
(1990) 10 DEL CK 0016

In the Delhi High Court

Case No : Interim Application No's. 5703, 5706, 5707, 5708 and 5713 of 1990
and Suit No's. 1911, 1912, 1913, 1914 and 1915 of 1990

Madhusudan Timber Industries

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-10-1990

Acts Referred:

Citation : (1991) 1 ARBLR 252 : (1991) 43 DLT 335 : (1990) 2 ILR Delhi 521

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : O.P. Popli, V.K. Gupta, Rajesh Benati and R.M. Bagai, for the
Appellant;

Judgement

P.K. Bahri, J.

(1) This application has been moved u/s 41 read with Schedule II of the Arbitration Act. praying that the Court should direct the stay of operation of The order of de-registration of the petitioner from made by the respondents on July 11, 1990.

(2) This application has been moved in a petition filed u/s 20 of the Arbitration Act. The facts, in brief, are that in response to the invitation of tenders issued by the respondents. the petitioner had submitted its tender for supply of 2000 boxes C-33A each to Ordnance Factory, Khamaria and Ordnance Factory, Chanda. The tender of the petitioner was accepted by the respondents on January 18, 1989. According to the petitioner, it had supplied the entire store under the aforesaid supply orders after they were manufactured under strict inspection procedure and quality control measures adopted by the respondents, and no sub-standard plywood was used in the manufacture of the said supplies and the supplies were also accepted by the respondent without any defects being pointed out. However the respondents issued a letter dated October 3, 1989, after five months of the supplies being made, intimating the petitioner that the supplies stood rejected as the plywood used was sub-standard and the petitioner was

called upon to make immediate replacements. It is alleged that the respondents in an illegal and high-handed manner made a recovery of Rs. 46600 by way of price reduction. So it pleaded that disputes have arisen between the parties with regard to the wrongful rejection of 400 Nos. boxes and withholding of Rs. 9,320 in respect of one supply order and Rs. 46,600 in respect of the second supply order and regarding the claim of the petitioner of interest @ 21% per annum, It was pleaded that the said dispute are covered by the arbitration clause and thus a prayer was made in the petition that the agreement for arbitration be directed to be filed and arbitrator he nominated in accordance with the arbitration clause.

(3) On September 27, 1990, counsel for the respondents informed the court that an arbitrator in accordance with the arbitration clause had been duly appointed and the disputes have been referred to the arbitrator. On that date, the main petition was disposed of with the directions that the disputes raised in the petition shall stand referred to the already appointed arbitrator, who shall decide the disputes in accordance with law.

(4) Now the question which arises for consideration is whether the petitioner is entitled to the relief claimed for in the application, referred to above. It is the admitted case that the petitioner was earlier de-recognised by the respondents and the petitioner filed a writ petition, which was allowed to the effect that the respondents were required to serve show cause notice before taking any action regarding de-recognition of the petitioner. Thereafter, it is an admitted fact that a proper show cause notice was served on the petitioner and after considering the reply of the petitioner, the respondents have passed the impugned order de-recognising the petitioner. It is also the admitted fact that the petitioner had filed a writ petition challenging the impugned show cause notice but the said writ petition was dismissed vide order dated May 17, 1990 by the Division Bench of this Court. I make it clear that similar applications have been moved in Suit No. 1911/90, 1913/90, 1914/90 and 1915/90 and the respondents have filed the reply only in Suit No. 1915/90 to the corresponding application (I A 5703/90). It was agreed that the contents of the said reply be taken into consideration for deciding the similar type of applications moved in all these cases.

(5) A detailed reasoned order dated July 11, 1990 has been passed by Brigadier Harbans Singh, Officiating Director of Quality Assurance, by which the petitioner firm had been derecognized for a period of three years from the date of issuance of this order on account of supply of defective/sub-standard stores.

(6) The counsel for the respondents has vehemently argued that under the provisions of Section 41 of the Arbitration Act no injunction order can be issued by this court as de-recognition of the petitioner firm is foreign to the actual disputes arising for decision in the arbitration matter. He has placed reliance on H.M. Kamaluddin Ansari and Co. Vs. Union of India (UOI) and Others, . Section 41(b) of the Arbitration Act reads as follows :

41. Subject to the provisions of this Act and of rules made there under:-

(A)the provision of the Code of Civil Procedures, 1908, shall apply to all proceedings before the- Court, and to all appeals, under this Act, and

(B)the Court shall have, for the purpose, of, and in relation to) arbitration proceedings, the same power of making orders in respect of any of the matters set out in the Second Schedule as it has for the purpose of, and in relation to, any proceedings before the Court :

PROVIDED that nothing in clause (b) shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with respect to any of such matters."

(7) In the cited case, facts in brief were that a contract for supply of books was awarded but the contract was cancelled as books were not supplied in accordance with the terms of the contract. The DGS&D had made a risk purchase incurring extra costs and had served a notice on the contractor to pay the amount failing which alternative arrangements would be made for recovery of the amount. There were other contracts made between the parties and some amounts became due to the contractor in the other contracts and the Union of India had threatened to withhold the amount due to the contractor in the other contracts in order to cover up the. claim of the Union of India in respect of the contract in question.

