
(2003) 05 DEL CK 0008
In the Delhi High Court
Case No : CW No. 3130 of 2003

Andhra Bank

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-05-2003

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(1)
Constitution of India, 1950 — Article 131, 226

Citation : (2004) 1 ARBLR 311 : (2005) 128 CompCas 959 : (2003) 107 DLT 636 : (2003) 70 DRJ 732 : (2004) 1 RAJ 34

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : A.S. Chandhiok and Sunil Murarka, Manmeet Arora and Hemant Rajora, for the Appellant; Atul Batra, for Respondent Nos. 1 to 3 and Krishan Mahajan, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—Rule.

2. With the consent of parties, the writ petition is taken up for final disposal. The petitioner, the Andhra Bank, is a Public Sector Bank having its Head Office at Hyderabad. The respondent is the Indian Airlines Ltd. Both are the Public Sector Enterprises. A dispute arose between the petitioner Bank and the Indian Airlines with respect to grant of Credit Card facilities for ticketing of the Indian Airlines. The petitioner Bank had a claim on the Indian Airlines and the Indian Airlines had a counter claim on the petitioner Bank.

3. By a letter dated 29.03.1989 issued by the Secretary, Department of Public Enterprises, Ministry of Industry, New Delhi, as regards commercial disputes between the Public Sector Enterprises inter-se as well as between Public Sector Enterprises and Government Departments, it was indicated that such disputes be settled through arbitration. In the letter it is noted that after considering the note dated 08.05.1987 prepared by the Department of Legal Affairs, the Committee of

Secretaries in its meeting held on 26.06.1987 suggested that a Permanent Machinery of Arbitration should be set up to settle all commercial disputes between Public Sector Enterprises inter-se as well as between a Public Sector Enterprise and a Government Department. In this regard, it was pointed out in paragraph 2 of the said letter that the Articles of Association of respective enterprises or the relevant provisions of the Acts creating the statutory corporations should include an arbitration clause in the form prescribed in "Annexure-I" to the letter. The clause suggested to be included reads as under:

" In the event of any dispute or difference relating to the interpretation and application of the provisions of the contracts, such dispute or difference shall be referred by either party to the Arbitration of one of the Arbitrators in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in charge of the Bureau of Public Enterprises. The Arbitration Act, 1940 shall not be applicable to the arbitration under this clause."

4. It is further provided in the said letter dated 29.03.1989 that the procedure to be followed by the Ministry in effecting the settlement of disputes was to be as per the Annexure-II enclosed therewith. Paragraphs 2 and 5 of the said Annexure-II are relevant for the purposes of this case and are reproduced hereunder:-

"2. The Arbitration Act, 1940 (10 of 1940) shall not be applicable to the arbitration under this clause. The award of the sole arbitrator shall be binding upon the parties to the dispute. Provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such further reference, the dispute shall be decided by the Law Secretary or the Special Secretary/Additional Secretary when so authorised by the Law Secretary, whose decision shall bind the parties finally and conclusively.

5. The Arbitrator shall make his award within six months after entering upon the reference or after having been called upon to act by notice in writing from any party to be the arbitration agreement or within such extended time as the parties may allow. The arbitrator may also, if he thinks fit, make an interim award."

5. There is no dispute that as amongst the parties hereto there is an arbitration agreement in the form indicated above. The arbitration procedure itself provides that the award of the arbitrator shall be binding upon the parties to the dispute. However, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. From this, it is clear that if an award is made under this clause, then the aggrieved party has recourse for having it set aside by a further reference to the said Law Secretary. Two questions arise for consideration in this petition. The first being as to whether an "interim award" is included in the concept of an award? The other question that

has been raised as a preliminary objection to the maintainability of the present writ petition on behalf of the respondent is that without permission of the High Powered Committee, can this Court exercise its jurisdiction under Article 226 of the Constitution?

6. Insofar as the question of an "award" including an "interim award" is concerned, it is well settled that an interim award is always included in the expression "award". In fact, though the Arbitration Act has not been made applicable to the present proceedings, the Arbitration and Conciliation Act, 1996 itself recognises as per section 2 (1) (c) thereof that an "arbitral award" includes an "interim award". This statutory provision is, in fact, a recognition of the general legal position that an interim award is included in the expression "award". An interim award is an award all the same. Thus, insofar as this objection of the respondent is concerned, there is no impediment for an aggrieved party to preferring a reference to the Law Secretary for having the interim award set aside.

