

(2001) 03 AP CK 0108
In the Andhra Pradesh High Court
Case No : WA No. 1360 of 1999

Andhra Pradesh Industrial Infrastructure Corporation Limited, APPELLANT
Hyd. and others

Vs

Padmavathi Constructions and another RESPONDENT

Date of Decision : 31-03-2001

Acts Referred:

Arbitration Act, 1940 — Section 23, 30, 33, 34
Arbitration and Conciliation Act, 1996 — Section 21, 34, 85
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Article 158

Citation : (2001) 3 ALD 529

Hon'ble Judges : S.B. Sinha, C.J.; V.V.S. Rao, J

Bench : Division Bench

Advocate : Mr. C.V. Nagarjuna Reddy, for the Appellant; Mr. R.K. Choudhary, for Mr. M. Sreenivasa Rao, for the Respondent

Judgement

S.B. Sinha, CJ

1. A short but interesting question which arises for consideration in this writ appeal is as to whether an application purported to have been made under Sections 30 and 33 of the Indian Arbitration Act, 1940 (hereinafter referred to as "1940 Act") can be treated to be an application u/s 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "1996 Act"). The parties entered into an agreement for construction of polytechnic hostel and staff quarters etc. Disputes and differences having arisen between the parties as regards the performance of the aforementioned contract, inter alia invocation of bank guarantee. A writ petition was filed by the respondent herein which was marked as Writ Petition No. 11619 of 1996. The said writ petition was dismissed where against an appeal was filed by the respondent herein before a Division Bench of this Court which was marked as Writ Appeal No.836 of 1996. At the suggestion of the Division Bench, the parties agreed to refer the disputes for arbitration by Justice K. Punnaiah. On 4-9-1996, the arbitrator entered into

reference. The award for a sum of Rs.49,44,497-50 together with past and future interest at 21% per annum as against the claim of Rs.48,29,065/- was ordered by the arbitrator on 27-10-1997. On 23-1-1998, an application was filed in the Court of Additional Chief Judge, City Civil Court, Hyderabad under Sections 30 and 33 of 1940 Act. The respondent herein filed interlocutory application marked as IA No. 513 of 1998 questioning the maintainability of the said application under the 1940 Act and the jurisdiction of the Court.

2. The writ petition was filed by the respondent herein on 3-8-1998 which was marked as WP No.12006 of 1998 inter alia questioning the jurisdiction of the Court to entertain the said application on the ground that 1940 Arbitration Act, was not applicable. The said writ petition has been allowed by the impugned order.

3. Mr. Ramesh Ranganathan, learned Additional Advocate-General appearing on behalf of the appellants inter alia submitted that having regard to the provisions of . Sections 21 and 85 of the 1996 Act, it should be held that although the application under Sections 30 and 33 of the 1940 Act, was not maintainable, the application could have been treated to be one u/s 34 of the 1996 Act. The learned Counsel would urge that the objection filed in any format may be treated to be one u/s 34 of the 1996 Act. Reliance in this connection has been placed on the decisions in Madan Lal Vs. Sunderlal and Another, and Ariyur Mohammed Habeebur Rahman and Others Vs. Ansuri Varamma (died) and Another, .

4. On behalf of the respondent Sri M. Srinivas Rao on the other hand submitted that an objection must be filed in terms of 34 of the 1996 Act, and it must be filed within the time specified therein. According to the learned Counsel having regard to the charge in law, an application filed under Sections 30 and 33 of 1940 Act, cannot be equated with an application filed u/s 34 of the 1996 Act. The learned Counsel would urge that in that situation, the impugned order must be held to be good in law. Reliance has been placed by the learned Counsel on Prudential Capital Markets Ltd., Calcutta Vs. State of A.P. and others, .

5. The learned single Judge referred to a large number of decisions to arrive at a finding that as an Ordinance preceded the 1996 Act, on 27-6-1996 when the parties agreed to refer their disputes to Arbitration, 1996 Act, will hold the field. On the aforementioned finding, it was held that the learned Court had no jurisdiction under the provisions of the Act. However, it was observed:

"At the time of hearing the learned Counsel for the respondents stated that the interest of the respondents may be safeguarded in the Court comes to the conclusion that the proceedings are without jurisdiction. This Court need not give any specific direction with reference to the said prayer. However, it is always open to the respondents to take appropriate proceedings that are available under law."

6. The finding of the learned single Judge to the effect that in the facts and circumstances of the case, the 199,6 Act will apply, is unexceptionable in view of

the decisions of the Apex Court in Shetty Constructions Company Private Limited v. Konkan Railway Construction 1998 (5) SCC 598 and in Thyssen Stahlunion GmbH Vs. Steel Authority of India Ltd., .

7. However, the question which arises for consideration is as to whether by reason of the said fact alone, a writ of prohibition may issue.

8. A writ of prohibition is a prerogative writ. Originally, it used to be directed to an ecclesiastical or to a crown Court for forbidding that Court to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It used to issue originally only out of the King's Bench. Prohibition confers power on the superior Court so as to enable it to exercise power of superintendence over all inferior Courts. It is a preventive remedy. However, a writ of prohibition cannot be used as an appeal. Appeal lies ordinarily in a case where the inferior Court has no jurisdiction. When a proceeding is initiated by a Tribunal having lack of inherent jurisdiction, the writ of prohibition will lie.

