

(2021) 11 OHC CK 0047

In the Orissa High Court

Case No : Writ Petition (Civil) No. 32929 Of 2021

Birla Institute Of Management Technology, BBSR

APPELLANT

Vs

M/s. Fiberfill Interiors And Constructions

RESPONDENT

Date of Decision : 03-11-2021

Acts Referred:

Constitution of India, 1950 — Article 227

Arbitration and Conciliation Act, 1996 — Section 34, 36(3)

Citation : (2021) 11 OHC CK 0047

Hon'ble Judges : Arindam Sinha, J

Bench : Division Bench

Advocate : P.K.Parhi, Santosh Kumar Dwivedy

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Mr. Parhi, learned advocate appears on behalf of petitioner and submits, there should be interference with order dated 20th September, 2021, whereby application by his client before the District Judge hearing petition under section 34, Arbitration and Conciliation Act, 1996, for production of records of the Tribunal, was rejected. He refers to annexure-3 being print of mail dated 2nd September, 2019, written by Presiding Arbitrator to other members of the Tribunal. He relies on first paragraph of the mail as is reproduced below:-

" I have received a letter dated 08.07.2019 from my co-arbitrators, refusing my request to permit me to recuse and requesting to continue as presiding Arbitrator. I have accepted the request on 09.07.2019."

2. He submits, one of the grounds for challenge against the award is bias. This mail is not part of the arbitration petition. It is there in the record of the Tribunal, which must be produced for purpose of adjudication of the petition to set aside the award. He draws attention to print of mail dated 18th September, 2019, sent by his client's advocate to members of the Tribunal terming it to be application

under Right to Information Act, 2005. Information sought includes copies of minutes of arbitral sittings from 7th March, 2019 to 2nd September, 2019, entire arbitral proceedings/procedural orders and other documents, which are included in the first two requirements. In effect right to information sought, were copies of the entire arbitral proceeding. He submits, for effective challenge to be mounted against the award, copies of the proceeding are necessary for his client.

3. Mr. Dwivedy, learned advocate appears on behalf of opposite party and submits, the application was delay tactics. He refers to impugned order and points out that the learned Judge had said that in case it is found that without reference to records of the Tribunal, the case cannot be adjudicated, then, the records, as proposed by applicant, can be called for. The rejection is only at the present stage. He submits further, section 34 petition is not an appeal but a challenge. Annexure-3 to the petition was disclosed as annexure-19 in the section 34 petition. He adds, in trying to prevent delay in adjudication of the purported challenge, his client moved this Court by filing writ petition in W.P.(C) no.20661 of 2021, dealt with by order dated 26th July, 2021. He relies on paragraph-5 in said order. There was direction upon the District Judge, Khurda to dispose of ARBP no.80 of 2019 (setting aside of award petition) within a period of four months from date of receipt of copy of said order. After this, on 1st September, 2021 the application to call for records from arbitral Tribunal was made by petitioner. The delay tractice is thus clear since, till before said order dated 26th July, 2021 passed by the writ Court, petitioner did not commence argument before the District Judge. Mr. Parhi's response, their prayer calling for the record in original petition for setting aside the award. Further submission of opposite party is, petitioner is enjoying ex-parte unconditional stay of operation of the award on the petition filed on 2nd December, 2019. Sub-section (3) in section 36 of Arbitration and Conciliation Act, 1996 is clearly applicable, whereby petitioner must put in security for stay of operation of the award, it being for money.

4. The petition before this Court is for regulating the procedure of the lower Court dealing with the arbitration petition to set aside award. Whether or not initial stay of operation granted is unconditional and can maintained, is a question that must be raised by the interested party before the arbitration Court. So far as calling for records are concerned, this Court finds that the dispute in a matter of procedure is holding up adjudication of the arbitration petition. There is no impediment for a direction upon the arbitral Tribunal to transmit the record in its entirety in a sealed box to the Court. This Court in exercising jurisdiction under article 227 in the Constitution of India directs the arbitral Tribunal to transmit entire arbitral proceedings in a sealed box to the arbitration Court. In event petitioner wants inspection of records, same can be made upon application to the Court below and notice to opposite party. Further direction is made upon the arbitration Court to adjudicate and dispose of the arbitration petition, since held up by this supplementary dispute on procedure, within the time directed by said order dated 26th July, 2021, by excluding threfrom period between 1st

September, 2021 till date of receipt of arbitral record by that Court. Further more, opposite party if applies, regarding non-compliance of sub-section (3) of section 36, said Court will at the first instance deal with the same. Mr. Dwivedi submits, such application has already been filed by his client and is pending.

5. Parties or either of them will serve the arbitral Tribunal copy of this order. The Tribunal will, within seven days of communication, transmit the records in its entirety to the arbitration Court.

6. Impugned order is set aside. The writ petition is disposed of.

.....