

(2017) 07 KAR CK 0013
In the Karnataka High Court
Case No : 102965 of 2017 (GM-CPC)

D.Y. UPPAR

APPELLANT

Vs

KARNATAKA NEERAVARI NIGAM LIMITED & Anr.

RESPONDENT

Date of Decision : 04-07-2017

Acts Referred:

Code of Civil Procedure, 1908, Order 7Rule 11 -
Arbitration and Conciliation Act, 1996, Section 34 - Application for setting aside arbitral award

Citation : (2017) 07 KAR CK 0013

Hon'ble Judges : K.N. Phaneendra

Bench : SINGLE BENCH

Advocate : NAGANANDA, T BASAVAN GOUDA, M.R.C.RAVI, RAMESH N?MISALE

Judgement

1. Heard the learned counsels for the petitioners and the learned counsel for the respondents. Perused the orders impugned under the writ petitions.
2. In all these writ petitions common facts are involved and common question of law is raised. Therefore all these matters are taken up together and common order is passed.
3. The petitioners case is that they have entered into work contracts with the Government undertaking various projects for the purpose of formation of canals to different extents. As per the contract entered into between the parties, there was an arbitration clause mentioning that if there is any dispute arises between the parties, the matter has to be referred to the arbitration. It is further evident from the facts that subsequently the Government has entrusted or the Government has bestowed all its rights and responsibilities in favour of the respondents herein, i.e., the Karnataka Neeravari Nigam Limited (?KNNL? for short) , represented by its Executive Engineer (Canal Division).
4. On the basis of the dispute between the parties, it appears, the parties have approached the arbitrator invoking the arbitration clause. In the arbitration

proceedings particularly the petitioner in W.P.No.102965/2017 has raised a question that there is no privity of contract between the petitioner and as well as the respondents (KNNL) herein and only the Government is the proper party. The said contention was raised by the petitioner on the application being filed by the respondents herein for their impleadment. The arbitrator, in fact, has rejected the application of the respondents herein and the same has been questioned before this Court in W.P.No.40390/2014 and connected matters. This Court in the above said writ petitions, vide orders dated 25.2.2015, has in fact allowed the writ petitions and permitted the respondents herein to participate in the arbitration proceedings as parties.

5. So far as the other writ petitions are concerned, in W.P.Nos.103278, 103279 and 103280 of 2017, though the petitioners have taken up the same contention that they have entered into an agreement with the Government, they did not object the respondents herein to participate in the arbitration proceedings.

6. In view of the above said circumstances the respondents herein have participated in the arbitration proceedings in the above said matters and ultimately the arbitrator has passed awards in the said cases.

7. Being aggrieved by the awards passed by the arbitrator, the respondents herein have filed arbitration suits before the Prl . District Judge at Koppal in Arbitration Suit No.1/2016 so far as the petitioner in W.P.No.102965/2017 and Arbitration Suit Nos.2, 3 and 4 of 2016, respectively, in so far as the petitioners in W.P.Nos.103278, 103279 and 103280 of 2017 are concerned. During the course of the said proceedings, it appears, the petitioners herein have filed an application under Order 7 Rule 11 of CPC. Particularly the petitioners in W.P.No.102965/2017 have taken up the contention that the order passed in W.P.No.40390/2014 and connected matters has not been properly understood by the trial Court, wherein in the said writ petitions this Court has opined that the respondents herein have no jurisdiction or locus-standi to file any suit under Section 34 of the Arbitration and Conciliation Act (the Act for short) . So far as the petitioners in other writ petitions noted above are concerned, they have not approached this Court by way of any writ petition earlier. However they have questioned the locus-standi of the respondents herein in the above said suits, on the ground that there was no privity of contract between the Government and as well as the petitioners in the above said writ petitions and on that ground they have claimed for rejection of the plaint under Order 7 Rule 11 of CPC.

8. The learned senior counsel Sri Naganand strenuously argued before this Court submitting that this Court while disposing of the writ petitions in W.P.No.40390/2014 and connected matters at paragraph No.11 specifically considered the right of the respondents and also specifically stated that they have no right to file any suit under section 34 of the Act. Therefore the trial Court has not properly considered this particular portion of the judgment, otherwise, the trial Court should have rejected the plaint under Order 7 Rule 11 of CPC.

