(2014) 04 KL CK 0051

In the High Court Of Kerala

Case No : O.P. (C) No. 1111 of 2014

Cochin Bridge Infrastructure Company Ltd. APPELLANT

Vs

GCDA RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9
Constitution of India, 1950 — Article 226, 227

Citation : (2014) 3 KHC 538

Hon'ble Judges : P.D. Rajan, J

Bench : Single Bench

Advocate : S.V. Balakrishna Iyer, Senior Advocate and Prakash P. George, Advocate for the Appellant; C.A. Majeed, Standing Counsel, GCDA, Advocate for the Respondent

Judgement

P.D. Rajan, J.—This petition is preferred under Article 227 of the Constitution of India seeking a direction to the respondents not to interfere with the collection of the toll by the petitioner from the vehicles passing through the Mattancherry bridge in terms of the Arbitrators'' interim orders and other reliefs claimed in Ext. P1 and WP (C) No. 13178/07 till disposal of the above OP (Arb.) of the District Court, Ernakulam. The petitioner is a Company incorporated under the Companies Act and has the right to collect toll from the Mattancherry Bridge as per the Concession Agreement and the Supplementary Agreement. There arise dispute between the petitioner and the respondents and the matter was referred for Arbitration. Now the arbitration proceedings are pending before Arbitrators and as per the direction of the Arbitrators, the toll is now being collected until further orders. Now the Chairman of the 1st respondent issued a press release informing that on 27/04/2014, they will interfere with the collection of the toll by taking over the Bridge and will not issue sealed coupons for collecting toll. Under the circumstances, the petitioner filed an application for injunction before Vacation Court, under Section 9 of the Arbitration and Conciliation Act, 1996 and that application was posted to 30/04/2014 for return of notice and for appearance of the respondents. The learned counsel for the petitioner sought for an early posting date on 25/04/2014 expressing his willingness to take out notice by special messenger, but that was not considered and the case was posted to 30/04/2014. In such a situation, the petitioner approached this Court

2. The respondents have not filed any written objection. They contended that the toll collection is according to the notification issued by the Government. The right to collect the toll came to an end on 27/04/2014 since the agreement with the petitioner was for a period of 13 years and 9 months, which expires on that date. After that, respondents have no power to seal the toll coupons in the absence of a new notification by the Government. The respondents had issued sealed toll coupons only on the basis of the earlier rates mentioned in the notification. Now the arbitration proceedings are pending and they are ready to cooperate with the arbitration proceeding, but petitioner has not impleaded the Government of Kerala as a necessary party in this petition.

3. The learned counsel for the petitioner contended that they have right to collect toll for another six years from 27/04/2014 by virtue of Ext. P3 Government Order. But the respondents strongly resisted the above contention and contended that there is no such agreement with them and the new concession period is the extended claim by the petitioner, which came to an end on 27/04/2014.

4. It is true that the petitioner filed Ext. P1 OP (Arb.) before District Court, Ernakulam. In Ext. P1, there was a request to grant prohibitory injunction restraining the respondents, their officials and agents from causing any sort of obstruction or hindrance in the matter of toll collection. They also sought for a mandatory injunction directing the respondents to issue sealed coupon to the petitioner for collecting the toll and also to render police protection to the employees of the petitioner at the time of collecting the toll. But, the case was posted on 30/04/2014.

5. In this context, I have considered Ext. P1 (15) concession agreement dated 27/10/99 executed between Gamon India Ltd., the Government of Kerala and the respondents regarding construction, operation and maintenance of the new bridge connecting Mattancherry and Willington Island. The petitioner is a subsidiary company promoted by the Gamon India Company executed a supplementary agreement between Government of Kerala, Gamon India Ltd. and respondents. In the concession agreement, it is admitted by both parties that agreement came to an end on 27/04/2014. Ext. P3 is a Government Order dated 24/01/2005, in which the Government issued an order fixing fee and concession period. Ext. P4 is the Arbitration Petition filed before Arbitrator. Ext. P5 is the arbitral proceedings, in which, the claimant is permitted to continue to collect the toll amount at the same rate as they are collecting as on today until further orders. That order was issued on 22/11/2010. Ext. P8 is the minutes of the meeting of the arbitration proceedings and Ext. P7 is the decision of the Division Bench of this Court, in which it is directed that respondents 3 and 4 shall provide the details of toll collection account every month to the 2nd respondent and also