9. In Govinda Menon Vs. Union of India (UOI), , it was held that the jurisdiction for grant of a writ of prohibition is primarily supervisory and the object of that writ is to restrain Courts or inferior Tribunals from exercising a jurisdiction which they do not possess at all or else to prevent them from exceeding their limits.

10. The only question which therefore arises for consideration is as to whether the Court had jurisdiction to entertain the application treating the same to be one u/s 34 of the 1996 Act.

11. It is neither in doubt nor in dispute that no format has been prescribed for filing an objection against an Award. The Award could be questioned only in terms of Sections 30 and 33 of the 1940 Act and now u/s 34 of the 1996 Act. It is now a well settled principle of law that non-mention about the provision of law is neither fatal when it exists to entertain an application nor wrong mention of provision would take away jurisdiction of the Court if it has otherwise a power to entertain it.

12. It is therefore evident that in the event the conditions precedent laid down u/s 34 of the 1996 Act, were existing for entertaining application and the Court had jurisdiction to entertain such application, the writ of prohibition was not appropriate remedy.

13. One of us (V.V.S. Rao, J.) in Prudential Capital Markets Limited v. State of A.P. (supra), distinguished between writ of prohibition and the writ of certiorari as under:

"It may be taken as well settled that a writ of certiorari and a writ of prohibition have many characteristics in common. A writ of prohibition is issued at the earliest stage to prevent a lower Court/ Tribunal from usurping the jurisdiction, which does not vest in it and where the lower Court/Tribunal inherently and apparently lacks jurisdiction. If a decision is already given by the inferior Court/Tribunal a writ of prohibition is not proper remedy and such decision without

jurisdiction can only be quashed by a writ of certiorari. The execution or implementation of a decision by an inferior Court cannot ordinarily be aborted by a writ of prohibition. It is also well settled that issuance of a writ of prohibition, like other extraordinary remedies, is also subject to doctrine of alternative remedy, delay and laches and other rules of prudence governing issue of prerogative writs."

14. In *Madan Lal v. Sunder Lal* (supra) the Apex Court observed:

"It is clear, therefore, from the scheme of the Act that if a party wants an award to be set aside on any of the grounds mentioned in Section 30 it must apply within 30 days of the date of service of notice of filing of the award as provided in Article 158 of the Limitation Act. If no such application is made the award cannot be set aside on any of the grounds specified in Section 30 of the Act. It may be conceded that there is no special form prescribed for making such an application and in an appropriate case an objection of the type made in this case may be treated as such an application, if it is filed within the period of limitation. But if an objection like this has been filed after the period of limitation it cannot be treated as an application to set aside the Award for if it is so treated it will be barred by limitation.

It is not in dispute in the present case that the objections raised by the appellant were covered by Section 30 of the Act, and though the appellant did not pray for setting aside the award in his objection that was what he really wanted the Court to do after hearing his objection. As in the present case the objection was filed more than 30 days after the notice it could not be treated as an application for setting the Award for it would then be barred by limitation. The position thus is that in the present case there was no application to set aside the award on grounds mentioned in Section 30 within the period of limitation and therefore, the Court could not set aside the Award on those grounds. There can be no doubt on the scheme of the Act that any objection even in the nature of a written statement which falls u/s 30 cannot be considered by the Court unless such an objection is made within the period of limitation (namely, 30 days), though if such an objection is made within limitation that objection may in appropriate cases be treated as an application for setting aside the Award."

15. Yet again in *Habeebur Rahman v. A. Varamma* (supra), it was observed:

"In the instant case, the application, by the petitioners, to the Court of the Subordinate Judge, Khammam for making the Award a rule of Court, was made on 5-8-1957. Notice of the filing of the Award was served on the respondents in August or September, 1957, and the written statement was filed by respondent No. 1 on 13-9-1957, that is, well within 30 days from the date of service of notice of the filing of the Award into Court. The time has to be reckoned not from the date of the Award, but from the date of service of notice of the filing of the Award into Court. In his written statement, the 1st respondent prayed for setting aside the Award. There is no particular form for filing an application for setting

aside the Award. There is no particular form for filing an application for setting aside the Award. Even a written statement filed in answer to the petition for passing a decree in terms of the Award, can be considered as an application for setting aside the Award, if it is filed within the time prescribed by law and contains a specific prayer that the Award should be set aside."

16. Ex facie, the application u/s 34 of the Act could have been treated as the same that had been filed within a period of three months. It is true that the scope of Section 34 of 1996 Act, is narrower than that of 1940 Act. But the same by itself would not mean that no application thereunder was entertainable at all.

17. The question has arisen as to whether the application under Sections 30 and 34 of 1940 Act, could have been filed before respondent No.5. No such objection has been raised either before it or before this Court.

18. For the reasons aforementioned, we are of the opinion that the impugned order cannot be sustained. It is set aside accordingly and the respondent No.5 is hereby directed to entertain the application and consider the questions which may be raised before it, expeditiously and not later than six months from date. The writ appeal is accordingly allowed. No costs.