Chandigarh (a designate of the Chief Justice of Punjab & Haryana High Court and hereinafter referred to as the 'Designate').
4. The said Designate by order dated 16.2.2002 dismissed the petition holding that appointment of arbitrator was not called for as the matter had already been decided by the Board for Industrial and Financial Reconstruction (for short 'BIFR'). Being aggrieved, the appellant approached the High Court in C.W.P. No. 9889 of 2002, for quashing the order of the Designate and for appointment of an arbitrator in terms of the agreement dated 23.7.1986. A Division Bench of the High Court by its order dated 7.7.2006 disposed of the said writ petition by the following short order:

"The Petitioner is aggrieved by rejection of application for appointment of arbitrator under Section 11(4) of Arbitration and Conciliation Act, 1996.

Learned Counsel for the Respondent raises a preliminary objection that Writ Petition is not maintainable in view of judgment of Seven Judges of the Hon'ble Supreme Court in *S.B.P. & Co. Vs. Patel Engineering Ltd.*<sup>1</sup> wherein it has been held that power of deciding an application for appointment of an arbitrator is judicial power and is not amenable to writ jurisdiction.

After hearing learned counsel for the parties, we uphold the preliminary objection and dismiss the Writ Petition. It is made clear that this will not debar the Petitioner from taking such other remedy as may be available under the law."

The said decision is challenged in this appeal by special leave, on the following grounds:

(a) The order of the High Court is a non speaking order and it upholds the preliminary objection of the respondent without assigning any reason.

(b) A writ petition under Article 227 was maintainable against the order of the Civil Judge, Senior Division (designate of the Chief Justice) and the High Court was wrong in assuming that the writ petition was not maintainable in view of the decision of this Court in SBP."

5. Before considering the contentions raised, we may usefully refer to the following relevant provisions of section 11 of the said Act:

"(4) If the appointment procedure in sub-section (3) applies and-

(a) A party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) The two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made, upon request of a party, by the Chief justice or any person or institution designated by him.

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(7) A decision on a matter entrusted by sub-section (4) or sub- section (5) or sub-section (6) to the Chief Justice or the person or institution designated by him is final.

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(10) The Chief justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub-section (4) or sub- section (5) or sub-section (6) to him."

The Chief Justice of High Court of Punjab & Haryana in exercise of his power under sub-section (10) of section 11 of the Act made a scheme under which the Civil Judge, Senior Division, Chandigarh, was designated to deal with applications under sub-sections (4) to (6) of section 11 of the Act.

6. The Act does not provide for an appeal against the order of the Chief Justice or his designate made under sub section (4) or sub-sections (5) and (6) of section 11. On the other hand, sub-section (7) of section 11 makes it clear that a decision of the designate under sub-section (4), (5) or (6) of section 11 is final. As no appeal was maintainable against the order of the designate and as his order was made final, the only course available to the appellant was to challenge the order, even if it is a judicial order, by a writ petition under Article 227 of the Constitution of India.

7. The respondent contended that having regard to the decision in SBP, the remedy of the appellant was to file an appeal by seeking special leave of this Court under Article 136 of the Constitution and not by way of a writ petition under Article 227 of the Constitution of India, and the High Court was therefore justified in rejecting the writ petition as not maintainable. In SBP, decided on 26.10.2005, this Court while dealing with the scope of section 11, inter alia, held:

"(a) The power exercised by the Chief Justice of the High Court under section 11(6) of the Act is not administrative power but judicial power.

(b) The power under section 11(6) of the Act, in its entirety, could be delegated by the Chief Justice of a High Court only to another Judge of that High Court.

(c) As the order passed by the Chief Justice of the High Court or the designated Judge of the High Court under section 11 of the Act is a judicial order, an appeal will lie against such order only under Article 136 of the Constitution of India, to the Supreme Court of India.

(d) Designation of a District Judge as the authority under section 11(6) of the Act by the Chief Justice of the High Court is not warranted under the scheme of the Act. Where a District Judges had been designated by the Chief Justice of the High Court under section 11(6) of the Act, the orders made by them till 26.10.2005 will be treated as valid; but applications, if any, pending before them as on that date will stand transferred, to be dealt with by the Chief Justice of the High Court concerned or a Judge of that High Court designated by the Chief Justice.

It is evident from the said decision that reference to section 11(6) of the Act includes reference to section 11(4) of the Act and reference to a District Judge as designate, will also include reference to Civil Judge, Senior Division, as designate.”

8. We have already noticed that though the order under section 11(4) is a judicial order, having regard to section 11(7) relating to finality of such orders, and the absence of any

provision for appeal, the order of the Civil Judge was open to challenge in a writ petition under Article 227 of the Constitution. The decision in SBP does not bar such a writ petition. The observations of this Court in SBP that against an order under section 11 of the Act, only an appeal under Article 136 of the Constitution would lie, is with reference to orders made by the Chief Justice of a High Court or by the designate Judge of that High Court. The said observations do not apply to a subordinate court functioning as Designate of the Chief Justice. This Court has repeatedly stressed that Article 136 is not intended to permit direct access to this Court where other equally efficacious remedy is available and the question involved is not of any public importance; and that this Court will not ordinarily exercise its jurisdiction under Article 136, unless the appellant has exhausted all other remedies open to him. Therefore the contention that the order of the Civil Judge, Sr. Division rejecting a petition under section 11 of the Act could only be challenged, by recourse to Article 136 is untenable. The decision in SBP did not affect the maintainability of the writ petition filed by Appellant before the High Court.

9. We therefore allow this appeal and set aside the order of the High Court. As a consequence, Civil Writ Petition No.9889 of 2002 shall stand restored to the file, and the High Court is requested to dispose it of in accordance with law.

<sup>1</sup>2005 (8) SCC 618