

SUPREME COURT OF INDIA

Assam Urban Water Supply Sew. Board

Vs.

Subash Projects Marketing Ltd.

C.A.Nos.2014 of 2006

(R.M. Lodha and H.L.Gokhale JJ.)

19.01.2012

JUDGMENT

R.M. LODHA, J.

1. Two contracts were entered into between the appellants and the respondents - (i) for construction of Tezpur Town Water Supply Scheme and (ii) for construction of Tinsukia Town Water Supply Scheme. Certain disputes arose between the parties concerning these contracts and to resolve such disputes, sole arbitrator was appointed by the Chief Justice of Gauhati High Court on March 26, 2002 under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, '1996 Act'). On May 10, 2002 the appellants filed application under Section 16 of the 1996 Act questioning the jurisdiction of the sole arbitrator as according to the appellants there was no arbitration clause in the agreement. This application came to be rejected by the sole arbitrator.

2. Thereafter, the sole arbitrator proceeded with the arbitration and passed two awards in relation to the above contracts in favour of the respondents on August 22, 2003. The awards were received by the appellants on August 26, 2003. On January 2, 2004, the appellants made two applications for setting aside the awards dated August 22, 2003 under Section 34 of the 1996 Act. These applications were accompanied by two separate applications for extension of time under Section 34(3) of the 1996 Act.

3. The District Judge, Kamrup, Guwahati, dismissed the appellants' applications under Section 34 of the 1996 Act on June 1, 2004 and June 5, 2004 on the ground of limitation.

4. The appellants challenged the above orders of the Districted Judge, Kamrup, Guwahati, in the Gauhati High Court in two separate Arbitration Appeals, being Arbitration Appeal Nos. 6 of 2004 and 7 of 2004. The Division Bench of that Court upheld the view of the District Judge, Kamrup, Guwahati and dismissed the above Arbitration Appeals.

5. Mr. Bijender Singh, learned counsel for the appellants, submitted that the Division Bench gravely erred in applying the decision of this Court in *Union of India Vs. Popular Construction Co.*¹ to the facts of the present case. He submitted that the judgment of this Court in *Popular Construction Co.* (supra) was rendered on the question of applicability of Section 5 of the Limitation Act, 1963 (for short, '1963 Act') and has no application to the peculiar facts of the present case where extension was sought by the appellants under Section 4 of the 1963 Act. In support of his argument, Mr. Bijender Singh, learned counsel, referred to Section 2(j) of the 1963 Act that defines 'period of limitation' and Section 43 of the 1996 Act that makes the 1963 Act applicable to arbitration matters.

6. Mr. Shyam Divan, learned senior counsel for the respondents, on the other hand, submitted that the High Court did not commit any error in upholding the view of the District Judge, Kamarup, Guwahati. According to the learned senior counsel, the High Court's view is consistent with Section 34(3) of the 1996 Act, particularly proviso (3) thereof.

7. Section 34(3) of the 1996 Act provides that an application for setting aside an award may be made within three months of the receipt of the arbitral award. The proviso that follows sub-section (3) of Section 34 provides that on sufficient cause being shown, the court may 1 (2001) 8 SCC 470 entertain the application for setting aside the award after the period of three months and within a further period of 30 days but not thereafter.

8. In *Popular Construction Co.* (supra), this Court has held that an application for setting aside an award filed beyond the period mentioned in Section 34(3) would not be an application in accordance with sub-section (3) as required under Section 34(1) of the 1996 Act and Section 5 of the 1963 Act has no application to such application. In para 12 of the report, it was held in *Popular Construction Co.* (supra) thus:-

12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are but not thereafter used in the proviso to sub-section (3). In

our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of the Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase but not thereafter wholly otiose. No principle of interpretation would justify such a result.

9. Recently, in the State of Maharashtra Vs. Hindustan Construction Company Limited², a two Judge Bench of this Court speaking through one of us (R.M. Lodha, J.) 2 (2010) 4 SCC 518 emphasised the mandatory nature of the limit to the extension of the period provided in proviso to Section 34(3) and held that an application for setting aside arbitral award under Section 34 of the 1996 Act has to be made within the time prescribed under sub-section (3) of Section 34, i.e., within three months and a further period of 30 days on sufficient cause being shown and not thereafter.

10. Section 43(1) of the 1996 Act provides that the 1963 Act shall apply to arbitrations as it applies to proceedings in court. The 1963 Act is thus applicable to the matters of arbitration covered by the 1996 Act save and except to the extent its applicability has been excluded by virtue of the express provision contained in Section 34(3) of the 1996 Act.

11. The facts in the present case are peculiar. The arbitral awards were received by the appellants on August 26, 2003. No application for setting aside the arbitral awards was made by the appellants before elapse of three months from the receipt thereof. As a matter of fact, three months from the date of the receipt of the arbitral award by the appellants expired on November 26, 2003. The District Court had Christmas vacation for the period from December 25, 2003 to January 1, 2004. On reopening of the court, i.e., on January 2, 2004, admittedly, the appellants made applications for setting aside those awards under Section 34 of the 1996 Act. If the period during which the District Court, Kamrup, Guwahati, remained closed during Christmas vacation, 2003 is extended and the appellants get benefit of that period over and above the cap of thirty days as provided in Section 34(3), then the view of the High Court and the District Judge cannot be sustained. But this would depend on the applicability of Section 4 of the 1963 Act. The question, therefore, that falls for our determination is - whether the appellants are entitled to extension of time under Section 4 of the 1963 Act in the above facts.

12. Section 4 of the 1963 Act reads as under :- 4. Expiry of prescribed period when court is closed.-Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

Explanation.-A court shall be deemed to be

closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.

13. The above Section enables a party to institute a suit, prefer an appeal or make an application on the day court reopens where the prescribed period for any suit, appeal or application expires on the day when the court is closed. The crucial words in Section 4 of the 1963 Act are 'prescribed period'. What is the meaning of these words?

Section 2(j) of the 1963 Act defines 'period of limitation' which means the period of limitation prescribed for any suit, appeal or application by the Schedule, and 'prescribed period' means the period of limitation computed in accordance with the provisions of this Act. Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside arbitral award is three months. The period of 30 days mentioned in proviso that follows sub-section (3) of Section 34 of the 1996 Act is not the 'period of limitation' and, therefore, not 'prescribed period' for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the 1996 Act being not the 'period of limitation' or, in other words, 'prescribed period', in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.

14. Seen thus, the applications made by the appellants on January 2, 2004, for setting aside the arbitral award dated August 26, 2003 were liable to be dismissed and have rightly been dismissed by the District Judge, Kamrup, Guwahati, as time barred.

15. The dismissal of the Arbitration Appeals (6 of 2004 and 7 of 2004) by the High Court, thus, cannot be legally flawed for the reasons we have indicated above.

16. The Appeal has no force and is dismissed with no order as to costs.