

(1991) 12 DEL CK 0015
In the Delhi High Court
Case No : Suit No. 2991-A of 1988

National Research Development Corporation	APPELLANT
Vs	
Malwa Metal Powder Pvt. Ltd.	RESPONDENT

Date of Decision : 06-12-1991

Acts Referred:

Citation : (1992) 48 DLT 125

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : P.N. Bhardwaj, D.K. Aggarwal and Vivek Gambhir, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) The petitioner Corporation is a Government of India Undertaking and is authorised to use and license inventions, know- how; processes, expertise and projects discovered/developed by various Central Government Laboratories including Central Electrol Chemical Research Institute, Karaikudi for short "CECRI"). Previously the name of the petitioner was National Research Development Corporation of India and with effect from May 2,1987 the company was rechristened as National Research Development Corporation.

(2) The petitioner by agreement dated February 17, 1975 granted a license to one M/s. Metalika Ratlam to use a process developed by Cecri for the manufacture of iron powder from mill scale (scrap) by direct reduction technique covered by Patent No. 125604. The petitioner also provided the know-how of the said process to M/s. Metalika Ratlam with full rights in the said invention for a period of 14 years, commencing from the date of manufacture of the product. By a tripartite agreement dated February 19,1975 to which the petitioner, respondent and M/s. Metalika Ratlam were parties, the license and know-how/ invention/process for the manufacture of iron powder from mill scale by direct reduction technique was assigned to the respondent.

(3) The respondent in consideration of the aforesaid assignment/ transfer, agreed

to discharge/performance/observe all the liabilities, obligations and stipulations which were to be performed or observed by M/s. Metalika Ratlam by virtue of agreement dated February 17, 1975. It is not disputed by the parties that under the agreement the respondent was required to pay royalty @ 2 on the net ex factory sale price of iron powder manufactured by the respondent in accordance with the said invention/know-how for a period of 14 years starting from the date of manufacture. The royalties were to become due on the first day of April and October in every year. In the event of default in payment of royalty on the due dates, the respondent agreed to pay interest @ 12% per annum. To start with for sometime the respondent in accordance with terms and conditions of the agreement paid the following sums of royalty on the dates shown below : drawn on United Commercial Bank, Parliament Street.

30.9.1974 Rs. 5000 Vide D.D. No. 98/74/82879 drawn on United Commercial Bank, Parliament Street. 31.3.1975 Rs. 5,000.00 Vide D.D. No. RTM/2/699 dated 22.4.1975 on Bank of India Janpath. 31.3.1976 Rs. 5,000.00 Vide D.D. No. 5165 dt. 9.11.76 on Bank of India, Janpath, ` New Delhi. 30.9.1976 Rs.4,992.00 Vide D.D. No. RTM/4/1389 on Bank of India, Janpath, New Delhi. 31.3.1977 Rs. 7813.39 Vide D.D. No. RTM/4/2092 dated 5.5.1977 on Bank of India, Janpath. 30.9.1977 Rs. 10,134/96 Vide D.D. No. on Bank of India, Janpath, New Delhi. 31.3.1978 Rs. 7,334.11 Vide D.D. No. RTM/5/1628 on Bank of India.

(4) From April 1,1978 the respondent ceased to pay the royalty to the petitioner. Thereupon correspondence ensued between the parties. No payment, however, was made by the respondent. By letter dated May 28, 1981 the petitioner requested the respondent company to file royalty returns from September 30. 1978 to September, 30)1980 Along with a demand draft for the amount due within 15 days from the issue of the said letter. The respondent by its letter dated June, 12, 1981 addressed to the Senior Development Officer of the petitioner company took the stand that the mill scale process had to be given up by them as the apparent density of the resultant product viz iron powder was poor and much below the requirement of the customers. It was pointed out that the respondent had started using another process which was known as "Electrolytic Deposition process". It was also requested that the demand for royalty be waived. By another letter of the petitioner dated October 1,1981 attention of the respondent was invited to Clause 3(1) of the agreement according to which the payment of royalty was obligatory. It was also pointed out therein that it was not open to the licensee to claim any exemption from payment of royalty on the ground of having used their own know-how or having effected any improvement upon the invention of the CECRI. In reply the respondent by letter dated November 27, 1981 totally disclaimed its liability under the agreement and also claimed from the petitioner company a sum of Rs. 25,000.00 which was paid by way of advance to the company at the time of entering into the agreement. After this reply some more letters appear to have been written by the petitioner to the respondent asking the latter to pay the royalty. But the respondent's response was always to the effect that no amount

"was due to the Corporation and in fact they had to recover an amount of Rs. 25,000.00 already paid to the Corporation. In addition the respondent also claimed reimbursement on account of loss suffered by it due to use of obsolete process developed by CECRI. The last disclaimer of the respondent on record is dated February, 4, 1985.

