

(2011) 07 CHH CK 0027
In the Chhattisgarh High Court
Case No : Writ Petition (c) No. 6604 of 2010

Gammon India Limited

APPELLANT

Vs

The State of Chhattisgarh and Another

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 — Section 7

Citation : (2011) 1 CGBCLJ 419

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Anand Dixit and Mr. Ashok Mishra, for the Appellant; M.P.S. Bhatia, Dy. Govt. Advocate for the State, for the Respondent

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner prays (i) for setting asaid the impugned order dated 30-9-2010 (Annexure - P/4) passed by the Chhattisgarh Arbitration Tribunal (for short "the Tribunal") in Ref. case No (Gammon India Ltd. v. The State of Chhattisgarh & Another); (ii) to declare that the petitioner is entitled to the remedy of arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (for short "the Act, 1996"); (iii) to declare that the time period spent before the Tribunal shall be excluded for the purpose of limitation in the arbitration proceedings under the Act, 1996; and (iv) to issue orders for refund of Court fee amounting to Rs. 6,98,714/-, which was deposited for instituting reference case before the Tribunal. The facts of the case, in brief, as projected by the petitioner, for adjudication of the dispute, are that the petitioner is a company incorporated under the provisions of the Companies Act, 1956 and the petitioner is engaged in the business of civil construction. The petitioner was awarded the work of construction of road bridge across river Hasdeo, Korba, by the respondent authorities. Accordingly, the petitioner entered into an agreement with the unified State of Madhya Pradesh. However, after bifurcation of the State, the liability of payment of dues was transferred to the State of Chhattisgarh. According to the petitioner, clause 67 of the general conditions of contract provides for an arbitration clause. After completion of

certain work, some disputes arose between the parties; therefore, a reference case No. 5/2008 was submitted before the Tribunal on 7-2-2008 by the petitioner for adjudication of the disputes vide Annexure - P/2. Subsequently, the petitioner has moved an application (Annexure - P/3) before the Tribunal for decision on the issue of jurisdiction. In the said application, the petitioner has referred the decision of the Supreme Court rendered in Va Tech Escher Wyass Flovel Ltd. Vs. M.P.S.E. Board and Another, . The application filed by the petitioner has been dismissed by the Tribunal by order dated 30-9-2010 (Annexure - P/4). Hence, this petition.

2. Shri Dixit & Shri Mishra, learned counsel appearing for the petitioner, would submit that the Tribunal committed gross error in law by holding that the petitioner has no right to seek decision on the objection relating to jurisdiction of the Tribunal. The Tribunal has also committed gross error in law by ignoring the well settled principles of law laid down by the supreme Court in VA Tech Escher Wyass Flovel Ltd. (supra). Shri Dixit would further submit that after relying on the decision of the Supreme Court in VA Tech Escher Wyass Flovel Ltd. (Supra), the Division Bench of this Court has considered and passed the order in M/s. R. S. Bajwa & Company v. State of Chhattisgarh & Others WA No. 208 of 2008 (decided on 27-8-2010).

3. On the other hand, Shri Bhatia, learned Dy. Govt. Advocate appearing for the State, would submit that the petitioner, who had made a reference, cannot dispute the jurisdiction of the Tribunal and it is for the opposite party to challenge the jurisdiction of the Tribunal. In the impugned order, the Tribunal has observed that if the petitioner feels that the Tribunal has no jurisdiction, then the petitioner is at liberty to withdraw the reference and to approach the appropriate forum. Thus, the impugned order is just & proper and in accordance with law. Shri Bhatia would further submit that the decisions of the Supreme Court as well as this Court rendered in VA Tech Escher Wyass Hovel Ltd. (supra) & M/s. R. S. Bajwa & Company (supra), respectively, are not applicable to the facts of the present case. Therefore, the petitioner is not entitled to any relief and the petition may be dismissed.

4. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

5. It is indisputable that the reference was made by the petitioner itself for adjudication of the dispute on 7-2-2008. The same was done in accordance with the provisions of Section 7 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (for short "the Adhiniyam, 1983"), which provides for reference of the dispute in works contract to the Tribunal.

