
(2012) 10 BOM CK 0209
In the Bombay High Court
Case No : Arbitration Appeal No. 46 of 2012

Board of Control for Cricket in India	Vs	APPELLANT
Deccan Chronicle Holdings Limited		RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 17, 37, 9

Citation : (2013) 2 ALLMR 353

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : T.N. Subramanian along with Mr. P.R. Raman, Mrs. Viraj Maniar, Mrs. Akhila Premkumar, Mrs. Misab Daba and Mr. Nikhil Karnawat instructed by M/s. Maniar Srivastava Associates, for the Appellant; S.U. Kamdar along with Mr. Zal Andhyarujina along with Mr. Arcot Chandrashekar instructed by M/s. Dave and Girish and Co., for the Respondent

Judgement

R.D. Dhanuka, J.—This appeal is filed u/s 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "Act") challenging the order dated 12th October, 2012 passed by the arbitral tribunal u/s 17 of the Act continuing status quo order passed by this Court. Some of the relevant facts are : On 10th April, 2008 the franchise agreement was entered into between the parties whereby the respondent was granted a right to own and operate a team in the league subject to the terms and conditions set out therein. On 14th September, 2012 the appellant terminated the said Franchise agreement. The respondent filed Arbitration Petition (L) No. 1238 of 2012 in this Court u/s 9 of the Act for interim measures. After hearing both the parties, this Court passed an order on 1st October, 2012 disposing off the said Arbitration Petition (L) No. 1238 of 2012. The said order was a conditional order granting stay of termination on respondent complying with various conditions including the condition to submit bank guarantee of Rs. 100 Crores of a nationalized Bank on or before 9th October, 2012. Time to submit bank guarantee was extended till 12th October, 2012.

2. On 12th October, 2012 at 11.00 a.m. the respondent applied for extension of time to furnish bank guarantee. It is not in dispute that the said application made by the respondent for extension of time to furnish the bank guarantee was declined by this Court. The arbitral tribunal issued a notice convening a meeting for issuing directions on 12th October, 2012 at 5.00 p.m. It is not in dispute that the meeting begun around 5.30 p.m. After directions were given by the arbitral tribunal the respondent filed an application u/s 17 of the Act for interim measures. The respondent prayed that pending the hearing and final disposal of the arbitration proceedings, the arbitral tribunal be pleased to stay the termination of the Franchise agreement and maintain status quo as per order dated 1st October 2012 passed by this Court. By an order dated 12th October 2012, the arbitral tribunal after recording submissions of both the parties, passed the following order :

Status quo granted by the Hon'ble High Court and continued till to-day, i.e. 12.10.2012 5.00 p.m. is ordered to continue. The application for interim relief will be heard by the Tribunal on 17.10.2012 at 11.30 a.m.

3. From the perusal of the order passed by the arbitral tribunal, it is clear that the prayer for continuation of status quo order prayed for by the respondent was strongly objected by the appellant. The appellant pointed out that termination of contract came into effect and grant of any status quo would virtually amount to grant of mandatory relief. The arbitral tribunal however took a view that when the status quo had been granted by this Court and was operative till 5.00 p.m. of 12th October, 2012, it would be in the interest of justice if it was directed to be continued for some time by giving an opportunity to the BCCI to file its response to the application submitted by the respondent herein.

4. Being aggrieved by the said order dated 12th October, 2012, the appellant filed this appeal u/s 37 of the Act. In view of the extreme urgency the matter was moved in Chambers on 13th October, 2012 when both the parties were heard by this Court. On 13th October, 2012 this Court passed a detailed order granting ad interim relief in terms of prayer clause (a) of the Civil Application and the effect, implementation and operation of the impugned order dated 12th October, 2012 passed by the arbitral tribunal came to be stayed. The respondents have not challenged the said order dated 13th October, 2012 passed by this Court granting ad interim stay of the operation of the order passed by the arbitral tribunal on 12th October, 2012.

5. The learned senior counsel Mr. T.N. Subramanian, appearing for the appellant, submits that the order passed by this Court on 12th October, 2012 was a self operative order. The termination was stayed till 5.00 p.m., of 12th October, 2012 on a condition that the respondent furnishes a bank guarantee of the nationalized bank in the sum of Rs. 100 Crores on or before 5.00 p.m. of 12th October, 2012. Various other conditions were directed to be complied with as per the said order passed by this Court on 1st October, 2012. It is submitted that on 12th October, 2012 at 11.00 am., when the oral application came to be made by

