

(1999) 10 AP CK 0029

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5061 of 1999

Satyam Constructions Ltd.

APPELLANT

Vs

Registrar (Judicial), High Court of A.P.

RESPONDENT

Date of Decision : 01-10-1999

Acts Referred:

Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Article 11
Arbitration and Conciliation Act, 1996 — Section 11(6), 2(e), 9
Constitution of India, 1950 — Article 136, 226
Limitation Act, 1963 — Article 183

Citation : (1999) 6 ALD 223 : (1999) 6 ALT 166

Hon'ble Judges : P. Venkatarama Reddi, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : Mr. C.V. Mohan Reddy, for the Appellant; Mrs. M. Bhaskara Lakshmi, SC for HC, for the Respondent

Judgement

P. Venkatarama Reddi, J.—This writ petition under Article 226 of the Constitution is filed praying for quashing the order passed by a learned single Judge of this Court in AA (SR) No.44201 of 1998 dated 28-7-1998 and for a declaration that persons acting under the Scheme framed by the Chief Justice of the High Court u/s 11(10) of the Arbitration and Conciliation Act, 1996 do not perform judicial functions of a Court of law and acts only as "Persona Designate.

2. The Registrar (Judicial), who is the "authorised Officer" under the Scheme to receive and process the requests for appointment of Arbitrators under subsections (4), (5) and (6) of Section 11, is the sole respondent in the writ petition.

3. The petitioner, represented by its Special Power of Attorney holder, filed an application u/s 11(6) of the Arbitration and Conciliation Act (hereinafter referred to as the "Act") in the Registry of the High Court. The Registry returned the papers with the following objections:

"(1) Court Fee of Rs.300/- shall be affixed (Schedule II, Article 11(ii)(3) of the

Andhra Court Fees and Suits Valuation Act, 1956).

(2) Affidavit shall be got attested by First Class Magistrate or Notary or Oath Commissioner.

(3) L.S (Costs for processing requests under Para 10 of this Scheme) of Rs.1,000/- shall be deposited.

(4) Batta shall be filed.

(5) Vakalat shall be filed after duly executed.

(6) Material papers shall be filed in original or authenticated.

(7) Service shall be effected on Standing Counsel for Central Government.

(8) Docket shall be filed after duly typed.

(9) Agreement shall be filed in original.

(10) Representation in AA No. of 1998 shall be placed before the concerned Officer."

4. The Special Power of Attorney Holder re-presented the papers with the following answers to the objections and requested the Registrar (Judicial) to place the matter before the Hon"ble Chief Justice for necessary "clarification". The answers to the objections are extracted below:

"(1) As the request under Para 2 of the "Scheme" is filed before person designated (persona designata) and not before Hon"ble High Court, the Court Fee is not liable to paid.

(2) Affidavit is got attested by the Notary.

(3) The cost for processing the request, in this case Rs.1,000/- in terms of Para 10 will be deposited.

(4) As per the Scheme (Para 10) only an amount of Rs. 1,000/- is required to be deposited for processing the request which obviously covers charges to be incurred for serving the notices to respondents.

(5) I am appearing as an agent of the applicant, and the Special Power of Attorney executed in my favour is enclosed along with material papers. Hence no vakalat need be filed.

(6) The request filed under Para 2 of the Scheme is neither a suit nor an application before Court. Moreover the person designated are deciding neither a right of one party to the prejudice of another nor any issue between the parties. I submit that most of the original documents are with the respondents. I, therefore, submit that filing of copies of the documents would be sufficient at this stage for processing the request filed under Para 2 of the "Scheme".

(7) I submit that para 6 of the "scheme" provides:

"(6) Notice to Affected Person:

Subject to the provisions of Paragraph 5, the person designated in Para "3 shall direct that a notice of the application be given to all the parties to the arbitration agreement....."

Hence service on Standing Counsel of respondents is not contemplated under the Scheme".

(8) As this is not an application before Court, Docket is not necessary.

(9) I submit that sub-para (iii) of para 2 of the "Scheme" permits filing of even a copy of agreement.

(10) Representation is filed under Para 11 of the Scheme and it has to be filed before the person designated."

5. Thereafter, the AA (SR) was placed before Hon"ble Shri Justice K.S. Shrivastav, who at the relevant point of time was dealing with original side work of the High Court. It may be noted at this juncture that the Scheme framed by the Chief Justice of the High Court of A.P. u/s 11(10) of the Act, the Chief Justice designated the Judge of the High Court to whom the original side work is for the time being allotted to deal with the requests made under sub-sections (4), (5) and (6) of Section 11 if the value of the subject-matter exceeds rupees five lakhs but does not exceed one crore. If the value of the subject-matter exceeds one crore, the Chief Justice himself reserved the power to deal with the request for appointment of the arbitrator. The learned Judge (Shrivastav, J.), rejected the contentions of the petitioner and took the view that the Judge nominated by the Chief Justice u/s 11(6) read with the Scheme framed u/s 11(10), acts as a "Court" within the meaning of Section 2(e) of the Act. The learned Judge, therefore, directed the applicant to comply with the office objections within the stipulated time. Aggrieved by some of the office objections and the order of the learned Judge upholding the same, the petitioner has filed writ petition under Article 226.