6. Section 7 of the Adhiniyam, 1983 reads as under:

7. Reference to Tribunal.- (1) Either party to a works contract shall irrespective of the fact whether the agreement contains an arbitration clause or not, refer in writing the dispute to the Tribunal.

(2) Such reference shall be drawn up in such form as may be prescribed and shall be supported by an affidavit verifying the averments.

(3) The reference shall be accompanied by such fee as may be prescribed.

(4) Every reference shall be accompanied by such documents or other evidence and by such other fees for service or execution of processes as may be prescribed.

(5) On receipt of the reference under sub-section (1), if the Tribunal is satisfied that the reference is a fit case for adjudication, it may admit the reference after recording reasons therefor.

7. The dispute with regard to applicability of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 vis-a-vis the Act, 1996 enacted by the Parliament, came into consideration before the Supreme Court in VA Tech Escher Wyass Hovel Ltd. (supra). The Supreme Court held that the Act, 1996 covers all kinds of acts including the dispute relating to work contracts. The Supreme Court, accordingly, held as under:

In our opinion, the 1983 Act and the 1996 Act can be harmonized by holding that the 1983 Act only applies where there is no arbitration clause but it stands impliedly repealed by the 1996 Act where there is an arbitration clause. We hold accordingly.

8. Thus, the ratio as laid down by the Supreme Court is clear that if there is an arbitration clause even in the disputes relating works contract, the provisions of the Act, 1996 would prevail and to that extent the provisions of the Adhiniyam 1983 (State Act), which is enacted by the State Legislature, stands impliedly repealed. Thus, clause to the extent that "whether the agreement contains an arbitration clause" stands repealed to the extent that if the agreement contains arbitration clause, the same is not referable to the Tribunal under the provisions of the Adhiniyam, 1983.

9. The Division Bench of this Court M/s. R. S. Bajwa & Company (supra) observed as under:

16. On the basis of the facts and circumstances discussed above, it is held that since there was an arbitration clause i.e. Clause 52 as quoted above, in the agreement, provisions of the Act, 1996 would be applicable and the Adhiniyam, 1983 in that case stands impliedly repealed by the Act, 1996 as held by the Hon"ble Apex court in Civil Appeal No. 3747/05 (supra) and the award passed by the Arbitrator cannot be said to be a nullity.

10. In the case on hand, the petitioner has chosen to refer the dispute to the Tribunal under the provisions of the Adhiniyam, 1983 and thereafter, after the declaration of the position of law by the Supreme Court in VA Tech Escher Wyass Hovel Ltd. (supra), the petitioner moved an application questioning the jurisdiction of the Tribunal under the Adhiniyam, 1983.

11. The Tribunal has no jurisdiction to consider the dispute in relation to works contract where there is a specific arbitration clause and the same shall be governed by the provisions of the Act, 1996. In the instant case, clause 67.1 of the general conditions of contract provides for arbitration clause.

12. The Tribunal dismissed the application of the petitioner on the ground that the petitioner who has referred the matter has no right to question the jurisdiction of the Tribunal. The finding of the Tribunal is not correct and the same is contrary to the ratio laid down by the Supreme Court in VA Tech Escher Wyass Hovel Ltd. (supra).

13. If the reference has been made by either party, once the jurisdiction of the Tribunal to the extent of reference in respect of works contract where there is an arbitration clause is denuded, the Tribunal cannot decide the dispute even there is no application for returning back the reference on the ground of having no jurisdiction.

14. If the Tribunal jacks jurisdiction, there is no question to retain the Court fees, which was deposited on wrong understanding of provisions of law, which stood clarified by the Supreme Court subsequently, as the effect of repeal would be with retrospective effect from the day, Act, 1996 came into force.

15. For the reasons mentioned herein above, the petition is allowed. It is ordered that:

(i) the Tribunal has no jurisdiction to decide the dispute in question, as there is an arbitration clause in the general conditions of contract.

(ii) the provisions of the Act, 1996 shall be applicable to the dispute in question.

(iii) the Tribunal shall refund the Court fees, after adjusting the expenses incurred by the Tribunal, before the application objecting the jurisdiction of the Tribunal, was made by the petitioner, as the reference is not maintainable before the Tribunal under the provisions of the Adhiniyam, 1983.

There shall be no order as to costs.