
(2016) 03 SHI CK 0036
In the High Court Of Himachal Pradesh
Case No : Arb. Appeal No. 11 of 2015

Himachal Pradesh Housing and Urban Development Authority
and Others

APPELLANT

Vs

Kundan Lal Hari Ram and Company

RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 21, Section 34, Section 37, Section 43

Citation : (2016) 162 AIC 317 : (2016) ILRHP 266

Hon'ble Judges : Sanjay Karol, J.

Bench : Single Bench

Advocate : C.N. Singh, Advocate, for the Appellant; Suneet Goel, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Sanjay Karol, J.—1. In this appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act"), appellant Himachal Pradesh Housing & Urban Development Authority (hereinafter referred to as the "Board") has laid challenge to the order dated 25.8.2015 passed by learned District Judge, Shimla, H.P. in Arb. Case No. 2-S/2 of 2010, titled as M/s. Kundan Lal Hari Ram & Company v. Himachal Pradesh Housing & Urban Development Authority and another, whereby Award dated 31.3.2010 passed by Arbitrator-cum-Superintending Engineer, Arbitration Circle, HP. PWD, Solan, stands quashed and set aside, with the matter being remanded back to the very same Arbitrator for adjudication of the disputes afresh.

2. Certain facts are not in dispute. With regard to construction of Social Housing Scheme at Kasumpti Zonal Centre, the Board awarded certain works to the claimant M/s. Kundan Lal Hari Ram & Company (respondent herein). Work allotted vide agreement dated 17.10.1989 was to be completed within a period of 21 months. Certain disputes having arisen between the parties, claimant issued notice dated 20.4.1996, calling upon the competent authority to appoint

the Arbitrator, in terms of the agreement and refer the disputes for adjudication. What led to the issuance of notice was release of payment on 22nd October, 1993, which was in terms of final bill prepared by the Board. Notice dated 20.4.1996 stood received by the competent authority on 26.4.1996/15.5.1996. Undisputedly no action was taken thereupon, prompting the respondent to approach this Court, seeking appointment of the Arbitrator and such petition [Arb. Case No. 9 of 2002, titled as M/s. Kundan Lal Hari Ram & Co. v. H.P. Housing Board and another] so filed on 20.1.2002, came to be decided by this Court on 10.5.2002, in the following terms:--

"Reply not filed. Heard. It is not in dispute that there exists arbitration agreement and despite notice issued by the petitioner-contractor the respondents have failed to appoint Arbitrator. Therefore, this petition is allowed and the Superintending Engineer (Arbitration), HP. PWD Solan is appointed as Arbitrator to adjudicate the disputes raised by the petitioner-contractor. Objections, if any, of the respondents will be decided by the Arbitrator.

This order has been passed in view of the law down by the Supreme Court in Konkan Railway Corporation Ltd. and another v. Rani Construction Pvt. Ltd. , 2002 (1) Arb. L.R. 326 (SC)."

[Emphasis supplied]

3. Pursuant thereto, the Arbitrator passed his Award dated 31.3.2010 holding his appointment as also the claims of the respondent to be barred by law of limitation.

4. In a petition filed under Section 34 of the Act, the District Judge, while setting aside the award passed by the Arbitrator, has held the appointment of the Arbitrator to be within the period of limitation. However in a passing reference, in para -23 of the order, it also stands observed that even the claims of the respondent are within the period of limitation. Eventually he remanded the matter back to the Arbitrator for adjudication on merits.

5. Having heard learned counsel for the parties as also perused the record, one is of the considered view that the question of the claims being within limitation or not could not have been adjudicated either by the Arbitrator or the Court below. Once the Arbitrator had come to the conclusion that his appointment was beyond the period of limitation, he could not have adjudicated the matter and gone into the question of the claims being barred by limitation. Also what the Court below was required to consider was the question of the appointment of the Arbitrator being barred by limitation or not. Perusal of the impugned order reveals that the observations made by the learned District Judge in para - 23 of the order are in the nature of alibi, inasmuch as the primary issue before him was the appointment of the Arbitrator being barred by limitation and not with respect to the maintainability of the claims. No specific issue/point was framed for consideration. He was not adjudicating the validity of the claims, else there was no need to have remanded the matter back to the Arbitrator.

6. The Court below has rightly held the observations made by the Arbitrator qua his appointment to be barred by limitation, to be illegal, so as to fall within the statutory exceptions stipulated under Section 34 of the Act. To that extent, no fault lies with the impugned order.

7. The Arbitrator could not have sat over the judgment dated 10.5.2002 rendered by this Court, which undisputedly had attained finality, more so, in the light of the decision rendered by the apex Court in Schlumberger Asia Services Limited v. Oil & Natural Gas Corporation Ltd., , (2013) 7 SCC 562 wherein it is held that at the time of appointment of the Arbitrator, it is not for the court to go into the contentious issue inter se the parties, with regard to the claims being barred or not, which question is left to be adjudicated by the Arbitrator.

8. Also the Arbitrator failed to apply the relevant statutory provisions to the given facts and circumstances. The Arbitrator failed to consider that the reference was sought within three years from the date of receipt of payment made towards the final bill so passed by the Board. The Arbitrator also failed to consider the impact of Section 21 of the Act which read as under:--

"21. Commencement of arbitral proceedings. - Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

9. In the instant case notice issued on 20.4.1996 stood received by the competent authority on 26.4.1996. The Arbitrator could not have gone into the question of his appointment being barred by limitation.

10. While contending that the Court below was right in deciding the issue of the claims being barred by limitation or not, Mr. Suneet Goel, learned counsel invites attention of this Court to the decisions rendered by the Bombay High Court in Arbitration Petition No. 646 of 2015 alongwith Arbitration Petition No. 1683 of 2014, titled as Mehrunnissa Sheikh Abdul Rahim v. Rashidabai Allarakha, decided on 30.07.2015; Singhal and Brothers & another v. Mahanagar Telephone Nigam Ltd., , 2005 (5) BomCR 261, 2005 (3) MhLJ 951; as also by Gujarat High Court in First Appeal No. 3740 of 2006, titled as DLF Universal Limited v. State Bank of India, decided on 14.6.2011; and by the Punjab & Haryana High Court in Kartar Singh and Co. v. Punjab State Electricity Board, , (2007) 147 PLR 589, 2008 (1) ARBLR 616 PH.

11. The law with regard to the jurisdiction and scope of the Arbitrator is now well settled. In fact statutory provisions are unambiguously clear. The provisions of the Limitation Act, 1963, by virtue of Section 43 of the Act, are squarely made applicable to all arbitral proceedings. Only for the purposes of commencement of such proceedings, it stands clarified that limitation would commence from the date postulated under the provisions of Section 21 of the Act. Hence the issue as to whether, claims were barred by limitation or not could have been considered only by the Arbitrator and not by the Court below in the proceedings under

Section 34 of the Act.

12. As such the appeal is partly allowed and the observation made in para-23 of the impugned order, only with respect to the claims being within the period of limitation, is set aside. It shall be open for the Arbitrator to decide the question of the claims being barred by limitation.

13. The Arbitrator is directed to decide the claims expeditiously and certainly before 30th of June, 2016. Parties undertake to appear before the Arbitrator on 22nd March, 2016.

Appeal stands disposed of accordingly, so also the pending applications, if any.