

(1998) 05 CAL CK 0018
In the Calcutta High Court

Case No : Ordinary Original Civil Jurisdiction G.A. No. 513 of 1998 A.C. No. 47 of 1997 Appeal No. 694 of 1991 Special Suit No. 147 of 1988

P.K.V. Nair

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-05-1998

Acts Referred:

Arbitration Act, 1940 — Section 14(2), 31(4), 44

Citation : (1998) 2 CALLT 69

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Mr. Debasish Kundu, for the Appellant; Mr. S.N. Dutta, for the Respondent

Judgement

1. The Court: The application was made by the petitioner to seek a direction upon the learned Arbitrator to correct the cause title in the Award and for further necessary directions in connection thereto after passing the decree. Since a decree was passed in terms of the award on 17th November, 1997, initially this court was pleased to direct the petitioner to serve a notice upon the respondent and when, in turn, the respondent appeared, directions for affidavits were given.
2. Ultimately the respondent neither filed affidavit nor opposed the prayers made in the application. As a result, whereof this court was pleased to pass the order upon observing that leave to make necessary corrections is mere formality.
3. Subsequently Mr. Debastsh Kundu, learned counsel appeared for the respondents raised a point that the award cannot be filed before the single Bench of this court since originally the Arbitrator was appointed by an order of Division Bench of this court.
4. Under such circumstances, a valuable point cropped up before this court although the original petitioner was neither inclined to resist this point with his full force nor able to understand the conceptual aspect of the subject for

unknown reason. However court has its own duty to explain the position for the sake of justice.

5. Section 31(4) of the Arbitration Act, 1940 has been referred to this court which is as follows :

"Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a court competent to entertain it, that court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that court and in no other court".

6. By referring the section the learned counsel contended that "competent court" u/s 31(4) is the Division Bench of this Hon"ble Court not the single Bench.

7. He has very much relied upon *Guru Nanak Foundation Vs. Rattan Singh and Sons*, head note (a) and paragraphs 13 and 14 therein. By citing such judgment he contended that the suit ended in an order or reference to the Arbitrator in a High Court. A subsequent application was also made before such High Court. On being this application dismissed, the matter was brought to the Supreme Court in appeal. By the decision of the Supreme Court in the appeal the Arbitrator was removed. Another person was appointed as sole Arbitrator. Indisputably, therefore, the Arbitrator was appointed by the Supreme Court. The appeal was accordingly disposed of. Thereafter the Supreme Court gave further direction about the manner and method of conducting the arbitration proceedings and fixed the time for completion of arbitration proceedings. It was held therein that the disposal of the appeal by the Supreme Court by appointing another Arbitrator would not mean that the Supreme Court was not in seisin of the matter. Consequently, in view of the provision of section 31(4) of the Supreme Court alone would have jurisdiction to entertain the award and it could not be filed before the High Court. He also cited *Pandurang and Others Vs. State of Maharashtra*, therein to submit that what can be done only by at least two Judges cannot be done by one Judge. Even if the decision is right on merits, it is by a forum which is lacking in competence with regard to subject matter. Even a "right" decision by a "wrong forum" is no decision. It is non-existent in the eye of law and hence a nullity. He also cited 1988 (2) *Arbitration Law Reporter* 66 which is a Division Bench judgment of the Andhra Pradesh High Court wherein it was held the court which appointed the Arbitrator has alone the Jurisdiction to make an award a rule of court. He further cited *Punjab State Electricity Board and others Vs. Ludhiana Steels Private Ltd.*, and stated that in a reference of dispute to Arbitrator by Supreme Court with a specific direction therein to send the award to registry of the Supreme Court, an award could not be sent to trial court for making a Rule of court but only Supreme Court could accept or reject the award. He also contended, by citing a Judgment reported in *State of Madhya Pradesh Vs. Saith and Skelton (P) Ltd.*, paragraphs 9, 20, 21 and 22 therein that an expression "court" occurring in section 14(2) of the Act should be understood

in the context in which it occurs. So understood, it follows that the court which appoints an Arbitrator to make an award is the court u/s 14(2) where the arbitration award can be validly filed. Thus where the appellate court has appointed the Arbitrator to make an award it is that court in which the award can be validly filed and this is particularly so when that court has not divested itself of its Jurisdiction to deal with the award or the matters arising out of the award.

8. He also referred Shah Babulal Khimji Vs. Jayaben D. Kania and Another, to make a distinction between Division Bench and single Bench. But I do not feel that there is much relevancy or face value herein more than the academic value.

9. I have carefully considered the judgments as cited above. From such judgments distinguishable value occur on the basis of section 31(4) of the Arbitration Act, 1940 itself. "Court" u/s 31(4) of the Arbitration Act never meant supremacy of any of the bench but only meant that if a reference is made in a court competent to entertain it, that court alone shall have jurisdiction over the arbitration proceedings and all subsequent application arising out of that reference and the arbitration proceedings shall be made in the court and no other court.

