
(2004) 08 P&H CK 0127
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 236 of 2002

Guru Dashmesh Rice Mills and Another	APPELLANT
Vs	
Punjab State Civil Supplies Corp. Ltd. and Others	RESPONDENT

Date of Decision : 23-08-2004

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Constitution of India, 1950 — Article 227

Citation : (2005) 139 PLR 137 : (2004) 4 RCR(Civil) 537

Hon'ble Judges : Adarsh Kumar Goel, J

Bench : Single Bench

Advocate : S.K. Singh, for the Appellant; Vikas Chatrath, for the Respondent

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This order will dispose of Civil Revision Nos. 236 and 1230 of 2002. Facts have been taken from C.R. No. 236 of 2002.

2. This petition has been filed against order of the arbitrator dated 2.11.2001 rejecting amendment sought by the petitioners to set up counter claim. The application was admittedly made one and a half years after filing of the original claim/written statement.

3. Case of the petitioners is that they entered into an agreement dated 4.10.1995 with the Respondent-Corporation for milling paddy which was to be supplied to the Food Corporation of India or other government agencies. The petitioners were to deliver rice after milling paddy upto 28.2.1996 and in case of shortfall they were to pay 1.5 times the cost of paddy. Milling charges were agreed between the parties. Paddy was entrusted to the petitioners. The petitioners supplied deficient rice and the Corporation made a claim for Rs. 54,43,113/- with interest. The matter was referred to the arbitrator and the respondent-Corporation filed its claim against the petitioners.

4. The petitioners filed their reply on 27.1.2000. The respondent-Corporation led

its evidence and closed the same on 31.4.2001. The petitioners thereafter filed an application on 3.7.2001 seeking amendment in their reply to set up counter claim and raise other pleas on the ground that the earlier counsel did not incorporate relevant facts and figures. Amendment was opposed inter alia on the ground that the same was belated. The arbitrator rejected the application for amendment. It was observed that the petitioner Raghbir Singh was the sole proprietor of the firm and was aware of the facts and he could not bring new facts on the only ground of change of counsel. It was observed that on account of lapse of time, the respondent-Corporation acquired a valuable right..

5. Learned counsel for the petitioners contended that only ground on which amendment could be declined u/s 23(3) of the Arbitration and Conciliation Act, 1996 (for short, the Act) was that there was delay, while the arbitrator has not declined amendment only on the ground of delay but on the ground that Raghbir Singh petitioner was the sole proprietor and was aware of the facts.

6. Learned counsel for the respondent-Corporation raised a preliminary objection that no revision could lie at this stage against an interlocutory order declining amendment by the arbitrator. Reliance was placed on a DB judgment of this Court. In *Herike Rice Mills Vs. State of Punjab and Others*, . Learned counsel also relied on a DB judgment, of this Court in *Satish Chander Gupta and Sons Vs. Union of India (UOI) and Others*, , wherein validity of the Act was challenged on the ground that the award could be challenged only u/s 34 of the Act and there was no other provision under which the award could be challenged. Learned counsel for the respondents further submitted that the arbitrator was justified in rejecting the prayer for amendment and in this regard the said order can be sustained in view of principles of law laid down in *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others*, ; *Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co.*, ; *Heeralal Vs. Kalyan Mal and Others*, ; *Shri Nain Singh Bhakuni and Others Vs. Union of India and Another*, and *Vishwambhar and Others Vs. Laxminarayana (Dead) through L.Rs. and Another*, .

7. Learned counsel for the petitioners relied upon a SB judgment of this Court in *M/s. Subhash Chugh and Co. and Ors. v. M/s Girnar Fibres Ltd. and Anr.*, C.R. No. 5972 of 1999, decided on 7.9.2000, wherein distinguishing the judgment of this Court in *Harike Rice Mills (supra)*, it was held that though, in the said judgment, it was held that appointment of arbitrator could not be challenged, jurisdiction under Article 227 of the Constitution was wide enough to reach any illegality in the procedure of arbitrator even at interim stage. Even provisions of Section 5 of the Act prohibiting judicial intervention except in the manner provided in the Act was held to be no bar.

8. I have considered the rival submissions and perused the record of the case. Two questions arise for consideration:-

(i) Whether an interim order passed by an arbitrator appointed by parties under a private arbitration agreement is open to be questioned under Article 227 of the

Constitution?

(ii) Whether refusal to allow the petitioners to amend their reply and to set up counter claim calls for interference under Article 227 of the Constitution? Section 5 of the Act is as under:-

"Extent of judicial intervention.- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this part, no judicial authority shall intervene except where so provided in this Part." Section 34(2)(2) (v) of the Act is as under:-

"34(2) An arbitral award may be set aside by the Court only if -

(a) the party making the application furnishes proof that-

XX XX XX XX XX XX (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or failing such agreement, was not in accordance with this Partjor."

