
(2023) 02 KL CK 0231

In the High Court Of Kerala

Case No : Original Petition (C) No. 460 Of 2023

M. Rajeev Kumar

APPELLANT

Vs

Kerala Football Association

RESPONDENT

Date of Decision : 22-02-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Arbitration and Conciliation Act, 1996 — Section 24, 24(1)

Citation : (2023) 02 KL CK 0231

Hon'ble Judges : C.S Dias, J

Bench : Single Bench

Advocate : Anoop Bhaskar, Ammu Manoharan Narayanan, Sathya Sreekumaran

Final Decision : Dismissed

Judgement

C.S Dias, J

1. The original petition is filed, to set aside Ext.P7 order passed by the Arbitral Tribunal in I.A No.4/2023 in A.C 2/2021. The petitioners are the respondents 1 and 2 and the respondents are the claimant and the respondents 3 to 5 before the Tribunal.

2. The petitioners' case is that, even though they had filed I.A No.4/2023 before the Tribunal, to permit them to hold an oral hearing for presentation of their evidence, by issuing summons to the Secretary of the Kerala Football Association and to examine him, the Arbitrator, by the impugned order, has held that the application cannot be allowed at the present stage. Ext.P7 order is erroneous and unsustainable in law. Hence the original petition.

3. Heard; Sri.Anoop Bhaskar, the learned counsel appearing for the petitioners, on admission.

4. Sri.Anoop Bhaskar vehemently argued that the learned Arbitrator has passed Ext.P7 order in flagrant violation of Section 24 of the Arbitration and

Conciliation Act, 1996 (in short, 'Act'), and the law laid down by the Delhi High Court in Sukhbir Singh v. Hindustan Petroleum Corporation Ltd [2020 SCC OnLine Del 228]. In Punjab State Power Corporation Limited and another v. Emta Coal Limited and another [(2020) 17 SCC 93], the Hon'ble Supreme Court has held that this Court can interfere in the arbitral proceeding under Article 227 of the Constitution of India, if there is patent lack of inherent jurisdiction. Thus, Ext.P7 order is liable to be set aside.

5. The petitioners have filed Ext.P2 application under Section 24 (1) of the Act, seeking the following relief:

"For the reasons set-forth in the accompanying affidavit, this Hon'ble Arbitral Tribunal may be pleased to grant an order permitting respondent Nos.1 &2 to hold oral hearings for the presentation of evidence by issuing summons/notice to the Secretary of Kerala Football Association to examine him."

6. Section 24 of the Arbitration and Conciliation Act, 1996, reads as follows:

"24. Hearings and written proceedings: (1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials:

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held:

[Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-today basis, and not grant any adjournment. Unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause"].

7. The learned Arbitrator, by Ext.P7 order, has held thus:

"16. Anyway granting permission to examine the Secretary or issuing notice to him for his presence at this stage is not allowed and these IAs have to be disposed, of course subject to the above observations. Points found accordingly.

17. In the result, these IAs stand dismissed. No cost."

8. A reading of Ext.P7 order shows that the Arbitrator has held that he was not inclined at the present stage to permit the petitioners to let in oral evidence.

9. A reading of the first proviso to Section 24(1) of the Act, reveals that the Arbitral Tribunal is conferred with the discretion to decide the stage at which the oral hearing has to be conducted. It is invoking the above discretion that the Arbitrator has deferred permission for oral evidence.

10. Even otherwise, Section 5 of the Act, mandates that no judicial authority shall intervene with the arbitral process except as provided under the provisions

of the Act.

11. The Hon'ble Supreme Court, in Bhaven Construction v. Executive Engineer, Sardar Sarovar, Narmada Nigam Ltd [(2022) 1 SCC 75] and Deep Industries Ltd v. Oil and Natural Gas Corporation [(2020) 15 SCC 706], has categorically held that the High Court shall only in the case of exceptional rarity interfere in the arbitral process under Articles 226 or 227 of the Constitution of India.

Going by Ext.P7 order passed by the Arbitral Tribunal, I am of the definite view that the case on hand is not a case falling within the category of exceptional rarity. Thus, I am not inclined to entertain the original petition. Thus, without prejudice to the right of the petitioners to work out their remedies, in accordance with law, the original petition is dismissed.