10. The import of the section is to restrain the multi court activities of the litigants since the arbitration can be proceeded with or without intervention of the court. "Bench" is not the criteria but the "court" is the criteria. For an example if a 9 Judges Bench or 7 Judges Bench or 5 Judges Bench or 3 Judges Bench are constituted in Supreme Court in respect of a matter, where the reference was made by an order of such Bench whether the arbitration award should be filed before 9 Judges Bench or 7 Judges Bench or 5 Judges Bench or 3 Judges Bench or before the Supreme Court alone? The answer will be the award will be filed before the concerned Registrar of the Supreme Court and the same will be placed before a particular Bench of the Supreme Court as per allocation of business. Therefore, bench is not the criteria, court is the criteria. The Supreme Court observed obviously with an intention that if today the reference is made by the Supreme Court and if thereafter the Supreme Court allows to file the award before any of the other court than the Supreme Court will be hit by section 31(4) of the Act itself because Supreme Court assumed the territorial and pecuniary jurisdiction of the court excluding others. Therefore, "court" having appropriate jurisdiction is the criteria not the "bench". If the award is filed in the High Court on the basis of the reference made by the appeal court and disposed of, thereafter, obviously that award has to be filed in the name of the Registrar, Original Side of that court. Therefore, it is duty upon the Registrar, of the court to place such matters before the appropriate court having determination as per the allocation of business given by the Chief Justice of the court.

11. Another important aspect has to be considered in this regard. There are three compartments in the arbitration law. One is available upto appointment of Arbitrator, another is in course of proceedings before the Arbitrator from the entering upon the reference till making and publishing the award and other is

proceedings thereafter. In deciding such issue I have considered a Judgment reported in Sumitomo Heavy Industries Ltd. Vs. ONGC Ltd. and Others, wherein application for appointment was proceeded in England and the Arbitrator was appointed who, in turn, proceeded on the basis of such appointment but the award was filed in a court of India, having appropriate territorial jurisdiction. Supreme Court held that the curial law operates during the continuance of the proceedings before the Arbitrator to govern the procedure and conduct thereof. The courts administering the curial law have the authority to entertain applications by Parties to arbitrations being conducted within their Jurisdiction for the purpose of ensuring that the procedure that is adopted in the proceedings before the Arbitrator conforms to the requirements of the curial law and for reliefs incidental thereto. Such authority of the courts administering the curial law ceases when the proceedings before the Arbitrator are concluded. The Arbitrator is not obliged by law to file his award in court but he may be asked by the party seeking to enforce the award to do so. The need to file an award in court arises if it is being enforced. The enforcement process is subsequent to an independent of the proceedings before the Arbitrator. It is not governed by the curial or procedural law that governed the procedure that the Arbitrator followed in the conduct of the arbitration. In the penultimate paragraph therein it is observed in the interest of completeness that it is not the case that the concerned High Court lacked the territorial jurisdiction to do so.

12. Similarly in the instant case appeal was disposed off by appointing the Arbitrator by the Division Bench of the same court and proceeding thereafter before the Arbitrator ceases as to the procedural or curial law as and when Arbitrator made and published the award. Last part of the arbitration law being enforcement process is independent and cannot be governed by the Division Bench of the same court since such authority of the court administering the curial law ceases when the proceedings before the Arbitrator are concluded. Under such circumstances the award was justifiably presented before the single Bench of this court having Jurisdiction for the purpose of passing a decree.

13. In further I like to point out that the non-obstinate Clause u/s 31(4) of the Arbitration Act is applicable only in respect of reference, arbitration proceedings and applications in connection thereto which has got nothing to do with the award. On the other hand, validity, effect or existence of an award or arbitration agreement is to be governed by another non-obstinate clause i.e. u/s 31(2) of the Arbitration Act. Therefore a jurisdiction regarding the award is independent from the reference and arbitration proceedings. Moreover u/s 44 of the Arbitration Act High Court has power to make rules. Even therein clause of the filing of awards and all proceedings consequent thereon or incidental thereto are differentiated from other clauses. Therefore High Court has to invoke and rightly invoked such power u/s 44 of the Arbitration Act in the light of section 31(2) of the said Act, which specially provides "notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an

arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the court in which the award under the agreement has been, or may be, filed, and by no other court". Incidentally in the instant case not only the award was filed but a decree was passed by this single Bench having Jurisdiction.

14. To clarify the position it is to be noted that "court" will have the Jurisdiction but the "Bench" will have the determination. Therefore "court" herein means court of appropriate Jurisdiction having allocation of business. Supreme Court in the various Judgments as above never wanted to introduce concept of "Bench" but concept of "court". The Supreme Court having over all Jurisdiction in respect of all the matters within the territory of india it was thought fit that award should be filed in Supreme Court when entire proceedings of arbitration was conducted pursuant to its direction upon assuming jurisdiction over and in respect of the arbitration proceedings. Even then I am afraid that in view of Sumitomo Heavy Industries Ltd. Vs. ONGC Ltd. and Others, how far earlier decisions in connection with filing of the award before the Supreme Court specially where no specific direction is given for filing of the award to the registry of the Supreme Court at the time of its disposal is good law is an open issue now.

15. Therefore I conclude herein by saying that I have reviewed the aspects as per as practicable but I do not find any reason to hold in favour of the objector. Decree is rightly passed by this single Bench of the court. Let the decree be drawn up expeditiously.

16. Department and all parties are to act on a signed copy minute of the operative part of the order.

17. Petition dismissed