
(2016) 04 AHC CK 0199

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 16219 of 2016

Bal Krishan Singh and 5 Others

APPELLANT

Vs

State of U.P. and 4 Others

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Constitution of India, 1950 — Article 226

Citation : (2016) 6 ADJ 666 : (2016) 117 ALR 525

Hon'ble Judges : Pankaj Mithal, J.

Bench : Single Bench

Advocate : Mithilesh Kumar Mishra and Umesh kumar Mishra, Advocates, for the Appellant; C.S.C., A.S.G.I., S.C. Dwivedi and Usha Mehrotra, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Pankaj Mithal, J.—The grievance of the petitioners in this writ petition is against the rejection of their application for summoning the record of arbitration proceedings.

2. The dispute with regard to quantum of compensation for the acquired land of the petitioner was referred to the Arbitrator. The Arbitrator made an award on 11th December, 2012 and partly enhanced the compensation. The said award of the Arbitrator is in dispute under Section 34 of the Arbitration and Conciliation Act, 1996 before the Court of District Judge.

3. In the proceedings before the District Judge, the petitioners moved an application for summoning the entire record of the arbitration proceedings. The said application has been rejected by the impugned order dated 10.9.2015.

4. The District Judge in rejecting the application has opined that the petitioners can obtain certified copies of the proceedings and place them before the Court instead of getting the record summoned.

5. The argument of learned counsel for the petitioners is that unless the original record including the order sheet of the arbitral tribunal and other documents forming part of the arbitral proceedings are placed before the District Judge, the correctness of the award cannot be adjudicated effectively and finally.

6. Sri Pranjal Mehrotra, learned counsel appearing for the respondents No.3 and 4 has filed a counter affidavit wherein it has been stated that summoning of the record of the arbitral tribunal would cause harassment to other claimants as by the said award claims of large number of persons were settled. In case the record is summoned by the Court, the other claimants would suffer as it would not be possible to make payment of compensation to them in the absence of record.

7. Section 34 of the Act provides for making an application for setting aside the award of the arbitral tribunal before the Court on the grounds specified therein. A very nature of the grounds permitting setting aside of the award reveals that in respect of some of the grounds the court may require the record or the evidence to establish the same.

8. The record, if necessary, may be produced by either of the parties or may be summoned from the arbitral tribunal.

9. There is no provision in the Act which enables the parties to have access to the record. There is no provision which permits the parties to have the certified copies of the pleadings, applications, documents or the orders passed by the arbitral tribunal except for Section 31(5) of the Act which provides that after the award is made, a signed copy shall be delivered to each party.

10. The Act is completely silent about the place where the record shall be kept by the arbitral tribunal after the pronouncement of the award. There are no rules framed by the High Court in this regard under Section 82 of the Act. In some cases where the arbitral tribunal comprises of a sole arbitrator a situation may arise that the said sole arbitrator may be incapacitated for some reason to maintain the record once the award is pronounced or the record may not be available due to his death. In such a situation it may not be possible to get the record even if desired or felt necessary by the Court.

11. Section 19 of the Act specifically states that the arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872 and that the parties are free to agree for any procedure which may be fair or reasonable. There is no material to show that the parties had agreed to any particular procedure or for adopting the procedure laid down in Code of Civil Procedure or the Evidence Act.

12. In view of the above, if for any reason the Court or the appellate Court, if at any stage, considers it necessary to go through the record of the arbitral tribunal it would not be possible to have it unless the copies thereof as available to the parties are supplied by the parties. The copies may only be true or authenticated

copies of the record but would not be either the original or the certified copies of the record. Thus, I find that there is a complete fallacy in the reasoning of the Court that the petitioners could have obtained certified copies of the relevant documents for producing them before the Court. This is not possible as there is no provision for the issuance of the certified copies of any document or part of the record of the arbitral tribunal.

13. The Right to Information Act, 2005 enables the citizens to secure information under the control of public authorities. It is not applicable for gathering information from arbitral tribunal which may comprise of a single person who may not be holding any public post. In that event it would not be possible for any party to obtain any information about the arbitral award from the arbitrator. Thus, any adverse inference drawn by the court below for inaction to take steps for seeking information under the above Act is not sound and unwarranted.

14. It may be a different thing that in the instant case, the District Magistrate/Special Land Acquisition Officer was the arbitrator but as the petitioners made an effort to gather information about the award from the arbitrator under the above Act but as the request was declined, it will not affect their rights.

15. The principle of res judicata does not have strict application to interlocutory applications, more particularly when the decision of such applications are not on merits. The petitioners were not even seeking substantive review of any order rather only summoning of the record on new and changed circumstances, the order dated 10.9.2015 could not have come in way of the petitioners.

16. In the circumstances, it is expedient and necessary in the interest of justice that till proper Rules are framed in this regard, in cases where the party wants to rely upon any part of the record of the arbitral tribunal either the record may be summoned or the parties may be permitted to obtain true authentic copies of those documents from the arbitral tribunal for production before the Court as part of the evidence. In any event, if this is not possible then the copies of the documents as available with the parties may be allowed to be produced and be treated as admissible as the originals subject to rebuttal by the other side.

17. In view of the above, if the petitioners feel that the record of the arbitral proceedings is necessary for adjudication of the dispute under Section 34 of the Act and for one reason or the other it is not considered proper to summon the record, the better course open for the petitioners is to get the authentic copies of the documents which are necessary from the records of the arbitral tribunal by moving an appropriate application whereupon the said documents would be supplied and to produce them in court which would be treated as original unless disputed by the other side.

18. The writ petition is disposed of with the above observations/directions.