9. So far as the orders in the said writ petitions is concerned, this Court has specifically ordered with regard to the agreement entered into between the parties and as well as the KNNL entering into the shoes of the Government and sought for participation in the arbitration proceedings. Of course para 11 of the judgment, if it is isolatedly read, it gives an indication that the petitioners have no right to file any suit under Section 34 of the Act. But what the Court has to do is, the Court has to understand the whole intention of the judgment by meaningfully reading the entire judgment.

10. The learned counsel for the respondent taken me through the entire judgment. This Court has observed at various paras in the said judgment that, the Government has assigned or entrusted the rights and responsibilities under the contract with petitioner to KNNL and the said KNNL virtually has stepped into the shoes of the Government and further all rights and liabilities of the Government has been crystalized in the said KNNL and they are actually the proper parties to participate in the arbitration proceedings. Having come to that conclusion the Court has observed at para 11 in the following manner. 11. As noticed above, the petitioner, a successor in interest in respect of the projects in question is not a party to the arbitration agreement. In view of the aforesaid two Government Orders, the terms and conditions of all contracts entered into by the Executive Engineers and the Contractors for executing the project is binding on the petitioner. However, it cannot ventilate its grievances against the award under Section 34. Under Section 34, recourse against an arbitral award may be made only by a party. The expression party has been defined in subsection (h) of Section 2 under which 'party' means a party to an arbitration agreement. The petitioner cannot have any remedy to challenge the award despite it being a successor in interest. Therefore, it is just and proper to allow the petitioner to come on record as additional respondent.

11. So, in the context of other paragraphs of the judgment, if this paragraph is read, it clearly indicates that the Court was of the opinion that if the respondents herein were not allowed to participate as parties in the arbitration proceedings, they cannot have any right to file any suit under Section 34 of the Act. That is the context used by the Court and the same has to be understood in that manner.

12. If the KNNL has stepped into the shoes of the Government, they are entitled for all the legal and factual consequences. Therefore, in order to provide an opportunity to the KNNL, the Court has observed that they are the proper parties before the arbitrator. If they are not allowed to participate in the proceedings, they not only lose an opportunity to question the arbitration proceedings nor they can file any suit under Section 34 of the Act. In that context the paragraph No.11 has to be understood. Therefore on meaningful reading and understanding of the entire judgment it virtually goes to show that an opportunity has been given to the respondents herein to participate before the arbitrator and to avail all the legal rights to meet the subsequent consequences arising out of such

arbitration proceedings. Therefore, this Court is of the opinion that paragraph No.11 of the judgment cannot be read isolatedly in order to come to any other conclusion. The same factual aspects have been considered by the trial Court in dismissing the application filed under Order 7 Rule 11 of CPC.

13. So far as the other writ petitions are concerned, the said judgment though not binding, however it is stated in the said judgment that the Government has entrusted the matter or assigned the matter or whatever may be the nature of the transfer of the rights of the Government in favour of KNNL, but by virtue of the same KNNL can proceed with the case. Therefore if the transfer of the rights by the Government is bad in law or on facts, that has to be adjudicated while dealing with the matter in the suit on merits, but till then respondents are entitled to continue the suit. So far as application under Order 7 rule 11 of CPC is concerned, it is only to be confined whether the parties have got any locus-standi to challenge the arbitration award before the Court under Section 34 of the Act or not.

14. In the opinion of this Court, the consequences ensue from the arbitration award is to challenge the same before the competent Court, by the aggrieved. If at all such an opportunity is not given to the party, there is no fun in allowing them for participation before the arbitrator. Under the above said circumstances, this Court does not find any strong reasons to interfere with the order passed by the trial Court. Hence the writ petitions are devoid of merit and the same are liable to be dismissed. Accordingly the writ petitions are dismissed.

15. However the learned Senior Counsel Sri Naganand submits that the trial Court may be directed to expedite the trial and dispose of the arbitration suit itself on merits. The respondents counsel has no objection for the same. In view of the above said submission, the trial Court is hereby directed to expedite the trial and dispose of the arbitration suits itself within a period of four months from the date of receipt of a copy of this order.

16. All other legal and factual contentions which are raised before this Court except the locus-standi of the respondents herein are kept open to be raised before the trial Court. Whatever the observations made by this Court while disposing of these writ petitions shall not be in any manner persuade the trial Court while disposing of the suits on merits.