6. The learned Additional Advocate-General has appeared on Court notice and assisted the Court.

7. Section 11(6) of the Act reads as follows:

"Where, under an appointment procedure agreed upon by the parties--

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Chief Justice or any person or institution designated by

him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment."

8. Sub-section (7) enjoins that a decision on a matter entrusted by subsection (4) or sub-section (5) or subsection (6) to the Chief Justice or the person or institution designated by the Chief Justice is final.

9. It is the contention of the learned Counsel for the petitioner as well as the learned Advocate-General that the "person or institution designated by the Chief Justice" acts as "Persona Designata" but not as a "Court" merely because the designated persons happens to be a Judge of the High Court dealing with original side work. It is pointed out very rightly that in the Scheme, guardedly, the expression "person designated" is used in Paras 4 to 7 and nowhere the word "Court" is used.

10. The learned Judge drew support for his conclusion from the definition of "Court" contained in Section 2(1)(e) of the Act. According to that definition, Court includes the High Court in exercise of its ordinary original civil jurisdiction having jurisdiction to decide the questions forming the subject-matter of arbitration if the same had been the subject-matter of a suit.

11. The question is whether the Judge designated by the Chief Justice to deal with the applications for appointment of arbitrators in matters falling within certain pecuniary limits is a Court ?

12. Our learned brother only referred to that part of definition, which says that "Court", includes the High Court. The learned Judge did not consider the impact of the other qualifying provisions contained in the very-same definition. As rightly pointed out by the learned Counsel for the petitioner as well as the learned Additional Advocate-General, the High Court does not exercise original jurisdiction to entertain and decide the suit, if a suit had been filed in respect of the subject-matter of arbitration. Moreover, if we import the other ingredient of subsection 2(e), viz., "exercise of ordinary original civil jurisdiction" into Section 11(6), it would be difficult to hold that the Judge designated by the Chief Justice as per Section 11(6) would be a Judge exercising ordinary original civil jurisdiction. Construing the same expression - "ordinary original civil jurisdiction", occurring in Clauses 11 and 12 of the Letters Patent, a Division Bench of the Madras High Court in P.T. Munia Servai Vs. Hanuman Bank Ltd. by Official Liquidator, , applied the test whether the jurisdiction has to be exercised in the ordinary course of law without any special step being necessary to assume it. The dicta laid down by the Privy Council in Candas Narrondas Navivahu v. C.A. Turner, ILR 13 Bom 520, was cited with approval by the Madras High Court. The Privy Council expressed the indicia of "ordinary civil jurisdiction" in the following words:

"But their Lordships are of opinion that the expression "ordinary jurisdiction" embraces all such as is exercised in the ordinary course of law and without any special step being necessary to assume it; and that it is opposed to extraordinary

jurisdiction which the Court may assume at its discretion" upon special occasions and by special orders."

13. The insolvency jurisdiction conferred on the High Court under the Special Act was held to be part of the ordinary original civil jurisdiction of the High Court. Applying the reasoning of the Privy Council, the Madras High Court held that the jurisdiction conferred on the High Court by the Banking Companies Act was part of its ordinary original civil jurisdiction within the meaning of Article 183 of the old Limitation Act because "that jurisdiction has to be exercised in the ordinary course of law without any special step being necessary to assume it."

14. A Judge designated by the Chief Justice u/s 11(6) assumes jurisdiction by virtue of the special orders embodied in the Scheme framed by the Chief Justice. In dealing with an arbitration application u/s 11(6) a Judge designated by the Chief Justice cannot be said to be exercising "ordinary original civil jurisdiction", more so when, as elucidated later, the functions u/s 11(6) are not judicial functions.

15. The next point to be noted is that the learned Chief Justice may designate any person or institution to deal with the applications under sub-sections (4), (5) or (6) of Section 11. He may, in an appropriate case, entrust that function to a person other than a sitting Judge of the High Court or he may entrust it to an institution. This again emphasises that the person designated u/s 11(6) is not intended to function as a judicial body with the attributes of a Court. In fact, our learned brother (Shrivastav, J.), himself has taken a view different from the one taken in the present case in a later decision in *Bommisetty Prasada Rao, and others Vs. SAS Mines and Minerals Ltd., Hyderabad* and another, . In that case, pending an application u/s 11, an interim application for temporary injunction was filed u/s 9 of the Act. The learned Judge held that the High Court does not exercise the ordinary original civil jurisdiction and, therefore, for the purpose of Section 9 of the new Act, it cannot be said to be a Court within the meaning of Section 2(1)(e) of the Act and secondly the application for interim relief cannot be granted by the High Court. The learned Judge observed at Paragraph 26:

"The High Court of Andhra Pradesh exercises original jurisdiction under the Indian Companies Act, Indian Divorce Act, and in respect of the Election Petitions filed under the Representation of the People Act etc, etc. The Chief Justice under clause 3(c) of the Scheme for Arbitration, has designated the Judge of the High Court who at the relevant time has been allotted original side work in the High Court for the purposes of appointment of arbitrator u/s 11 where the value of the subject-matter exceeds rupees five lakhs but does not exceed rupees one crore. It does not mean that the original side work in the High Court means civil suits of all or any type including proceedings civil in nature, but it relates to exercising original jurisdiction under special enactments like the Indian Companies Act, the Indian Divorce Act, the Representation of the People Act" etc, etc."

