

(2011) 12 CHH CK 0041

In the Chhattisgarh High Court

Case No : Civil Revision No. 86 of 2011 with CR. No. 87 of 2011

Manish Pipes Pvt. Ltd., Raipur

APPELLANT

Vs

State of Chhattisgarh and another

RESPONDENT

Date of Decision : 15-12-2011

Acts Referred:

Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 — Section 17A, 19, 7
Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 — Section 7(1)

Citation : (2012) 1 MPHT 79

Hon'ble Judges : I.M. Quddusi, J;Gulam Minhajuddin, J

Bench : Full Bench

Advocate : B.P. Sharma, for the Appellant; Vinay Harit, Dy. Advocate General for the State/Respondents, for the Respondent

Final Decision : Allowed

Judgement

G. Minhajuddin, J.—The aforesaid civil revisions have been filed u/s 19 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (in short "the Act, 1983") against the order dated 20-5-2011 passed by Chhattisgarh Madhyastham Adhikaran, Raipur, whereby the application of the applicant u/s 17-A of the Act, 1983 has been treated as an application for withdrawing both the Reference Cases filed u/s 7 of the Act, 1983 with liberty to approach Appropriate Court/ Forum under the Arbitration and Conciliation Act, 1996, and allowed to that extent only, but the prayer of the applicant for refund of the Court fee paid alongwith both the reference cases have been refused. Brief facts of the case are that in respect of two works contracts that the dispute arose between the parties and as per arbitration clause contained in the work contracts, the dispute was referred to the arbitrator, against whose awards the abovementioned two reference cases, i.e., Ref. Case Nos. 1/09 and 1/10 were filed u/s 7 of the Act, 1983 before the Chhattisgarh Madhyastham Adhikaran (in short "the Tribunal"). However, during pendency of both the reference cases, the Hon'ble Supreme Court in the case of V.A. Tech Escher Wyass Flovel Ltd. Vs. M.P.S.E. Board and another, reported in 2010 (2) M.P.H.T. 13 (SC) : 2010 Arb.W.L.J. 116 (SC), laid

down that even in a work contract if there is an arbitration clause, then the jurisdiction of the Arbitration Tribunal constituted under the Act, 1983 stands ousted and the reference is to be made under the provisions of the Arbitration and Conciliation Act, 1996 (in short "the Act, 1996"). Therefore, keeping in view the law laid down by the Hon''ble Apex Court in the aforesaid judgment, an application on behalf of the applicant was moved in Reference Case No. 1/09 u/s 17-A of the Act, 1983 intimating the Tribunal that in view of the judgment of the Hon''ble Apex Court in the matter of V.A. Tech Escher Wyass Flovel Ltd. (supra), the Tribunal has no jurisdiction to decide the reference and for passing appropriate orders. However, the Tribunal treating the said application as an application for withdrawing both the reference cases with liberty to approach Appropriate Court/Forum under the provisions of the Act, 1996, allowed the application to that extent, but, vide Para 8 of the impugned order, refused to grant refund of the Court fee, which was deposited alongwith both the reference cases. It is against this refusal to refund the Court fee, that the present revision petitions have been filed.

2. The dispute arising out of the work contract between the parties was referred for arbitration under Clause 17 of the agreement to the Arbitral Tribunal and against the order passed by the Arbitral Tribunal on 3-3-2009, that reference was made u/s 7 of the Act, 1983 to the Tribunal.

3. Contention of learned Counsel for the applicant is that when the Tribunal after considering his application u/s 17-A of the Act, 1983 as an application for withdrawal of reference with liberty to file the same before the Appropriate Court/ Forum under the provisions of the Act, 1996, has returned the reference for presentation before the Appropriate Forum, then the Tribunal has no jurisdiction to refuse refund of the Court fee paid alongwith the reference.

4. On the other hand, learned Counsel for the State/respondent has supported the impugned order so far as it relates to non-refund of the Court fee. In support of his contention, learned Counsel has submitted photocopies of the judgments in the matters of Mt. Ananti Vs. Chhannu and Others Smt. Sisir Kana Guha and others Vs. Ayakar Grihanirman Samabaya Samity Ltd. and another, AIR 2002 Cal 247; Jankan Devi Vs. Smt. Leelan Devi, 2000 AIHC 2424 (HP), and Exphar SA and Another Vs. Eupharma Laboratories Ltd. and Another,

5. Heard learned Counsel for the parties, perused the material available on record as well as the impugned order.

6. It is not in dispute that an agreement was entered into between the parties relating to a work contract and on arising of a dispute, as per Clause 17 of the agreement, the same was referred to the Arbitral Tribunal, which passed the order dated 3-3-2009, against which the present applicant has made reference u/s 7 of the Act, 1983 before the Tribunal constituted under the Act, 1983. However, during pendency of both the references, that judgment of the Hon''ble Supreme Court in the matter of V.A. Tech Esther Wyass Flovel Ltd. (supra),

came, in which the Hon''ble Supreme Court has observed as under :-

Section 7 (1) of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (for short "the 1983 Act") provides as follows :-

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.

