

SUPREME COURT OF INDIA

APS Kushwah

Vs.

Municipal Corp.Gwalior & Ors.

C.A.No.1888-1889 of 2011

(R.V. Raveendran and A.K.Patnaik,JJ.,)

17.02.2011

JUDGMENT

R.V.Raveendran, J.,

SLP (Civil)No.23767-23768 of 2010

1. Leave granted.

2. The appellant filed an application under section 11(6) of the Arbitration and Conciliation Act, 1996 ('Act' for short) before the Madhya Pradesh High Court alleging that on execution of an agreement in regard to "maintenance of water supply and electrical works in different parts of Gwalior Municipal Corporation area", a work order was issued to him on 1.5.2002 by the respondent; that as the bills submitted by the appellant were not paid, it filed a writ petition and that petition was disposed of on 15.2.2006 with a direction to seek reference to arbitration; that clause 29 of the General Rules and directions for the Guidance of the contractor provided for settlement of disputes by arbitration; and that therefore the appellant was filing the application under section 11(6) of the Act requesting the Chief Justice to appoint an independent arbitrator to arbitrate upon the disputes. The designate of the Chief Justice by order dated 11.5.2007 allowed the said application and appointed a retired Judge of the High Court as arbitrator.

3. Before the Arbitrator, the appellant made claims aggregating to Rs.76,64,725 with interest at 18% per annum. The respondents contested the claims contending that work orders were issued only to the extent of Rs.29,72,331 and there were some irregularities in the issue of work orders and therefore the appellant was not entitled to payment of any of the bills. The arbitrator made an award dated 30.1.2008 directing the respondents to pay a sum of Rs.76,64,725 to the appellant with interest at 9% per annum from the date of the award till date of payment.

4. The respondents filed an application under section 34 of the Act for setting aside the award. In the said proceedings, the respondents made an application raising a preliminary objection that the sole arbitrator had no jurisdiction as the dispute had to be decided by arbitration under the Madhya Pradesh Madhyastham Adhikaran Adhinyam 1983. The District Judge, Gwalior before whom the said application was filed rejected the said preliminary objection by order dated 9.2.2009. The review petition filed by the respondents seeking review of order dated 9.2.2009 was also dismissed by the learned District Judge, Gwalior, on 17.7.2009.

5. In the meanwhile the appellant also filed a review application seeking review of the order dated 11.5.2007 by which the designate of the Chief Justice allowed the application under section 11(6) of the Act and appointed an arbitrator. The said review petition was dismissed by the High Court on 8.7.2009.

6. The respondent challenged the orders dated 9.2.2009 and 17.7.2009 before the High Court in an arbitration appeal. The High Court allowed the appeal by order dated 26.11.2009 and set aside the orders dated 9.2.2009 and 17.7.2009 holding that the arbitral award dated 30.1.2008 passed by the sole arbitrator was without jurisdiction. The High Court held that the dispute raised by the appellant could only be decided by the statutory arbitral tribunal constituted under the 1983 Adhinyam and therefore the sole arbitrator appointed by the designate of Chief Justice under section 11(6) of the Act lacked inherent jurisdiction to decide the disputes. The review petition filed by the appellant contractor was dismissed by order dated 30.4.2010. Feeling aggrieved the appellant has challenged the orders dated 26.11.2009 and 30.4.2010 of the Madhya Pradesh High Court.

7. The only question that arises for consideration in this appeal by special leave is whether there was inherent lack of jurisdiction in the Arbitrator, thereby nullifying the award.

8. This court, in *V.A.Tech Escher Wyass Flovel Ltd. vs. M.P. S.E.Board*¹ held that the provisions of the Act would apply where there was an Arbitration clause and the provisions of the 1983 Adhinyam would apply where there was no Arbitration clause. In this case it is not in dispute that the contract between the parties contained an arbitration clause (clause 29). The decision of the High Court that the provisions of the 1983 Adhinyam would apply and sole arbitrator appointed by the designate of the Chief Justice lacked inherent jurisdiction, cannot therefore be sustained. Though the said Arbitration clause provided for reference of disputes to a three member Arbitration Board, the designate chose to appoint a sole arbitrator and that order dated 11.5.2007 attained finality.

9. In *SBP & Co. v. Patel Engineering Ltd*². a constitution bench of this Court held that once the Chief Justice or his designate appoints an Arbitrator in an application under section 11 of the Act, after satisfying himself that the conditions for exercise of power to appoint an arbitrator are present, the arbitral tribunal could not go behind such decision and rule on its own jurisdiction or on the existence of an arbitration clause. Therefore the contention of the respondents that the arbitrator ought to have considered the objection relating to jurisdiction and held that he did not have jurisdiction, cannot be accepted.

10. The appeals are therefore allowed and the impugned order of the High Court dated 26.11.2009 is set aside. As a consequence the learned District Judge, Gwalior will now proceed with the consideration of the application (Misc. Application (Arbitration) No.29/2008) under section 34 of the Act on merits in accordance with law.

Judgment Referred.

¹*C.A. No.3746/2005*

²*(2005) 8 SCC 0618*