

(2004) 02 BOM CK 0101
In the Bombay High Court
Case No : Civil Appeal No. 1417 of 2004

Secur Industries Ltd.

APPELLANT

Vs

Godrej and Boyce Mfg. Co. Ltd. and Another

RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16, 2, 21, 40, 41
Industrial Disputes Act, 1947 — Section 10A
Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 — Section 4, 5, 6

Citation : (2004) 4 BomCR 49 : (2004) 106 BOMLR 798

Hon'ble Judges : Ruma Pal, J;P. Venkatarama Reddi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ruma Pal, J.—Leave granted.

2. This appeal has been preferred from an interim order granted by the Division Bench of the Bombay High Court staying the arbitration proceedings before the Uttar Pradesh Industry Facilitation Council (referred to as "the Council") set up under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (referred to as "the Act").

3. We are not concerned with the merits of the proceedings initiated by the appellant before the Council. The only question is whether the High Court had the jurisdiction to pass the impugned order.

4. The chronology of events which are relevant for the purposes of this appeal, commenced with a notice dated 11th September, 2001 served by the appellant on the respondent raising a demand. The notice also contained the following paragraph:

You may also treat this as a notice under the provisions of the "Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act,

1993. Failure or non-payment will force us to move our claims as mentioned above to the appropriate authorities for recovery of our dues as mentioned above.

5. In October, 2001 the appellants filed a claim petition before the Council. The Council forwarded the claim petition to the respondent No. 1 under cover of its letter dated 27th December, 2001 asking the respondent No. 1 to respond to the same within a period of one month. The receipt of the claim petition was acknowledged by the respondent by letter dated 25th January, 2002 and requested for time to submit its reply by six weeks. The prayer for extension of time was, however, made without prejudice to the respondent's "legal rights and contentions relating to the impugned notice dated 27th December and the claim purported to be made u/s 6 of the said Act."

6. On 12th February, 2002 the respondent No. 1 filed a suit in the Civil Suit Court at Bombay against the appellant who was named as the defendant No. 1 and the Council which was named as the defendant No. 2. The prayers in the plaint are, inter alia, for a declaration that the claim petition filed by the appellant before the Council was ultra vires the provisions of the Act and, therefore, illegal, null and void. A permanent order of injunction was also asked for restraining further proceedings before the Council. An application was filed in the suit for interim relief by the respondent No. 1. By an order dated 5th February, 2002 the City Civil Court granted an ad interim injunction staying the proceedings under the Act. The application for interim relief was, however, ultimately dismissed by the Civil Court on 28th November, 2002 principally on the ground that the claim had been filed by the appellant u/s 6(2) read with Section 8(1) of the Arbitration and Conciliation Act, 1996 (which we will refer to as the 1996 Act) and in view of Section 5 of the 1996 Act no Court could intervene in arbitration proceedings except to the extent prescribed under the 1996 Act. According to the City Civil Court, the reliefs claimed for the respondent No. 1 in the suit did not fall within the ambit of those situations where interference by Court was permissible and consequently the Court had no jurisdiction to stay the proceedings before the Council.

7. The respondent No. 1 preferred an appeal from the decision of the City Civil Court before the High Court. The appeal is pending. On an application for interim relief filed by the respondent No. 1 pending the appeal, the High Court by its order dated 21st January, 2003 stayed the proceedings before the Council only on the ground that no notice had been served by the appellant on the respondent No. 1 u/s 21 of the 1996 Act. The High Court rejected the appellant's application for expediting the appeal on 2nd May, 2003. Both these orders of the High Court are questioned before us in these appeals.

8. Section 6 of the Act provides as follows:

Recovery of amount due. - (1) The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of Sections 4 and 5 shall be recoverable by the supplier from the buyer by way of a suit or other

proceedings under any law for the time being in force.

(2) Notwithstanding anything contained in Sub-section (1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that sub-section and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such disputes as if the arbitration or conciliation were pursuant to an arbitration agreement referred to in Sub-section (1) of Section 7 of that Act.

9. Sub-section (2) of Section 6 expressly incorporates the provisions of the 1996 Act. Apart from such express incorporation, Sub-section (2) of Section 6 goes further and creates a legal fiction whereby disputes referred are to be deemed to have been made pursuant to an arbitration agreement as defined in Section 7 of Sub-section (1) of the 1996 Act.

