
(2015) 03 BOM CK 0109
In the Bombay High Court
Case No : Writ Petition No. 2364 of 2014

Ravindra Balaji Govindwar

APPELLANT

Vs

Ashok Dhoble and Others

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(1)(e), 34, 42, 9
Constitution of India, 1950 — Article 226, 227

Citation : (2015) 5 ALLMR 889 : (2015) 5 BomCR 77 : (2015) 5 MhLj 431

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : S.P. Bhandarkar, Counsel, for the Appellant

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J.—This writ petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 20.04.2013 passed by the learned Principal District Judge, Nagpur in Miscellaneous Civil Application No. 151 of 2013.

2. The facts in so far as they are relevant for adjudication of the prayers made in the writ petition are that the dispute between the petitioner and respondent nos. 1 to 5 is in respect of Annual General Meeting of the Indian Dental Association that was held on 24.12.2011. The validity of aforesaid Annual General meeting was the subject matter of the arbitration proceedings between the petitioner on one side and the respondent nos. 1 to 5 on the other. The respondent no.6 acted as arbitrator in proceedings under the Arbitration and Conciliation Act, 1996 (for short the said Act). An award came to be passed by the learned Arbitrator on 21.12.2013. By said award it was declared that the Annual General Meeting held on 24.12.2011 was illegal and had been held in violation of provisions of the constitution of the Association. The petitioner being aggrieved by aforesaid award challenged the same in proceedings under Section 34 of the said Act before the learned Principal District Judge, Nagpur. The learned Principal District Judge,

Nagpur, by order dated 20.04.2013 held that in view of provisions of Section 2(1) (e) of the said Act, the jurisdiction to entertain said application did not lie before the Court at Nagpur. The application was directed to be returned to the petitioner for presentation to the Court at Bombay. This order is under challenge in the present Writ Petition.

3. Shri S.P. Bhandarkar, learned counsel appearing for the petitioner submitted that the learned Principal District Judge erred in holding that the jurisdiction for aforesaid proceedings did not lie before the Court at Nagpur. He submitted that two earlier proceedings under provisions of Section 9 of the said Act had been filed and entertained at Nagpur itself and hence in terms of Section 42 of the said Act all further proceedings thereafter were required to be entertained at Nagpur itself. He submitted that in the earlier proceedings no objection to the jurisdiction of the Court at Nagpur had been raised. By placing reliance upon two decisions of the Calcutta High Court in *Sarkar Enterprise Vs. Garden Reach Shipbuilders and Engineers Ltd.*, and *Nissho Iwai Corporation Vs. Veejay Impex and Others*, , it was submitted that the learned Principal District Judge erred in holding otherwise.

4. Shri A.C. Dharmadhikari, learned counsel appearing for respondent no. 4 raised a preliminary objection to the tenability of the writ petition on the ground that respondent nos. 1 and 5 who were necessary parties had been deleted from the array of parties to the writ petition and hence in absence of said necessary parties, the writ petition itself was not tenable. He submitted that the respondent no.1 was the Honorary Secretary General whose name has been deleted from the array of parties. Without prejudice to said preliminary objection, it was submitted that in terms of Clause 6 of the constitution of the Indian Dental Association, the proceedings against the Indian Dental Association could have been initiated only at the place where the Honorary Secretary General resided. He further submitted that proceedings under Section 9 of the said Act had also been earlier filed at Thane in which the present petitioner had participated without raising any objection to the jurisdiction. He, therefore, submitted that had it been rightly held by the learned Principal District Judge that the Court at Nagpur had no jurisdiction. In support thereof he relied upon the decision of the Supreme Court in *State of West Bengal Vs. Associated Contractors*, and submitted that an application made to a Court without subject matter jurisdiction was outside the scope of Section 42 of the said Act. He also relied upon the judgment of the Division Bench in *Arbitration Petition No. 956 of 2011 Kantilal Chhaganlal Securities Private Limited Vs. Ms. Shilpa Pareek* decided on 22.07.2013. He, therefore, sought dismissal of the Writ Petition.