7. Coming to the facts of the case, it appears that when disputes arose amongst the parties, the respondent Indian Airlines sought permission of the High Powered Committee by a letter dated 19.12.2000 to file a legal case against the Bank. The High Powered Committee on Disputes held a meeting on 01.03.2001 wherein, with regard to the application of the respondent Indian Airlines, the Committee came to the following conclusion:-

"The Committee noted that the issue would require arbitration rather than an adjudication in the court. The Committee, accordingly, directed Indian Airlines Limited and Andhra Bank to submit the matter to Permanent Machinery of Arbitration, functioning in Department of Public Enterprises, and to complete the formalities for submission of the matter to Permanent Machinery of Arbitration within a period of one month."

8. It is after this permission granted by the High Powered Committee that the matter came to be referred to the Permanent Machinery of Arbitration. On 08.11.2002, the Joint Secretary and Arbitrator under the said Machinery (respondent No. 3) passed an interim award to the following effect:-

"In view of the aforesaid and looking to the facts and circumstances of the case, I am satisfied that there exist sufficient grounds for acceding to the request made by the Claimants. Therefore, without going into the merits of the case and purely as an Interim Relief to the Claimants, I hereby direct the Respondents to pay a sum of Rs. 40 Lakhs (Forty Lakhs only) as a lump-sum amount to the Claimants within 20 days of the issue of this Order. The said amount will be adjusted as and when the final Award is published. This Order, however, shall be without prejudice to the Claims and Counter Claims of both the parties and the respective pleas they may take during the hearing."

9. Being aggrieved by this interim award, the petitioner preferred an appeal/revision before the Law Secretary (respondent No. 2). The Law Secretary without

going into the merits of appeal, came to the conclusion that under the scheme, there is no provision for filing an appeal against an interim award and accordingly, dismissed the appeal as being not maintainable. Being aggrieved by this Order dated 21.02.2003 passed by the respondent No. 2, the petitioner has preferred this writ petition seeking directions of this Court for quashing of the said Order of 21.02.2003. As indicated above, the expression "award" includes interim award. That being the case, the Law Secretary was certainly empowered to hear the appeal/revision/reference against the interim award dated 08.11.2002 and he ought to have heard the same on merits and passed an order thereon.

10. Coming now to the next question of the maintainability of writ petition. The learned counsel for the respondents and Mr. Mahajan, who appears for respondent No. 4, in particular have raised this question in view of the observations of the Supreme Court in the following four decisions:-

i) 1992 (61) ELT 3 (SC) ;

(ii) Oil and Natural Gas Commission and Another Vs. Collector of Central Excise, ;

(iii) Oil and Natural Gas Commission Vs. Collector of Central Excise, ; and

(iv) Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others, .

In 1992 (61) ELT 3 (SC) the Supreme Court observed as under:-

"3. This Court has on more than one occasion pointed out that Public Sector Undertakings of Central Government and the Union of India should not fight their litigations in Court by spending money on fees of counsel, court fee, procedural expenses and wasting public time. Courts are maintained for appropriate litigations. Court's time is not to be consumed by litigations which are carried on either side at public expenses from the source. Notwithstanding these observations repeated on a number of occasions, the present cases appear to be an instance of total callousness. The letter of October 3, 1988, indicated that the Cabinet Secretary was looking into the matter. That has not obviously been followed up. As an instance of wasting public time and energy this matter involves a principle to be examined at the highest level.

4. The Cabinet Secretary is called upon to handle this matter personally and report to this Court within four weeks as to why this litigation is being conducted when the two sides are a public sector undertaking and the Union of India. The report of the Cabinet secretary should be supported by an affidavit of a responsible officer. The matter be placed again before us on October 11, 1991."

11. From the above, it would be clear that the Supreme Court was anxious about the fact that various Public Sector Undertakings were litigating in Courts and this lead to wastage of public time and expenses. Thereafter in Oil and Natural Gas Commission and Another Vs. Collector of Central Excise, , the Supreme Court observed in paragraph 4 as under:-

"4. It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with."

12. In the same decision, the Supreme Court also observed that no litigation should come to Court or to a Tribunal without the matter having been first examined by the High Powered Committee and its clearance being given for litigation. From the observations of the Supreme Court in this decision, it is clear that the Supreme Court was anxious about the fact that Public Sector Undertakings or Enterprises should not come to Court straightway to litigate in respect of their grievances and disputes but they should, in the first instance, approach the High Powered Committee which would examine the matter at some length and then decide whether such a matter was fit to be litigated or not. As such, it is clear that although there is no bar in approaching the Courts, the Supreme Court made it clear that the Public Sector Enterprises as regards disputes amongst them should, in the first instance, get a clearance from the High Powered Committee permitting them to agitate their disputes before the appropriate forum. The forum may be the Permanent Machinery of Arbitration or it may be a Civil Court or some other forum. What is necessary is that the High Powered Committee must give a clearance to litigation. In *Oil and Natural Gas Commission Vs. Collector of Central Excise*, , the Supreme Court reiterated the aforesaid observations and directions. Paragraph 5 of the said decision reads as under:-

"5. Accordingly, there, should be no bar to the lodgment of an appeal or petition either by the Union of India or the Public Sector Undertakings before any court or tribunal so as to save limitation. But, before such filing every endeavor should be made to have the clearance of the High Power Committee.

