

(2000) 12 OHC CK 0038
In the Orissa High Court
Case No : Misc. Judicial Case No. 291 of 1999

Niranjan Soren

APPELLANT

Vs

Senior Regional Manager, Hindustan Petroleum Corporation
Ltd.

RESPONDENT

Date of Decision : 15-12-2000

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(1), 34, 34(1), 36, 42
Civil Procedure Code, 1908 (CPC) — Section 2(1)

Citation : (2001) 92 CLT 218 : (2001) 1 OLR 131

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

Bench : Single Bench

Advocate : M/s Sisir Das, S.K. Sanganeria, A.K. Mohanty and R.K. Sahoo, for the Appellant; M/s Biswanath Rath, J.N. Rath, S.K. Jethi, R. Misra, B.B. Ratho, P.K. Panda, M.K. Panda and K.K. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

1. This application has been filed u/s 34 of the Arbitration and Conciliation Act, 1996, (hereinafter called the "Act") to set aside the award dated 28-4-1999.
2. A preliminary objection has been filed on behalf of the opposite party contending that such petition is not maintainable in the High Court. Counsels for both parties have been heard on the question of maintainability of the petition only. Learned counsel appearing for the petitioner has submitted that an arbitrator is to be appointed by the Chief Justice of the High Court or the person or the institution designated by him and such application for setting aside the award should be filed before the High Court. In this connection, it is contended that as per the definition contained in section 2(1)(e) of the Act, the expression "Court" includes the High Court.
3. The contention of the petitioner that the award can be challenged in the High Court as the Chief Justice of the High Court has authority to appoint an arbitrator, is untenable on the face of it. Even without making a request to the

Chief Justice or his delegate to make an appointment, the parties themselves can appoint an arbitrator in accordance with the procedure agreed upon by them. u/s 8 of the Act, a judicial authority before which an action is brought in a matter within the arbitration agreement has also the authority to refer the parties to arbitration. Section 9 of the Act envisages that a party may apply to a Court for interim measures. Section 34(1) of the Act contemplates that recourse may be made to a Court against an arbitral award- Section 36 of the Act lays down that if the time for filing an application u/s 34 of the Act has expired, or such application has been rejected, the award shall be enforced under the Code of Civil Procedure, as if it were a decree of the Court. Section 42 of the Act provides that where any application under Part-1 has been made to a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications shall be made in that Court and in no other Court. It has to be noticed that in sections 9 and 34 of the Act, it is contemplated that application should be made to a Court. Section 11 of the Act does not contemplate any "application" but contemplates that a request shall be made to the Chief Justice or any person or institution designated by the Chief Justice to take: necessary measure regarding appointment of an arbitrator. The Chief Justice may even delegate such, authority upon any person or institution and such designated person or institution is to appoint an arbitrator on the basis of the request made. There is no embargo on the authority of the Chief Justice to designate any person or institution which may not be a judicial authority or a judicial institution. If in the given case such authority is delegated to a person who is not a judicial authority, can it be contended that the award made by the arbitrator appointed by such designated person can be challenged only before such person even though such person may not be a judicial authority ?

4. The alternative submission made by the counsel for the petitioner that "Court" includes the High Court and under the scheme framed by the Chief Justice of the Orissa High Court provisions having been made for making request for appointment of arbitrator before the Chief Justice, application for setting aside the award can be filed before the High Court is equally untenable. Section 2(1) (e) of the Act defines the expression "Court". Under the definition the expression "Court" means the principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit. This inclusive definition is meant to cover those High Courts which in exercise of their ordinary original civil jurisdiction have jurisdiction to decide suits. In other words, High Courts like High Court of Bombay, High Court of Madras and High Court of Calcutta having ordinary original civil jurisdiction to decide suits are meant to be covered within the inclusive portion of the definition. It is well-known that all the High Courts in India do not have ordinary original civil jurisdiction to decide all suits (though they may have such authority to transfer any suit and try by themselves). In places where the High Courts do not have ordinary original civil jurisdiction, the

expression "Court" means the principal Civil Court of original jurisdiction in a district having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit. In such places the High Court does not have any jurisdiction to set aside the award u/s 34 of the Act or enforce the same as a decree. Applications for setting aside the award in such places are to be filed in the principal Civil Court which would have jurisdiction otherwise to decide the questions forming the subject matter of the arbitration had it been the subject matter of a suit. In such view of the matter, the present application u/s 34 of the Act, filed in the High Court is not maintainable and the petitioner is required to file such application before the principal Civil Court of original jurisdiction in the district having jurisdiction to decide the questions forming the subject matter of the arbitration. It has to be emphasised that the expression "Court" as contained in sections 9, 34 and 36 of the Act must have the same meaning as indicated in section 2(1)(e) of the Act.

5. For the aforesaid reason, the M. J. C. application is not maintainable in this Court. The application and other papers including the Vakalatnama filed by the petitioner shall be returned to the petitioner for filing the same before the appropriate Court having jurisdiction. Such papers shall be returned to the petitioner on or before 5th January, 2001.

6. Application dismissed.