(8) The contractor had moved a petition u/s 33 of the Arbitration Act pleading that there was no concluded contract and thus no liability could be imposed on him for failure to supply the goods. The application for grant of injunction was moved re training the Union of India from withholding any amount due to the contractor under the other contracts. The short question which arose for decision before the Supreme Court was whether the application for injunction til? the disposal of the main petition was entertainable u/s 41(b) of the Arbitration Act, The Supreme Court clearly held that before granting any injunction under clause (a) of Section 41, it must be proved that the condition- of clause (b) of the said Section are satisfied, otherwise clause (b) would become otiose. The Supreme Court upheld the order of the High Court declining to grant injunction, holding that the injunction sought was not pertaining to the matter covered by clause (b) of Sec 41.

(9) In the present case also, the question whether the petitioner should be de-recognised for future supplies, is not a matter pertaining to the arbitration proceeding. The injunction is not being sought for the purpose of and in relation, to arbitration proceedings. The arbitrator has to only consider whether there has occurred breach of contract in respect of the contract in question. Hence the provisions of S. 41(b) are not satisfied by the petitioner turn seeking the injunction pertaining to the order of de-registration passed by the respondents.

(10) In the present case, the respondents have invoked their administrative powers in cancelling the recognition of the petitioner for future supplies for a period of three years although the main bases for invoking the said

administrative power is the alleged default of the petitioner in making defective supplies in the contract in question. The disputes pertaining to the contract in question are referable to arbitration but it cannot be said that injunction in the present case is being sought for the purpose of and in relation to arbitration proceedings.

(11) The only principles to be kept in view by the administrative authorities while exercising the administrative powers are that they must act fairly and if any order is to be passed to the prejudice of any person, the said person should be given a fair opportunity of hearing. The fair opportunity of hearing involves issuance of a show cause notice, which admittedly in the present case has been given to the petitioner.

(12) In *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, the Supreme Court has laid down that black-listing has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for the purpose of gains and when the State acts to the prejudice of a person, it has to be supported by legality and a person must be given an opportunity of hearing before his name is put on the black-list.

(13) It is not the case of the petitioner that no such opportunity of hearing has been afforded to the petitioner.

(14) The counsel for the petitioner has vehemently argued that the petitioner has a good prima facie case to show that in fact no defective goods have been supplied and thus the balance of convenience being in favor of the petitioner, the operation of the impugned order should be stayed by this court by passing an injunction order.

(15) The parameters of exercise of judicial review of administrative acts are now well settled as has been culled out by the Supreme Court in *Commissioner of Income Tax, Bombay and Others Vs. Mahindra and Mahindra Limited and Others*. The Supreme Court has approved the following passage appearing at pages 285-286 in Prof. de Smith's treatise *Judicial Review of Administrative Action* (4th edition):

THE authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith. It must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of

an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories: failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account; and where an authority hands over its discretion to another body it acts ultra vires. Nor, is it possible to differentiate with precision the grounds of invalidity contained within each category."

(16) It is also very clear that in judicial review of administrative actions, the only thing to be seen is whether the said act of the administrative body is lawful or legal. The reasonableness of the reasons of the administrative body in passing an administrative order cannot be subject to judicial review by the court. It was well observed in "Administrative Law" by H.W.R. Wade in its sixth edition at page 37 that the Court's duty is to confine itself strictly to the question of legality and if the administrative authority has acted within its powers and according to law, it is no business of the court to interfere. The law draws the boundaries within which the administration is a free agent. The learned author at page 407 of the same book has observed that if the decision of the administrative authority is within the confines of reasonableness, it is no part of the court's function to look further into the merits. The learned author has quoted the observations of Lord Hale to the effect that two reasonable persons can perfectly, reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable. It is quite clear that courts would apply the principles of natural justice to cases of administrative character and what those principles of natural justice are that a person, who is to be prejudicially affected, should be made aware of the facts being taken note of by the administrative authority in order to enable that person to make any representation whatsoever pertaining to those facts and thereafter the administrative authority, after due consideration of those facts can come to any decision and such a decision which is arrived at by the administrative authority acting fairly, is not then open to challenge by judicial review unless the administrative authority has committed any illegality in passing such administrative order. The parameters of judicial review of administrative acts have been already noted above and counsel for the petitioner has not been able to show how the decision of the respondents in the present case is covered by any of such parameters.

(17) Mere facts that there exist some benifice disputes between the parties with regard to supplies made by the petitioner. does not debar or disable the respondent to was any administrative order regarding de-recognising the petitioner firm for future supplies based on similar disputes, after giving show came notice to the petitioner and coming to an honest opinion that infact it is a fit case where the petitioner should be de-recognised for future supplies for a period of three years. Unless and until it is shown that either the administrative order. is passed capriciously or arbitrarily or is passed on no material at all, it cannot be said that the order is illegal and the court can grant injunction for

staying the operation of such an order. At any rate, in the present case, the petitioner has not been able to make out a case where the court should exercise its discretion in its favor for passing the interim injunction order, as grayed for.

(18) Tile application is thus dismissed.

(19) In the other applications of the other suits, same arguments have been advanced and those applications are also liable to be dismissed Ordered accordingly.

(20) A copy of this order be placed in each of those suits.