the respondents for continuation of ad interim order passed by this Court, it was declined by S.J. Kathawala, J. It is not in dispute that such application was made and the same was rejected by this Court. It is submitted that the order passed by this Court on 1st October, 2012 was made operative till the disposal of the arbitral proceedings provided the respondent therein furnishes bank guarantee of Rs. 100 Crores of the nationalized bank on or before 5.00 p.m., of 12th October, 2012. When the application u/s 17 was moved before the arbitral tribunal, admittedly the bank guarantee of the nationalized bank in the sum of Rs. 100 Crore was not furnished. The order dated 1st October, 2012 passed by this Court, being self operative, termination came into effect at 5.00 p.m., of 12th October, 2012. The oral application for extension of time to furnish bank guarantee was already rejected by this Court at 11.00 a.m., on 12th October, 2012. The learned arbitrator therefore, could not have passed any orders u/s 17 of the Act when such application was already rejected by this Court u/s 9 of the Act. The Learned Counsel further submitted that there was no statement of claim filed by the respondent before the arbitral tribunal. Unless the pleadings were filed before the arbitral tribunal claiming substantive relief, no application u/s 17 of the Act for interim measures could be entertained by the arbitral tribunal. It is submitted that in any event the application filed u/s 17 of the Act was not signed by the parties but was signed by the Learned Counsel. It is submitted that the arbitral tribunal thus could not have entertained such application which was not competent in the absence of the pleadings as well as application not having been signed by the respondent. The Learned Counsel placed reliance upon the judgment of the Supreme Court in the case of M.D., Army Welfare Housing Organisation Vs. Sumangal Services Pvt. Ltd., in support of this contention. It is submitted that the grant of status quo amounted to grant of mandatory injunction. The relief which was rejected by this Court has been granted by the arbitral tribunal which is not permissible in law.

6. Mr. Kamdar, the learned senior counsel appearing for the respondent on the other hand submits that filing of pleadings was not mandatory before entertaining the application u/s 17 of the Act. In any event, the application filed u/s 17 of the Act itself was a pleading and thus the arbitral tribunal was justified in passing the order of status quo. In so far as application not having been signed by the parties is concerned, it is submitted that the said application was signed by the counsel under the authority of the clients and he had undertaken to replace the same by another application duly signed by the respondent.

7. It is submitted by Mr. Kamdar that once this Court became functus officio on rejecting the application of the respondent u/s 9 of the Act at 5.00 p.m., of 12th October, 2012, the respondent was justified in making the application u/s 17 of the Act before the Arbitral Tribunal. It is submitted that the powers of the arbitral tribunal are independent and in addition to the powers of this Court u/s 9 of the Act. It is submitted that the learned arbitral tribunal is ceased of the matter and the matter has been directed to be placed for further hearing on 17th October, 2012, thus this Court should not interfere with the status quo order passed by

the arbitral tribunal and the ad interim order passed by this Court be vacated.

8. I have heard the Learned Counsel and have considered the rival submissions.

9. The records of this proceedings indicate that the order dated 1st October, 2012 passed by this Court disposing off the application u/s 9 of the Act filed by the respondent, is self operative. this Court passed protecting order staying the termination of the contract on various conditions including the condition that the respondent furnishes bank guarantee of Rs. 100 Crores of a nationalized bank in this Court on or before 5.00 p.m., of 12th October, 2012. It is not in dispute that till 5.00 p.m., of 12th October, 2012 no such bank guarantee came to be furnished. It is also not in dispute that at 11.00 a.m., on 12th October, 2012 an oral application came to be made by the respondent for extension of time for furnishing the bank guarantee which was declined by this Court. The arbitral tribunal had scheduled the arbitral meeting at 5.00 p.m. on 12th October, 2012 for giving directions. The meeting commenced at about 5.30 p.m. After directions were issued by the arbitral tribunal, application u/s 17 came to be filed by the respondent seeking interim measures by applying status quo order. In view of the admitted fact that the bank guarantee was not furnished by 5.00 p.m., of 12th October, 2012 by the respondent, the termination order issued by the BCCI came into effect. The oral application for extension of time to furnish bank guarantee was declined by this Court. Once this Court has declined extension of time and the termination order having come into effect, in my view the arbitral tribunal has acted beyond its jurisdiction to grant status quo order. If the court had declined to grant the relief, the arbitral tribunal cannot grant that relief. The powers of the arbitral tribunal are not superior to that of the Court. The arbitral tribunal could not sit in appeal over the order passed by this Court. The perusal of the order passed by this Court on 1st October, 2012 indicates that no liberty was granted by this Court to the respondent to make any such application u/s 17 of the Act before the arbitral tribunal for continuation of the status quo. In absence of any such liberty, such application made by the respondent u/s 17 for continuation of status quo itself was not maintainable.

10. I am not inclined to accept the submissions made by the learned senior counsel Mr. Kamdar that at 5.00 p.m., of 12th October, 2012 this Court having become functus officio, powers of the arbitral tribunal u/s 17 of the Act could be invoked independently. This is not a case where section 17 application was made without there being any order of this Court u/s 9 of the Act. There may be a situation where an application u/s 9 is made before this Court and party have applied for liberty to treat the said application as an application u/s 17 of the Act and to pursue the same before the arbitral tribunal. If any leave is granted by this Court while permitting parties to apply u/s 17 of the Act, such powers can be exercised by the arbitral tribunal u/s 17 of the Act for continuation, modification or varying the order. In my view, once application for extension of time was rejected by this Court and termination order had came into effect, application u/s 17 made by the respondent before the arbitral tribunal for status quo was

incompetent and not maintainable. The perusal of the order passed by the arbitral tribunal indicates that the arbitral tribunal has exercised appellate powers over the order passed by this Court which arbitral tribunal does not have. For the reasons recorded aforesaid, I need not decide the issue that arbitral tribunal could not have passed status quo order as there were no pleadings filed before arbitral tribunal. I am therefore, of the view that the learned arbitrator has acted without jurisdiction and thus the impugned order passed by the arbitral tribunal on 12th October, 2012 is quashed and set aside. The appeal is allowed. There shall be no order as to costs.