16. The point at issue need not detain us further in view of the very recent

judgment of the Supreme Court in *Ador Samia Private Limited v. Peekay Holdings Limited*, 1999 (7) Supreme 309. In that case, the question arose whether the order passed by the learned Chief Justice u/s 11(6) of the Act is a judgment, decree, determination or order in any case or matter passed or made by any Court or Tribunal within the meaning of Article 136. After referring to the decision in *M/s. Sundaram Finance Ltd. Vs. M/s. NEPC India Ltd.*, , that Section 11 does not contemplate passing of a judicial order, the Supreme Court observed that the learned Chief Justice or his designate u/s 11(6) acts in administrative capacity. It was observed:

"It is obvious that this order is not passed by any Court exercising any judicial function nor it is a Tribunal having trappings of a judicial authority."

17. The appeal under Article 136 was held to be not maintainable. Thus, apart from the fact that the person designated u/s 11(6) does not answer the description of "Court" within the meaning of Section 2(e) of the Act, it is clear from the aforementioned ruling of the Supreme Court that the nature of the functions u/s 11(6) are such which cannot be considered to be judicial functions in which case it would be wholly inappropriate to equate the role of the Judge-designate to that of a "Court" in its ordinary connotation as well.

18. In the light of the aforesaid discussion, the objections raised on the footing that the Judge-designate u/s 11(6) is a Court cannot be sustained. In view of the special procedure prescribed under the Scheme, we cannot countenance the practice of the Deputy Registrar, who is not an authorised officer under the Scheme to deal with the objections in connection with the processing of applications u/s 11(6) read with Para 3 of the Scheme. It is the authorised officer - Registrar (Judicial) alone who has to apply his mind whether the application is in order or whether it is liable to be returned for non-compliance with the requirements of the Scheme or other procedural requirements.

19. The objections raised by the Deputy Registrar must be deemed to be non est in the eye of law and the Registrar (Judicial), who is the authorised officer has to consider the question *de tivo* in the light of our holding that the Judge designated u/s 11(6) is not a "Court".

20. The main objection of the petitioner seems to be in regard to payment of Court-fee. The Registry raised the objection that a Court-fee of Rs.300/- has to be paid under Article 11(m) (ii) (3) of Schedule II of the A.P. Court-Fee and Suits Valuation Act. It is not known as to how the said provision is attracted in the instant case. If at all, it is the residuary provision in sub-clause (n) of Article 11 that applies in which case the Court-fee payable would be Rs.2/-. The stand of the learned Counsel for the petitioner is that the proceedings u/s 11(6) read with the Scheme not being the proceedings in a Court, he need not pay any Court-fee at all and the learned Counsel points out that it is exactly for this reason the Scheme itself prescribes for payment of Rs.1,000/- as costs of processing the application. This argument of the learned Counsel is not without force. But, in

view of the fact that the Counsel has agreed for payment of Court- fee of Rs.2/- without prejudice to the petitioner's stand, the authorised officer need not delve further into this aspect.

21. A doubt as to the maintainability of the writ petition under Article 226 of the Constitution against the order of the learned single Judge has arisen. In a way, what is discussed above, as regards the status and nature of functions of the Judge designated by the Chief Justice under the Scheme answers the said doubt. We cannot regard the order passed by the learned Judge nominated u/s 11(6) as the judgment of a single Judge within the meaning of Clause 15 of the Letters Patent, more so, when he passes an order concerning certain preliminary defects pointed out by the Registry. Therefore, no LPA lies. It follows that such an order is amenable to writ jurisdiction. In any case, we are concerned in the instant case with the preliminary objections raised by an officer who was not authorised to raise such objections under the relevant provisions. Such officer was obviously exercising ministerial functions. The learned single Judge before whom the matter was placed upheld those objections without going into the question of competence of Deputy Registrar to raise such objections and once the Deputy Registrar who returned the papers is held to have acted without jurisdiction, the Court in exercise of jurisdiction under Article 226, can set right this jurisdictional error irrespective of the fact that the matter was placed before the Judge acting as designated person u/s 11(6). Thus, viewed from any angle, we come to the conclusion that the writ petition is maintainable.

22. In the result, the application of the petitioner shall be dealt with and processed in the light of the directions and observations in this judgment. Accordingly, WP is disposed of. We make no order as to costs.