9. In Konkan Railway Corpn. Ltd. and Others Vs. M/s. Mehul Construction Co., , the Apex Court considering the background in which the Act was enacted while drawing inspiration from Uncitral Model Law of International Commercial Arbitration adopted by the United Nations Commission on International Trade Law, observed as under:-

"... To attract the confidence of International Mercantile community and the growing volume of India's trade and commercial relationship with the rest of the world after the new liberalisation policy of the Government, Indian Parliament was persuaded to enact the Arbitration and Conciliation Act of 1996 in Uncitral Model and, therefore in interpreting any provisions of the 1996 Act courts must not ignore the objects and purpose of the enactment of 1996. A bare comparison of different provisions of the Arbitration Act of 1940 with the provisions of the Arbitration and Conciliation Act, 1996 would unequivocally indicate that 1996 Act limits intervention of Court with an arbitral process to the minimum and it is certainly not the legislative intent that each and every order passed by an authority under the Act would be a subject matter of judicial scrutiny of a Court of law. Under the new law the grounds on which an award of a arbitrator could be challenged before the Court have been severely cut down and such challenge is now permitted on the basis of invalidity of the agreement, want of jurisdiction on the part of the arbitrator or want of proper notice to a party of the appointment of the arbitrator or of arbitral proceedings. The powers of the arbitrator have been amplified by insertion of specific provisions on several matters. Obstructive tactics is adopted by the parties in arbitration proceedings are sought to be thwarted by an express provisions inasmuch as if a part knowingly keeps silent and the suddenly raises a procedural objection will not be allowed to do so. The role of institutions in promoting and organising arbitration

has been recognised...," (underlining supplied).

10. In Punjab State Electricity Board Vs. Indure Limited, , It was observed by a Single Bench of this Court as under:- -

"18. On a consideration of the matter, it is found that the question of law raised by Shri Sarin about the maintainability of the present petition under Article 227 of the Constitution has substance. As stated earlier, a Division Bench of this Court has, in M/s Harike Rice Mills (supra), already considered a similar issue and has taken a view with regard to the stage at which appointment of an arbitrator can be challenged by an aggrieved party. Since the Division Bench of this Court has" taken a view in the matter, I feel bound by that view. Section 12 specifies the grounds for challenge and Section 13 lays down the procedure for challenge. In that view of the matter, the allegations put forward by the petitioner-Board do not require an examination in the present petition. Once the petition is held to be not maintainable in the light of provisions of Section 13 of the 1996 Act, the allegations levelled against the arbitrator need no examination or finding.

19. In the result, the petition filed by the Board under Article 227 of the Constitution is dismissed with the observation that it is not maintainable in the light of the provisions contained in Section 13 of the 1996 Act. The Board is at liberty to challenge the award at the appropriate stage as provided u/s 13 read with Section 34 of the 1996 Act and also challenge at that time and appointment of the arbitrator, if so advised. No costs."

11. In M/s Mangayarkarasi Apparels Pvt. Ltd. Bangalore and Anr. v. Sundaram Finance Ltd., Chennai,"" 2002(2) Madras Law Journal 444, a Single Bench of the Madras High Court held as under:-

"28. In the circumstances, following the Supreme Court judgments in The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay, , Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others, and Kapur Chand Jain Vs. B.S. Grewal and Others, , this Court holds that a revision under Article 227 is not maintainable as against the order of rejection of memo passed by Mr. Y.K. Rajagopal, Arbitrator appointed under the commercial transaction between the two private parties in terms of the bilateral Hire Purchase agreement entered between them."

It was further, observed following decisions of the Apex Court in M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., , Achutananda Baidya Vs. Prafulla Kumar Gayen and others, and the Punjab National Bank Vs. O.C. Krishnan and Others, , that while exercising jurisdiction under Article 227 of the Constitution, High Court cannot interfere unless there is flagrant violation of fundamental principles of law or justice.

12. In Subhash Chugh"s case (supra), though a petition under Article 227 was entertained, judgments of the Apex Court in Engineering Mazdoor Sabha, Rohtas

Industries and Associated Cement Companies case (supra) do not appear to have been brought to the notice of this Court. Following those judgments a learned Single Judge of the Madras High Court in M/s Mangayarkarasi's case (supra) has held that a petition under Article 227 of the Constitution will not lie to challenge an interim order of an arbitrator appointed under a private agreement between the parties. Same is the view expressed by this Court in Harike Rice Mills and Punjab State Electricity Board case (supra). View taken in Subhash Chugh 's case (supra) cannot thus, be held to be a precedent for holding that an interim order of arbitrator is open to be challenged under Article 227 of the Constitution.

13. On merits, the Arbitrator has given reasons for rejecting prayer for amendment which was highly belated and was found to be without any justification having been filed merely on the ground of change of counsel. In view of principles governing exercise of jurisdiction under Article 227 of the Constitution, as laid down by the Apex Court in Estralla Rubber, Dass Estate (P) Ltd., Acutananda Baidya v. Prafulya Kumar Gayen and Punjab National Bank's case (supra), no interference is called for. Moreover, the petitioners will have a remedy to raise these contentions while challenging the final award u/s 34 of the Act.

For the above reasons, answer to the questions posed above has to be as under:-

(i) The petition under Article 227 of the Constitution will not lie against an interim order by an arbitrator appointed under a private agreement between the parties.

(ii) Order of the arbitrator declining to permit amendment to set up counter claim or to take other claims is not open to be challenged in exercise of jurisdiction under Article 227 of the Constitution though the petitioners may question the same u/s 34 of the Act, if so advised.

For the above reasons these revision petitions are dismissed.