However, as to what the court or tribunal should do if such judicial remedies are sought before such a court or tribunal, the order of 11th October 1991 clarifies:

"It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with".

13. It is also pertinent to note that in paragraph 4 of this decision, the Supreme Court observed that "it is apparently clear that the Machinery contemplated is only to ensure that no litigation comes to Court without the parties having had an opportunity of conciliation before an in-house Committee". It is, Therefore, clear that the whole idea behind the High Powered Committee and the clearance being given by such a Committee was that before the Public Sector Enterprises approach the Court, or the appropriate forum as the case may be, the parties would have had an opportunity of conciliation before an in-house Committee. A large volume of litigation could, by this mechanism, be screened and filtered of

and only those disputes which necessarily required adjudication by the appropriate forum would be permitted to continue.

14. The learned counsel for the respondent pointed out the 4th decision of Supreme Court mentioned above to support his contention that the Supreme Court had in this decision expressly stated that there is a bar to the filing of a writ petition in view of the following observations and directions of the Supreme Court in paragraph 14 of the aforementioned decision:-

"14. Under the scheme of the Constitution, Article 131 confers original jurisdiction on the Supreme Court in regard to a dispute between two States of the Union of India or between one or more States and the Union of India. It was not contemplated by the framers of the Constitution or CPC that two departments of a State or the Union of India will fight a litigation in a court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a court of law. Indeed, such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various departments of the Government are its limbs and, Therefore, they must act in coordination and not in confrontation. Filing of a writ petition by one department against the other by invoking the extraordinary jurisdiction of the High Court is not only against the propriety and polity as it smacks of indiscipline but is also contrary to the basis concept of law which requires that for suing or being sued, there must be either a natural or a juristic person. The States/Union of India must evolve a mechanism to set at rest all interdepartmental controversies at the level of the Government and such matters should not be carried to a court of law for resolution of the controversy. In the case of disputes between public sector undertakings and the Union of India, this Court in *Oil and Natural Gas Commission v. CCE1* called upon the Cabinet Secretary to handle such matters. In *Oil and Natural Gas Commission v. CCE2* this Court directed the Central Government to set up a committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of the Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to court or to a tribunal without the matter having been first examined by the Committee and its clearance for litigation. The Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline."

15. From the aforesaid decision of the Supreme Court, it is clear that what is required is that the High Powered Committee must apply its mind to the dispute between Public Sector Enterprises and then decide as to whether it is a fit case for granting permission for further litigation or not. Once the High Powered Committee decides that the disputes can be proceeded with in the appropriate

forum, to my mind, the High Powered Committee becomes functus officio. In the present case, what has happened is that the respondent Indian Airlines approached the High Powered Committee for permission to file a suit. The High Powered Committee, after considering rival contentions of the parties, directed the parties to go in for arbitration rather than filing a suit. Thereafter, the parties entered into an arbitration agreement as indicated above. So, in this case, what has happened is that the High Powered Committee has given clearance to the parties to litigate the disputes although before the Permanent Machinery of Arbitration. That being the case, the aforesaid decisions of the Supreme Court do not come in the way of the petitioner approaching this Court under Article 226. On the contrary, they tend to support the case for the petitioner inasmuch as the petitioner is not invoking Article 226 of the Constitution for a decision on merits of the case. It has filed this writ petition, inter-alia, for a direction that its objection against the interim award be decided by the Law Secretary on merits. The petitioner seeks a decision within the Permanent Machinery of Arbitration, not without

16. In the facts and circumstances of the case, it may also be relevant to note that the last decision of the Supreme Court, i.e., Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others, refers to disputes between Departments of the Government and in that context the Supreme Court has observed that filing of a writ petition by one Department against the other by invoking an extraordinary jurisdiction of High Court is not only against the propriety and polity as it smacks of indiscipline but is also contrary to the basic concept of law which requires that for suing or being sued, there must be either a natural or a juristic person. These observations would not apply to the present case inasmuch as the petitioner and the respondent are not Departments of the same Government but are independent Public Sector Enterprises and are separate and distinct juristic persons.

17. In view of the above discussions, the impugned order dated 23.02.2003 passed by the respondent No. 2 is quashed. The respondent No. 2 is directed to dispose of the petitioner's appeal/revision on merits. To this extent, the writ petition is allowed. The parties may approach the respondent No. 2 within a week from this Order. There shall be no orders as to costs.

dusty under the signature of the Court Master to all the parties.