

(1998) 10 J&K CK 0008
In the Jammu And Kashmir High Court
Case No : CIMA No. 19 Of 1997

Amarpali Structural Pvt.Ltd.

APPELLANT

Vs

State of J&K through Commissioner/Secretary Power
Development Department, Civil Secretariat, Jammu Chief
Engineer, Electric Construction Wing, Power

RESPONDENT

Date of Decision : 22-10-1998

Acts Referred:

Jammu and Kashmir Arbitration and Conciliation Act, 2002 — Section 20, 30, 33

Citation : (1999) KashLJ 483

Hon'ble Judges : G.D.Sharma, J

Bench : Single Bench

Advocate : K.S.Johal, Baldev Singh, Advocates appearing for the Parties

Judgement

1. This appeal is directed against the judgment & decree dated 30/11/1996 passed by the learned 1st Addl District Judge, Jammu whereby he made the award of the arbitrator (Mr. Ajit Kumar CommissionercumSecretary to Government, Education Department) a rule of the court after rejecting the objections of the appellant which he filed after making an application under sections 30/33 of the J&K Arbitration Act. Because of the impugned judgment and decree, the award of the arbitrator in the sum of Rs. 15,42,893. 83 along with interest at the rate of 18% per annum has been made a rule of the court.

2. The facts of the case briefly stated are that the appellant herein had taken the contract for the supply of Galvanized Steel Structures for 220 KV Transmission Line (GaladaniUdhampur) which was to be constructed in the year 1984. A formal agreement was executed between the parties in the year 1984. On 10/9/1991 the respondent issued a letter bearing No. TICD1/

G119/838 requiring the appellant herein to make a payment of Rs.

31, 74,138. 43 stating that it was an amount payable to the respondents out of the contract.

3. The appellant has contended that respondent herein had moved this court under section 20 of the Arbitration Act with a prayer for the

appointment of an arbitrator and that application was withdrawn vide Annexure III at page 43. This Annexure says that it is an order passed by

Brother V. K. Gupta, J on 21 91992 on an application for leave to withdraw the Arbitration Application No. 4 of 1992 on the ground that the

petitioners/applicants had decided to refer the dispute to the arbitrator of their own choice without the intervention of the court. It is further stated

in this order that ""for the reasons stated in the application the same is allowed and disposed of and the petitioners are permitted to take recourse to

the provisions of the Arbitration Act thus leave for reference of the dispute to the arbitrator in accordance with the arbitration agreement and law,

The petitioners are also reserved liberty to approach this court again in case of accrual of cause of action to them.

4. There is annexure P5 (at page 44) which is Government order No. 193PDD of 1992 dated 15101992 which shows that Special Secretary to

Government. Power Development Department in exercise of the powers conferred by subsection (1) of section 72 of the J&K Electricity Supply

Act, 1972 had appointed Sh. Ajit Kumar, Commissioner/Secretary to Government, GAD as arbitrator for adjudication upon the matter and make

an award within a period of three months. It is being pleaded on behalf of the appellant that he had appeared before the said Arbitrator and raised

the objection that he had no authority to act as an arbitrator under the provisions of the Electricity Supply Act and this objection was raised by

making a formal application which was not decided but the said arbitrator passed the award which was submitted in the court for making a rule of

the court. The award was expert. On the receipt of the award, this court sent the same for proceeding further in accordance with law to the court

of 1st Add). District Judge, Jammu. The transferee court called the parties for filing the objections on the award The appellant had filed the

objections by making application under sections 30/33 of the J&K Arbitration Act and a plea was raised that the appointment of the arbitrator was

void abinitio. The respondents had contested therein that objections were time barred and could not be considered the learned 1st Addl District

Judge, Jammu had held the application of the appellants herein as time barred and made the award as a rule of the court and drawn the decree.

