

(2002) 04 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : OMP (M) No. 6 of 1999

M/s. Bharat Ropeways

APPELLANT

Vs

M/s. Himachal Pradesh Horticultural Produce Marketing and
Processing Corporation Ltd. and Others

RESPONDENT

Date of Decision : 30-04-2002

Acts Referred:

Arbitration Act, 1940 — Section 11, 12, 5

Citation : (2002) 2 ShimLC 259

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : T.S. Chauhan, for the Appellant; Shrawan Dogra, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Verma, J.—This application under Sections 5, 11 and 12 of the Arbitration Act, 1940 (hereafter referred to as "the Act") seeking revocation of the authority of the sole Arbitrator already appointed and appointment of Anr. sole Arbitrator has been moved by the claimant/Petitioner (hereafter referred to as "the Petitioner").

2. The case of the Petitioner as made out in the petition is that Respondent No. 2 pursuant to the orders of this Court dated 9.6.1993, appointed an Arbitrator on 31.7.1993 but because of his transfer out of Shimla, he could not act as such, therefore, Anr. Arbitrator, i.e. Respondent No. 3, was appointed to arbitrate the disputes between the parties. Respondent No. 3, however, is alleged to have miscomputed the arbitral proceedings, has biased attitude against the Petitioner and has delayed the arbitral proceedings by not acting expeditiously. Hence the present application.

3. Respondent Nos. 1 and 2 resisted the application and filed a written reply to the application wherein it has been averred that the delay in finalizing the arbitral proceedings is because of the lapses on the part of the Petitioner who

had not been putting in appearance on various dates fixed for conducting the proceedings by the Arbitrator and that the application is liable to be dismissed on the sole ground of delay on the part of the Petitioner in moving the present application after a period of about two years of giving notice to the Arbitrator not to proceed with the arbitral proceedings because of the expiry of the statutory time for making award. On merits, the allegations that the Arbitrator has misconducted himself and the arbitral proceedings have been denied.

4. I have heard the learned Counsel for the parties and have also gone through the records.

5. It was contended by the learned Counsel for the Petitioner that the authority of the Arbitrator is liable to be revoked for the reasons that (i) he had delayed the conducting of the arbitral proceedings; (ii) he had shown bias against the Petitioner; and (iii) he has misconducted the arbitral proceedings.

6. Explaining the contention, the learned Counsel has submitted that the Arbitrator entered upon the reference sometime in the year 1994 and conducted a part of the proceedings till 7.4.1995 but thereafter he did not care to take any proceedings in the matter till 30.11.1996 which by itself is a reason for revoking his authority.

7. It was further contended that the Arbitrator is in collusion with the Respondents and has also misconducted the proceedings inasmuch he has failed to direct the Respondents to file reply to the interrogatories filed by the Petitioner in the form of affidavit. These acts on the part of the Arbitrator also render his authority liable to be revoked.

8. On the other hand, the learned Counsel for the Respondents has contended that the delay, if any, caused in conducting the arbitral proceedings is entirely attributable to the conduct of the Petitioner who had been repeatedly absenting from attending the proceedings and for a short while the proceedings could not be taken by the Arbitrator for the reason that the Arbitrator is a full-time public servant and he had to discharge other official duties also and in between he was transferred which disabled him to conduct the proceedings for some time and this cannot be said to be an intentional or deliberate act on the part of the Arbitrator and does not constitute the ground for revocation of his authority. It was also submitted that the Arbitrator is not bound by the procedural laws as are applicable to the Courts. The Arbitrator had reserved his judgment on the failure of the Respondents to answer the interrogatories by way of affidavit to be considered and decided at the time of final hearing. This act and conduct of the Arbitrator in no way, amount to misconducting of the proceedings.