5. I have given thoughtful consideration to the rival submissions. In view of the preliminary objection as raised, it is necessary to consider the same at the outset. The facts narrated above are not in dispute. The petitioner and respondent nos. 1 to 5 were parties to the arbitration proceedings that were conducted by respondent no. 6. By award dated 21.02.2013 the Annual General

Meeting dated 24.12.2011 held at Nagpur was declared to be invalid, illegal and in violation of the constitution of the Association. The petitioner being aggrieved by said award had filed application under Section 34 of the said Act in which present respondent nos. 1 to 5 were arrayed as non-applicants. The prayers made in said application were to set aside the award dated 21.02.2013 and further hold that the Annual General Meeting held at Nagpur on 24.12.2011 was legal and valid. All the contesting parties were heard by the learned Principal District Judge Nagpur after which by the impugned order dated 20.04.2013 it was held that the Court at Bombay had jurisdiction to entertain and decide the application filed under Section 34 of the said Act.

6. In the present writ petition the petitioner had arrayed all the non applicants who had participated in the proceedings before the learned Principal District Judge as respondents. However, by order dated 14.10.2014 the petitioner sought deletion of the name of respondent no.5 from the array of parties. This deletion was permitted at the risk of the petitioner. By subsequent order dated 07.01.2015 on the request made by the petitioner, the name of respondent no.1 was also permitted to be deleted from the array of parties. As a result the names of respondent nos. 1 and 5 stood deleted on the request of the petitioner and the proceedings were contested by three of the five non applicants. The effect of aforesaid deletion of respondent nos. 1 and 5 will therefore, have to be considered.

7. It is to be noted that respondent nos. 1 and 5 had participated in the arbitration application before the learned Arbitrator after which the Annual General Meeting dated 24.12.2011 held at Nagpur was declared as illegal and it was further held that the jurisdiction in the matter under Section 34 of the said Act vested in the Court at Bombay. The petitioner being aggrieved by said adjudication had challenged the same in the present writ petition. The parties who had been arrayed before the learned Principal District Judge had been so arrayed as they had participated in the arbitration proceedings before the learned Arbitrator. The order passed by the learned Principal District Judge was therefore binding on the parties subject to it being modified/set aside by a superior Court. It is, thus, clear that all the five respondents who had contested the proceedings before the learned Arbitrator as well as before the learned Principal District Judge were necessary parties in the present writ petition. The effect of deletion of the names of respondent nos. 1 and 5 from the array of parties in the present writ petition is that, in so far as said respondents are concerned, the order dated 20.04.2013 passed by the learned Principal District Judge has attained finality. If said order is set aside in the present writ petition, it would result in there being two inconsistent orders holding the field, one dated 20.04.2013 passed by the learned Principal District Judge as against respondent nos. 1 and 5 and the another in favour of respondent nos. 2, 3 and 4.

8. A somewhat similar question was considered by the Supreme Court in Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, . One

of the questions considered was the effect of absence of necessary parties to a writ petition seeking a writ of certiorari. Said question was answered by the Supreme Court by observing thus in para 9 of its judgment:

"9. The next question is whether the parties whose rights are directly affected are the necessary parties to a writ petition to quash the order of a tribunal. As we have seen a tribunal or authority performs judicial or quasi-judicial act after hearing parties. Its order affects the right or rights of one or the other of the parties before it. In a writ of certiorari the defeated party seeks for the quashing of the order issued by the tribunal in favour of the successful party. How can the High Court vacate the said order without the successful party being before it? Without the presence of the successful party the High Court cannot issue a substantial order affecting his right. Any order that may be issued behind the back of such a party can be ignored by the said party, with the result that the tribunal's order would be quashed but the right vested in the party by the wrong order of the tribunal would continue to be effective. Such a party, therefore, is a necessary party and a petition filed for the issue of a writ of certiorari without making him a party or without impleading him subsequently, if allowed by the court, would certainly be incompetent. A party whose interests are directly affected is, therefore, a necessary party." It is, therefore, clear that if any order is passed by this Court behind the back of respondent nos. 1 and 5 it would be liable to be ignored by them. It would also result in two inconsistent orders holding the field. Such course is, therefore, not permissible in law. The effect of deletion of the names of respondent nos. 1 and 5 from the array of parties has the effect of rendering the writ petition itself not tenable in absence of necessary parties. The preliminary objection as raised is therefore required to be upheld.

9. It is also to be noted that the jurisdiction under Articles 226 and 227 of the Constitution of India is discretionary in nature. In the facts of the present case considering the absence of necessary parties I am not inclined to exercise the same in favour of the petitioner. It is, therefore, not necessary to go into the rival submissions as regards merits of the impugned order. The same are, therefore, kept open for being agitated in appropriate proceedings in accordance with law.

10. As an upshot of aforesaid discussion, it is clear that the writ petition in absence of necessary parties cannot be entertained for considering the challenge to the impugned order. Writ Petition is, therefore, dismissed on said count with no order as to costs.