Subsequently, the Parliament enacted the 1996 Act. The 1996 Act only applies where there is an arbitration clause but it does not apply where there is none. The 1996 Act covers all kinds of disputes including the dispute relating to work contracts.

In our opinion, the 1983 Act and the 1996 Act can be harmonised 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.

7. Thus, keeping in view the above observations of the Hon''ble Supreme Court, learned Counsel for the applicant moved an application u/s 17-A of the Act, 1983 before the Tribunal intimating it that as there is an arbitration clause in the agreement executed between the parties, therefore, in view of the judgment of the Hon''ble Supreme Court in the matter of VA Tech Escher Wyass Flovel Ltd. (supra), the Tribunal, constituted under the Act, 1983, docs not have the jurisdiction to decide the reference, and has prayed for passing of appropriate orders. However, the Tribunal, treating the said application u/s 17-A of the Act, 1983 as an application for withdrawal of the reference with liberty to file the same before the Appropriate Court/Forum under the provisions of the Act, 1996, has in Paras 7 and 8 of the impugned order has observed thus :-

In the light of VA Tech Escher Wyass Flower Limited''s case, we find that there is sufficient ground to return the reference with liberty to file fresh reference. In the light of above discussion, for granting permission to withdrawal under clause (b) of sub-rule (3) of Rule 1 of Order XXII and thereby under Regulation 53 (2) (b), it is not essential that reference must fail due to some formal defect. However, in the light of VA Tech Escher''s case, reference might fail due to lack of jurisdiction. The petitioner has filed application objecting the jurisdiction but in facts and circumstances of the case we treat application I.A. No. 3, filed by the petitioner challenging the jurisdiction of the Tribunal, as one filed for withdrawal of the petition with liberty to file fresh reference. If we hold that Tribunal is having no jurisdiction, still we will have to return the petitioner for filing before proper Court/ Forum. Therefore, treating I.A. No. 3 one for withdrawal with liberty to file fresh reference, we think it proper to direct that the petition be returned to the petitioner. Respondents have the opportunity to raise the objection that the relevant clause in the agreement does not amount to "arbitration clause" and hence 1983 Act shall be applicable, before the Court/ Forum, where the petitioner chooses to seek his remedies. Since the petition in

this case and that in Reference Case No. 1/10 arc being returned and thus both the case are being disposed, therefore, passing of any order, on I.A. No. 1 and LA. No. 2 filed by the respondents in this case and I.A. No. 1 filed in Reference Case No. 1/ 10, is not required.

8. The learned Counsel for the petitioner has contended that the Court-fee paid be refunded to the petitioner. Reliance, in this regard, has been placed on M/s Shri Bhaiyalal Shukla Vs. State of M.P., reported in 1998 A.T.L.R. 547. The facts of the above case are different. In that case the matter was compromised out of the Court and the petition was withdrawn. There was no occasion to file any fresh petition. In the facts and circumstances of the present case, we do not think it proper to invoke inherent powers for directing refund of the Court-fee.

8. Thus, in view of the above, it is clear that the Tribunal by its order dated 20-5-2011 has treated the application filed by the applicant u/s 17-A of the Act, 1983, for exercising inherent powers, as an application for withdrawal of the reference with liberty to file a fresh reference before the Appropriate Court/ Forum. As per law laid down by the Hon"ble Supreme Court in the case of V.A. Tech Escher Wyass Flovel Ltd. (supra), it is clear that when there is an arbitration clause in an agreement and even in cases of dispute relating to work contract, the Act. 1983 stands repealed and the reference has to be made before the Appropriate Court/Forum under the provisions of the Act, 1996. The present case is not a case of either rejection of plaint or a case in which after return of the reference, there is no Court/Forum available to the present applicant for getting his reference adjudicated because he has a remedy under the provisions of the Act. 1996. As such, the case laws cited by learned Counsel for the respondent in support of his contention are of no help to the respondent. When the plaint or a reference, as in the present case, is returned to the plaintiff or the applicant with liberty to present it before the Appropriate Court/Forum, then as a natural and necessary corollary, the Court fee has to be returned, and by refusing to refund the Court fee, there is no doubt that the Tribunal has committed a grave error of law and therefore, the impugned order dated 20-5-2011, so far as it relates to refusal to refund the Court fee. cannot be sustained.

9. In the result, both the revision petitions are allowed. The impugned order dated 20-5-2011, so far as it relates to non-refund of the Court fee lo the applicant, is hereby set aside. The applicant shall be entitled to refund of the Court fee paid alongwith both the reference cases, i.e.. Ref. Case Nos. 1/09 and 1/10. No order as to costs.