9. It may be pointed out at the very outset that a valid submission to the arbitral proceedings once made, is irrevocable except with the leave of the Court u/s 5 of the Act. Before the Court exercises its jurisdiction to give leave to revoke the authority of an Arbitrator, it must be satisfied that its refusal to grant leave to revoke the authority of the Arbitrator will lead to substantial miscarriage of

justice. In exercising its discretion in granting the leave to revoke the authority of an Arbitrator, the Court has to be cautious and the powers must be used sparingly keeping in view the fact that the parties have chosen the Tribunal to decide their dispute and they cannot be lightly relieved from the Tribunal on flimsy grounds.

10. The leave for revocation of the authority of the Arbitrator can be granted by the Court on the following grounds:

- (i) Exercise of jurisdiction in excess of the jurisdiction vested in the Arbitrator or refusal to exercise the jurisdiction which vests in him;
- (ii) The Arbitrator misconducting himself or the proceedings;
- (iii) The Arbitrator being disqualified from acting as Arbitrator;
- (iv) There being a proven allegation of fraud against the Arbitrator; and
- (v) In other exceptional cases like unreasonable delay in conducting the arbitral proceedings incompetence of the Arbitrator etc.

11. Section 11 of the Act provides for removal of the Arbitrator (i) if he fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award; or (ii) has misconducted himself or the proceedings.

12. In the case in hand, the revocation of the authority of the Arbitrator/his removal as such is sought on the grounds that (i) he had delayed the conducting of the arbitral proceedings; (ii) he had shown bias against the Petitioner; and (iii) he has misconducted the arbitral proceedings. A perusal of the record of day-to-day proceedings as maintained by the Arbitrator in this case reveals that he entered upon the reference on 21.5.1994 when the parties were directed to present their claim/counter claim on 13.6.1994. Pursuant to the said directions, the parties through their counsel put in appearance before the Arbitrator on 13.6.1994 and 2.7.1994 and the matter was thereafter ordered to be taken up for further proceedings on 16.7.1994 by which date the Respondents were to file reply. However, on 16.7.1994 none appeared for the Petitioner and the proceedings were adjourned to 6.8.1994 when the Arbitrator was on leave. The matter was then taken up for proceedings on 1.10.1994 when it was adjourned on the request of the counsel for the Petitioner received through a letter dated 26.9.1994 and further proceedings were ordered to be conducted on 17.10.1994. Again, on this day a letter was received from the counsel for the Petitioner for adjournment and the matter thus stood adjourned for 8.10.1994. Nothing appears to have been done on 8.10.1994 nor anybody claims to be present before the Arbitrator on the said date and the matter came up before the Arbitrator on 22.10.1994 for further proceedings when some proceedings were taken and the matter was adjourned for 26.11.1994. On this date it appears that some interrogatories for discovery of certain facts were sent by the learned Counsel for the Petitioner to the Arbitrator through a letter and reply to the counter claim of the Respondents was also so sent and further proceedings were