a direction to the 2nd respondent to take appropriate steps to issue stamped and sealed collection coupons to respondents 3 and 4, so that the 2nd respondent can ascertain the exact amount of collection of toll from the parties. Ext. P8 is another Government Order issued on 13/12/2010, in which it is noticed that since the respondents have not executed supplementary agreement as indicated in paragraph 5 of the Government Order issued on 24/01/2005 do not virtually has any legal sanctity. The Government Order dated 26/12/2008 cancelling the Government Order dated 24/01/2005, the order as such virtually lacks legal sanctity. Therefore, the petitioner cannot claim that the Government Order dated 24/01/2005 is acceptable and at the same time the GO Dated 26/12/2008 is not binding. Since the GO (MS) No. 11/2005/PWD dated 24/01/2005 and subsequent orders have been cancelled vide GO (MS) No. 53/2008/PWD dated 26/12/2008, the orders issued before 24/01/2005 on the subject shall prevail. From Ext. P8, it is found that the petitioner has not co-operated with the Government for a settlement as requested by them. Hence, the CBICL can collect toll at the prescribed rates vide Government Orders which were prevailing prior to 24/01/2005. In the meantime, Ext. P9 publication was made by the respondents and the actual agreement came to an end on 27/04/2014. But, there was a direction by the Arbitration Tribunal to collect toll and in Ext. P7, there was also a direction by this Court to take appropriate steps to issue stamped and sealed collection coupons to the petitioner so that the respondents can ascertain the exact amount of collection of toll from the parties.

6. Now what remains is whether this Court can interfere into the proceedings pending before the District Court, invoking the jurisdiction under Article 227 of the Constitution of India. Under Article 227 of the Constitution of India, this Court shall have superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction can be exercised only when a valid ground subsists. Since the arbitration agreement period expired on 27/04/2014 and one of the parties to the agreement approached this Court for giving direction, I am of the opinion that, after expiry of the original concession agreement, this Court lacks jurisdiction. Nature and scope of power and supervisory nature of jurisdiction have been expressed in the decision of Jai Singh and Others Vs. Municipal Corporation of Delhi and Another, , in which in paragraph 15, it is held as follows:

15. We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well-recognised principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all Subordinate Courts as well as statutory or quasi-judicial Tribunals exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well-established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The

jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well-known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognised constraints. It cannot be exercised like a "bull in a china shop", to correct all errors of judgment of a Court, or Tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave derlicition of duty or in flagrant abuse of fundamental principles of law or justice.

7. A party is entitled to get a relief under Section 9 of the Arbitration and Conciliation Act, if there is a condition precedent to the relief and such relief come from the terms of the agreement. Any dispute, which is not the subject-matter of terms of the agreement, is beyond the scope of arbitration. A person is entitled to get interim protection, if the action of the party is either in breach of the terms of the agreement or which is against equity, fair play or natural justice or otherwise he is not entitled. Government Order dated 13/12/2010 permitted the CBICL to collect toll at the rate as per the Orders that prevailed prior to 24/01/2005. The terms and conditions are already prescribed in the original concession agreement (page 191 P8). In such a situation, the request made by the petitioner to give direction to the District Court by invoking the jurisdiction under Article 227 of the Constitution of India is not at all warranted. The petitioner also filed IA No. 6086/2014 to give direction to the respondents to remove the obstruction caused by them at Mattanchery Bridge by preventing the employees of the petitioner from collecting toll from the said Bridge and not to cause any obstruction or interference with the collection of the toll by the petitioner from the vehicles passing through the Bridge and also to issue sealed coupons to the petitioner strictly in accordance with the judgment passed by this Court in WP (C) No. 13178/2007 and also to direct the Commissioner of Police, Ernakulam City to provide adequate Police Protection to the life of the employees of the petitioner to carry out the toll collection. Since the concession agreement came to an end on 27/04/2014, I am of the opinion that the directions sought for by the petitioner in the IA cannot be granted invoking Article 227 of the Constitution of India. Apex Court in New India Civil Erectors (P.) Ltd. Vs. Oil and Natural Gas Corporation, discussed the scope of arbitration agreement and held that the parties are bound to operate within the four corners of the agreement and cannot travel beyond it and also held that it is axiomatic that the Arbitrator being a creature of the agreement must operate within the four corners of the agreement and cannot travel beyond it. Accepting the above legal principle, I am of the opinion that after the expiry of the agreement, this Court cannot travel beyond the period of the agreement.

Therefore, there is no merit in this petition and it is dismissed accordingly.