(5) Having failed to receive the royalty from the respondent the petitioner has filed the present petition u/s 20 of the Arbitration Act for reference of the disputes relating to payment of royalty to the arbitrator named in the agreement.

(6) I have heard the learned Counsel for the parties.

(7) Learned Counsel for the petitioner has invited my attention to Clause 12 of the agreement. According to this clause any dispute or difference between the parties is required to be referred to the sole arbitration of the Chairman of the petitioner company. Learned Counsel submitted that the respondent was liable to pay royalty for 14 years commencing from the date of manufacture. According to him the royalty was required to be paid up to the year 1989. On the other hand learned Counsel for the respondent submitted that the respondent was not liable to pay any royalty to the petitioner inas much as direct reduction technique was a technology which was obsolete and the respondent had to incur loss by utilising the same. It was further submitted that the direct reduction technique was dropped and a totally different process was introduced. According to the learned Counsel the petition needs to be dismissed on the ground of being barred by limitation. It was also urged that the respondent had disclaimed its liability by letter dated June 12, 1981 which was followed, by further disclaimer dated November 27, 1981, October 30, 1984 and February 4, 1985. According to the learned Counsel the petition could have been filed by the petitioner within three years from June 12, 1981 and the petition having been filed only on November 26, 1988 and re-filed on November 29, 1988 was clearly barred by time. I have considered the respective contentions of the learned Counsel for the parties.

(8) In order to appreciate the respective contentions of the parties. reference to Article 137 of the Limitation Act would be necessary. Article 137 of the Limitation Act reads as under :

"Description of Period of Time from which Suit Limitation period begins to run. Any other application Three Years When the right to corporation for which no apply accrues." period of limitation is provided elsewhere in this Division.

(9) This Article has a wide application. The expression "any other application" is not hedged in by any limitation. The words are broad based so as to fit in with various types of applications which may be filed in civil proceedings. The applications contemplated under Article 137 are not confined to one under the Code of Civil Procedure. The sweep of the Article will embrace an application under the Arbitration Act as well. Therefore Article 137 would apply to an application u/s 20 of the Arbitration Act. The period of three years prescribed under Article 137 will start from the date when the right to apply accrues.

Previously the view was that the said Article applied to applications under the CPC alone and to no other applications. This view does not hold good in view of the judgment of the Supreme Court in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, wherein it was held that Article 137 will apply even to the applications which are not contemplated under the Code of Civil Procedure. In this regard their Lordships observed as follows:

"18.The alteration of the division as well as the change in the collocation of words in Article 137 of the Limitation Act, 1963 compared with Article 181 of the 1908 Limitation Act shows that applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure. In the 1908 Limitation Act there was no division between applications in specified cases and other application as in the 1963 Limitation Act. The words "any other application" under Article 137 cannot be said on the principle of *ejusdem generis* to be applications under the CPC other than those mentioned in Part I of the third division. Any other application under Article 137 would be petition or any application under, any Act. But it has to be an application to a Court for the reason Sections 4 and 5 of the 1963" Limitation Act speak of expiry of prescribed period when Court is closed and extension of prescribed period if applicant or the appellant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application during such period".

(10) At another place the Supreme Court held as under :

"22.The conclusion we reach is that Article 13.7 of 1963 Limitation Act will apply to any petition or application filed under any Act to a Civil Court. With respect we differ from the view taken by the two Judge Bench of this Court in *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, and hold that Article 137 " of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act".