then ordered to be held on 13.1.1995 when reply to the interrogatories was filed by the Respondents. The Petitioner was called upon to file rebuttal of the reply by 4.3.1995. On 4.3.1995 none put in appearance for the Petitioner before the Arbitrator and a letter requesting adjournment of the proceedings was received from the counsel for the Petitioner and by Anr. letter it was pointed out that the HPMC be directed to file reply to the interrogatories by affidavit. The Arbitrator took the view that the provisions of CPC were not applicable to the proceedings before him and the stand taken by the Respondents in the reply to the interrogatories was in conformity with the stand already taken by them, therefore, the effect of this stand would be seen at the time of hearing of the case. The next date for the proceedings was 25.3.1995 when the Arbitrator was busy on account of closing of the financial year and further proceedings were ordered to be held on 7.4.1995. On this date also the counsel for the Petitioner insisted that reply to the interrogatories must be in the form of affidavit whereas it was not conceded to by the counsel for the Respondents on the ground that CPC does not apply to the arbitral proceedings. The matter was then adjourned to 28.4.1995 for framing of issues and considering the question whether reply to the interrogatories must be in the form of affidavit. On 28.4.1995 issues were framed and the question whether interrogatories ought to have been replied on affidavit and if not what would be its effect, was left to be decided at the time of the final hearing. Further proceedings were to be held on 20.5.1995 when the Arbitrator was busy. Again on 27.5.1995 he was busy. It appears that in between he was transferred and remained officially busy because of the transfer, therefore, the next date was to be intimated to the parties. As per the contents in the day-to-day proceedings, it has been mentioned that from 24.6.1995 onward the Arbitrator could not undertake further proceedings because of his transfer on new assignments and then notices were issued to the parties for further proceedings for 30.11.1996. On this date none put in appearance for the Petitioner. Fresh notice to the counsel for the Petitioner was issued for 26.4.1997 when, again, nobody put in appearance for the Petitioner. However, a letter was sent by the learned Counsel for the Petitioner to the Arbitrator alleging misconduct by the Arbitrator and a copy thereof was sent to Respondent No. 1 also. It was noted that the allegations were baseless and a notice was ordered to be issued to the counsel for the Petitioner for 17.5.1997 to lead evidence by way of affidavit in support of the claimants. On 17.5.1997 no appearance was put in for the Petitioner for want of notice. Fresh notice was then issued for 28.6.1997. On this date also none put in appearance for the Petitioner despite notice. On this date ex parte proceedings could have been taken against the Petitioner but the Arbitrator thought it just and fair to give one more opportunity to the Petitioner to lead evidence in support of the claim by way of affidavit. Notices were issued to the counsel for the Petitioner as also to the Petitioner for 9.8.1997. However, this date of hearing was changed to 16.8.1997 as per telegraphic information sent to the parties. On 16.8.1997 none put in appearance for the parties but by a letter dated 9.8.1997 counsel for the Petitioner pointed out that since the time to pass award had expired, therefore, all the proceedings

if continued by the Arbitrator, would be illegal and invalid. In view of this intimation, the Arbitrator stopped the proceedings to wait for the result of proceedings regarding extension of time proposed to be initiated by the Petitioner before the appropriate Court.

13. It may be pointed out here that the Petitioner through its learned Counsel informed the Arbitrator in August 1997 that because of lapse of time for making the award, he should not proceed with the matter unless the time is extended and for that matter the Petitioner was approaching the appropriate Court. The Petitioner thereafter neither moved for extension of time for making award by the Arbitrator nor took any other steps in the matter till 28.4.1999 when the present petition was filed.

14. Against the aforesaid background and in view of the facts as stated therein, the delay in completing the arbitral proceedings and making the award by the Arbitrator is mainly attributable to the Petitioner itself whose counsel sought repeated adjournments and absented on various dates fixed for further proceedings in the matter and finally the Petitioner is responsible for the delay for non-prosecution of the matter during the period August 1997 till April 1999 during which period the arbitral proceedings were not conducted because of the conduct of the Petitioner itself. The - only delay which can be attributed to the Arbitrator is during the period May 1995 to November 1996. However, there is no dispute that the sole Arbitrator appointed in this case was to act as such in addition to his own duties which he was required to perform in his official capacity.

In between he was disabled from conducting the proceedings because of his transfer and new assignments. Therefore, it cannot be said that the Arbitrator delayed the proceedings intentionally, deliberately and with mala fide intention.

15. The allegation that the Arbitrator is biased against the Petitioner is not substantiated by anything cogent and reliable on the record. On the contrary, he had been affording opportunities to the Petitioner time and again despite the fact that either the adjournments were sought by the Petitioner or it was absenting from taking part in the proceedings.

16. The allegation regarding misconducting of the proceedings by the Arbitrator is based on the ground that he did not call upon the Respondents to give reply to the interrogatories filed by the Petitioner on affidavit. Once the Respondents were not willing to file reply to the interrogatories on affidavit, the course left open to the Arbitrator was to take this conduct on the part of the Respondents into account at the time of final hearing of the matter and that is precisely what he had ordered. Therefore, the allegation of misconducting the arbitral proceedings by the Arbitrator is not sustainable.

17. In view of the above discussion, none of the grounds pressed into service for revocation of the authority of the Arbitrator/his removal is substantiated. Therefore, the present application merits dismissal.

18. As a result, this application is dismissed.