10. Incorporation of the provisions of the 1996 Act into Section 6(2) of the Act has also been effected by Sub-sections (4) and (5) of Section 2 of the 1996 Act which say :

(4) That part except Sub-section (1) of Section 40, Sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this part are inconsistent with that other enactment or with any rules made thereunder.

(5) Subject to the provisions of Sub-section (4), and save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between India and any other country or countries, this part shall apply to all arbitrations and to all proceedings relating thereto.

(Emphasis added)

11. The "Part" referred to in this sub-section is Part 1 of the 1996 Act which deals with domestic arbitrations. The proceedings before the Council, therefore, are proceedings under the 1996 Act, pursuant to a deemed agreement between the parties to the dispute. With the applicability of Part 1 of the 1996 Act in all its force, the extent of judicial intervention in arbitrations is limited by the non obstante provisions of Section 5 of the 1996 Act, which stipulate: "Notwithstanding anything contained in any other law for the time being in force, in matters governed by this part, no judicial authority shall intervene except where so provided in this Part." The City Civil Court was right in its approach when it said that the Court could only intervene in respect of matters expressly provided for in the 1996 Act. The validity of the proceedings before the Arbitral Tribunal is an issue which the Council, and not the Court could decide u/s 16 of the 1996 Act. Sub-section (1) of Section 16 opens with the words. "The Arbitral Tribunal may rule on its jurisdiction...." It has been held by this Court that the Arbitral Tribunal's authority u/s 16 is not confined to the width of its jurisdiction

but goes to the very root of its jurisdiction. Konkan Railway Corporation Ltd. and Another Vs. Rani Construction Pvt. Ltd., . Therefore, the Council can go into the question whether its authority had been wrongly invoked by the appellant and it is open to it: to hold that it had no jurisdiction to proceed with the matter.

12. The arguments which have been raised before us by the learned Counsel on behalf of the respondent to a large extent related to the merits of the appellant's claim before the Council. Having regard to the scope of the authority of the Arbitral Tribunal u/s 16, this is not a matter which the Court can adjudicate upon. Indeed it is incumbent on the Court to refer the parties to arbitration u/s 8(1) of the 1996 Act if a suit is filed in a matter which is the subject-matter of an arbitration agreement. Furthermore, even while this question is pending decision before a Court, the Arbitral Tribunal may proceed with the arbitration u/s 8(3) and make its award. The High Court could not, therefore, have stayed the proceedings before the Council.

13. We are also unable to accept the submission of the respondent No. 1 that Section 16 of the 1996 Act does not apply to the present case because the reference is a statutory one. The decision relied upon by the respondent No. 1 in support of this submission, namely, Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others, related to a voluntary reference of an industrial dispute u/s 10-A of the Industrial Disputes Act. Section 10-A of the Industrial Disputes Act, 1947 permits the employer and the workmen to agree to refer the dispute to the arbitration to a Labour Court or a Tribunal for adjudication "where any industrial dispute exists or is apprehended," Therefore, if there was no such industrial dispute there could be no arbitral reference. This Court therefore held that the disputes spilt "into areas where the arbitrator deriving authority u/s 10A has no jurisdiction." The provisions of Section 10-A are entirely different from the provisions of Section 16 of the 1996 Act. There is in this case, no question of dispute spilling into areas where the Arbitral Tribunal does not have jurisdiction. Under the 1996 Act, the Arbitral Tribunal has been given a very wide and deep area of operation and it: is the Court's powers which have been statutory curtailed.

14. This brings us to the ground on which the High Court stayed the proceedings before the Council, namely, the alleged failure of the appellant to serve notice u/s 21 of the 1996 Act. The point was not raised before the High Court at all by the respondent No. 1. This was candidly stated by the learned Counsel for the respondent No. 1. Our attention was not drawn to any other legal proceeding which requires a notice to be given prior to commencing proceedings apart from Section 21 of the 1996 Act. Whether the notice was a notice u/s 21 and whether the giving of notice u/s 21 is to be construed as a precondition to the exercise of jurisdiction by the Council are questions which the Council will have to decide. This debate could not be a ground for the High Court interfering with the Council's jurisdiction and staying proceedings before it.

15. To sum up: The High Court erred in staying proceedings before the Council,

It had no jurisdiction to do so.

16. Having regard to our conclusion, and as has been agreed by the parties, the appeal before the High Court has really become infructuous. We, therefore, set aside the decision of the High Court and treat the appeal of respondent No. 1 before the High Court as having been decided by this order. The decision of the City Civil Court is confirmed and the appeal is allowed with costs.