5. Through the medium of this appeal the judgment and decree have been challenged mainly on the ground that the appointment of the arbitrator by

the Special Secretary in terms of the Govt. order No 193PDD/92 dated 15101992 (AnnexureP) was void abinitio, as under clause 20 of the

agreement drawn between the parties, it is contemplated that if at any time doubt, question or dispute or difference whatsoever arises between the

Contractor and the Purchaser in relation to or in connection with the contract between the parties, a notice had to be given to otherside in writing

of such doubt, question, dispute or difference and the same had to be referred to any officer of the State Government as the Minister In charge,

Power Development Department may nominate for arbitration under the agreement. In other words, according to this clause of the agreement, the

Minister In charge, Power Development Department was the competent person to nominate a Government Officer for arbitration under the

agreement but in the present case the arbitrator was appointed by the Special Secretary to Government under the provisions of the Electricity

Supply Act, which had no application to the facts of the present case.

6. The other ground, which has been set out, is that when the appointment of the arbitrator is void abinitio then the Limitation Act had no

application and the findings given by the learned 1st Addl District Judge. Jammu that application under section 30/33 of the Arbitration Act was

time barred was contrary to law. Heard the arguments

7. The learned counsel appearing for the appellant during the course of his arguments has reiterated the above stated grounds in his arguments and

stressed that in this case the arbitrator (Mr. Ajit Kumar CommissionercumSecretary to Government, General Administration Department) had no

legal authority to act as an arbitrator because the appointment was contrary to law and against the direction of this court contained in AnnexureP4

which is a court order dated 2191992 passed on the application of the respondents with a direction that recourse had to be taken to the provisions

of the Arbitration Act in accordance with the arbitration agreement. When the appointment of the arbitrator was without any lawful authority then

the award is no award in the eyes of law and could not be legally acted upon.

8. In support of this contention the learned counsel has cited the case of T. N. Electricity Board Vs. Bridge Tunnel Constructions & others. (1997)

4 Supreme Court Cases 121.

9. The learned counsel appearing for the respondents could give no satisfactory reply to the submissions as to how the provisions of the Electricity

Supply Act 1971 were made applicable to the present case and the arbitrator was appointed under that Act ignoring the agreement entered into

between the parties which has been placed on the record (Annexure P1). Clause 20 of this agreement deals with the arbitration which specifically

states that only the Minister In charge, Power Development Department, J&K, Jammu, was competent to nominate a person to act as an

arbitrator under the provisions of the J&K Arbitration Act and the rules framed thereunder.

10. Under section 72 of the Electricity Supply Act 1971 the matter can be referred to arbitration when there are questions arising between the

Government or the Board and the citizens or the other persons. The said Act covers the disputes regarding the production and supply of electricity

but could not have an overriding effect for ignoring the agreement duly entered into between the parties wherein there was clause 20 regarding the

arbitration and the dispute had to be referred to the arbitrator to be appointed by the Minister In charge Power Development Department, Jammu

& Kashmir under the provisions of the Arbitration Act.

11. The law laid down by the Apex Court in (1997 (4) SCC 121 (Supra) is that award is vitiated by error of jurisdiction and in such a case the

court can either remit the award to arbitrator for reconsideration or set aside the award in Toto.

12. Adverting to the facts of the present case it is found that the appointment of the arbitrator was without any authority of law ignoring the

provisions of the law and the directions of this court contained in the order dated 21/9/1992 passed while withdrawing the arbitration application

No. 4 and there was no reply to all these legal infirmities and lapses. On this view of the matter when the arbitrator has not been appointed validly

under the authority of law, his award is nonest and cannot be accepted. The appeal is accepted and the judgment and decree of the learned 1st

Addl District Judge, Jammu as well as the award made by the arbitrator is set aside. However, this will not debar the respondents from referring

the dispute to the arbitrator after observing the terms of the agreement and observing the law which applies to the facts of the present case. It is

hoped that such a procedure should be adopted without any further loss of time as the award is becoming nonoperational because of proper

application of mind by the concerned officials. It is expected and hoped from all the concerned persons on behalf of the State that they should

address themselves to the factual and legal aspect of this dispute and without further loss of time get the dispute settled from the competent

arbitrator. This will be in the benefit of the public and the party concerned that dispute is settled at the earliest.