(11) Therefore in view of the observations of the Supreme Court the controversy has been set at rest and there is no manner of doubt that Article 137 will apply to the applications under the Arbitration Act as well. The position in law as noticed by this Court in *New Delhi Municipal Committee v. Mis. Tirath Ram Ahuja (P) Ltd. and Another*. Air 1980 Delhi 185 is as follows:

"II.the present petition u/s 20 of the Arbitration Act is also barred by limitation as provided by the Indian Limitation Act. There is no specific article of the Schedule of Limitation Act which applies to such a petition. There is one residuary Article 137 which provides limitation of three years, from the time right to apply accrues. Previously the view was that said article applied to petitions under the CPC only and none other. This view was expressed in the judgment of this Court also *Union of India Vs. Rishi Raj and Co., Delhi*, referred to above) but

the aforesaid view was changed later on and it was held by the Supreme Court in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, that the applications contemplated under Article 137 are not confined to the ones under the CPC and the said article applied to all the applications under any law whatsoever. Hence in view of that judgment of the Supreme Court Article 137 has application to the petitions under Sec. 20 of the Arbitration Act."

(12) To the same effect are the judgments of the Supreme Court in *Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority*, and judgment of the Delhi High Court in *Shah Construction Co. Ltd. Vs. Municipal Corporation of Delhi*, .

12.The upshot of above discussion is that a party can invoke the provisions of Section 20 of the Arbitration Act within three years of the accrual of the cause of action. In the instant case limitation started running from the date when the respondent denied its liability to pay the royalty. The argument of the learned Counsel is that the agreement was to remain in force for 14 years and the right to recover royalty continued to be available up to year 1992 that is within three years of the end of the period during which the petitioner was liable to pay royalty. Clause 3(i) of the agreement reads as under:

"3.The grantee will, during the continuance of the license observe and perform the covenants and provisions following, that is to say: (i) During the period of the said term the Grantee will pay to the Corporation for 14 years a royalty of 2 1/2 on the net ex-factory sale price of the iron powder manufactured by him in accordance with the said invention and marketed by him. Such royalties shall become due on the First day of April and on the First day of October in every year, in respect of the iron powder manufactured and marketed or used by the Grantee during the preceding half year and shall be paid by the First day of May, and First day of November of that year. In default of payment of such royalties on the due dates, the Grantee shall pay interest on the amount in default at the rate of Twelve per cent per annum".

(13) No doubt Clause 3(i) postulates that the respondent will be liable to pay royalty for a period of 14 years commencing from the date of manufacture of the iron powder but the respondent by letter dated November, 17, 1981 had explicitly denied its liability to pay under the agreement. The relevant portion of the letter reads as follows :

In the light of what we have stated above it is contended that Royalty can be taken only if the technical know-how in fact was suitable for the manufacture of Iron Powder of requisite quality. The agreement was signed on that supposition and on that presumption. No royalty can Therefore be charged if this basic assumption proved to be false. After all consideration for payment of royalty was the supply of technical know-how with the aid of which iron powder of the requisite quality could be produced. But as stated above this basic presumption proved, to be wrong. The Nrdc itself admits this fact that the know-how was not adequate. It Therefore knocks down the entire consideration for payment of

royalty. It follows from this that even if it is written in the agreement that royalty will be paid if different know-how is used that Clause is not binding in law as you cannot recover any royalty without an element of quid pro quo. In other words Nrdc cannot enforce that Clause because that involved an agreement to pay money without consideration and Therefore not enforceable in law".

(14) As manifest from above the respondent challenged the very basis and foundation on which the royalty was claimed by the petitioner. It had clearly taken the stand that the aforesaid Clause relating-to payment of royalty was enforceable at law. According to the petitioner the agreement stood vitiated being without consideration. Therefore the cause of action to file the application accrued to the petitioner when the respondent totally disclaimed and denied its liability to pay the royalty under the agreement. Where the party challenges the very foundation and basis of the agreement on a particular date, the cause of action would accrue to the other party on the said date. As .noticed above, it is not disputed that on June 12, 1981 the respondent disclaimed its liability to pay the royalty. This was followed up by letters dated November 27,1981, October, 30, 1984 and February 4, 1985 in which the respondent specifically stated that it was not liable to pay royalty as it had to switchover to another system for manufacture of iron scrap. In view of this disclaimer the petitioner ought to have filed the petition u/s 20 within three years from June 12. 1981 or latest within three years from February. 4, 1985 i.e. by February 3. 1988. The petition has been filed on November. 25, 1988 which is clearly time barred.

(15) In view of the aforesaid discussion the petition is dismissed but with no order as to costs.