
(1996) 11 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Revision Petition No. 1627 of 1996

Sirojexport Company Ltd.

APPELLANT

Vs

Indian Oil Corporation Ltd.

RESPONDENT

Date of Decision : 18-11-1996

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 42
Civil Procedure Code, 1908 (CPC) — Section 115, 20
General (Civil) Rules, 1966 — Rule 19

Citation : AIR 1997 Raj 120 : (1997) 1 RLW 187 : (1996) 2 WLN 693

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : N.C. Chaudhary, for the Appellant; V.P. Singh Anil Bhatnagar, J.K. Singhi and Sanjay Tyagi, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—The expression "material irregularity" or "illegality" has a limited connotation. It means that the challenged order poses a problem about a material defect in the procedure adopted by the Court while dealing with the matter before it and not of either law or fact after the prescribed procedure was complied with.

2. In the light of above settled legal position, I proceed to examine the impugned order dated 8th November, 1996 passed by the District Judge, Jaipur City, whereby the application of the petitioner submitted u/s 11(6) read with Sections of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act of 1996) has been dismissed.

3. The Act 1996 has been enacted to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto; Sections of the Act 1996 is with regard to power to refer parties to arbitration, where there is an arbitration

agreement. It provides that :

8. Power to refer parties to arbitration where there is an arbitration agreement.--

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in subsection (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under Sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

Section 11(6) of the Act 1996 provides that:

"(6) 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."

Section 17 of the Act, 1996 pertains to the interim measures ordered by arbitral tribunal. It reads thus:

"17. Interim measures ordered by arbitral tribunal.-- (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute.

(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under Sub-section(1).

Section 42 of the Act, 1996 provides that notwithstanding anything contained elsewhere in this part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

4. In the revision petition it has been averred that the petitioner is a consortium partner with Skodaexport Company Limited and M/s. Larson & Tubio Limited for

the execution of laying of pipe line from the port of Kandly in Gujaratto the town of Bhatinda in Punjab. The three companies are equally liable and the contracts were executed by Skodaexport as the leader of the consortium.

5. The petitioner submitted an application u/s 11(6) read with Sections of the Act, 1996 before the Court below with a prayer that the non-petitioner be restrained from invoking the Bank guarantees furnished in favour of the non-petitioner. The non-petitioner raised objections about the maintainability of the petition and averred in the reply that the petitioner Company did not furnish any bank guarantee. M/s. Skodaexport and M/s. Larson and Tubro have furnished the Bank guarantees. M/s. Skodaexport Company has already instituted Suit No. AA 124 of 1996 before the High Court of Delhi in connection with the said Bank guarantees. The interim application moved by the said Company u/s 9 of the Act, 1996 with a prayer that Indian Oil Corporation Ltd. be restrained from encashing any of the bank guarantees, has been dismissed by the High Court of Delhi vide order dated 1-11-1966. As such the Court of District Judge, Jaipur City had no jurisdiction to hear the petition.

6. The Court below dismissed the petition of the petitioner. The said order of the Court below has been assailed in this revision.

7. I have given my anxious consideration to the arguments advanced before me by the learned counsel for the parties and carefully perused the impugned order.

8. Mr. N. C. Chaudhary, the learned counsel for the petitioner has vehemently contended that the Court below has failed to appreciate that the substantial part of the work of laying the pipe line has been carried out in Sanganer which falls within the Municipal Limits of Jaipur City. The Court below has committed illegality in exercise of jurisdiction vested in its in observing that it had no jurisdiction to grant the relief sought by the petitioner.

9. On the other hand, the contention of learned Sr. Advocate Mr. V. P. Singh is that the petitioner Company has not come before the Court with clean hands. This is a matter in which process of law has been abused by the petitioner company. No bank guarantee was ever furnished by the petitioner. Only the High Court of Delhi has jurisdiction to hear and decide all subsequent applications in view of the provisions contained in Section 42 of the Act, 1996. Mr. Singh, the learned counsel has placed reliance on "U.P. Co-operative Federation Ltd. v. Singh Consultants and Engineers (1987 (4) JT (SC) 406) in which the apex Court had set aside the order of the Allahabad High Court whereby it was held that invocation of performance guarantees, was illegal. The Supreme Court in para 34 of the judgment has observed thus :

"on the basis of these principles I reiterate that commitments of banks must be honoured free from interference by the Courts, otherwise, trust in commerce internal and international would be irreparably damaged, it is only in exceptional cases that is to say in case of fraud or in case of irretrievable injustice be done, the Court should interfere."

10. Reliance has also been placed on General Electric Technical Services Company Inc. Vs. M/s. Punj Sons (P) Ltd. and another, Hindustan Steel Workers Construction Ltd. Vs. G.S. Atwal and Co. (Engineers) Pvt. Ltd., Hindustan Steel Works Construction Ltd. Vs. Tarapore and Co. and another, and Ansal Engineering Projects Ltd. Vs. Tehri Hydro Development Corporation Ltd. and Another, Ratio of all the decisions is that bank could not be restrained by Court from making payment as per undertaking given by it in the absence of fraud or special equities in the forms of preventing irretrievable injustice between the parties.

11. In Skodaexport Company Limited v. I.O.C. (Suit No. AA 124 of 1996 decided on 1-11-1996) the Delhi High Court has observed thus:

"The contractor knows it fully well that if the bank guarantee is encashed the only remedy with him would be to file a suit or to refer the dispute to arbitration as the case may be. The plaintiff is already referring the disputes to arbitration. Under the new Act, during the arbitration proceedings, the Tribunal has been empowered to give interim measure or protection as the Tribunal may consider necessary in the subject matter of dispute. Therefore the plaintiff may even approach the arbitrator for interim measure of protection."

12. The petitioner has nowhere mentioned in the revision petition that Skodaexport Company Limited had already instituted suit in the High Court of Delhi regarding the bank guarantees which are subject matter of dispute in the revision petition. This fact was also concealed by the petitioner in the Court below. It appears that after the decision of the Delhi High Court the petitioner-company rushed to the Court of the District Judge, Jaipur City and submitted the application u/s 11(6) read with Section 8 of the Act, 1996. As already stated the petitioner-company is a consortium partner with Skodaexport Company Limited and M/s. Larsen and Tubro Limited and the three Companies are equally liable and the contracts were executed by Skodaexport as the Leader of the consortium. The bank guarantees which are subject matter before this Court are also the subject matter before the High Court of Delhi. The leader of the consortium M/s. Skodaexport had already approached the High Court of Delhi as such according to Section 42 of the Act, 1996 all subsequent applications arising out of the arbitration agreement and arbitral proceedings shall have to be made in the High Court of Delhi and no other Court had jurisdiction to entertain such applications. Thus, the Court of the District Judge, Jaipur City had no jurisdiction to entertain the application submitted u/s 11(6) read with Section 8 of the Act, 1996.

13. So far as question pertaining to territorial jurisdiction is concerned it has been contended that Rule 19 of the General Rules (Civil) 1986 conferred jurisdiction upon the District Judge, Jaipur City as per Appendix "A" Rule 19 provides that the territorial limits and place or places of sitting of the permanent Civil Courts in the State are stated in Appendix A. In the Appendix A territorial limits of jurisdiction of District Judge, Jaipur City is "Municipal Limits of Jaipur City." Sanganer falls within the Municipal limits of Jaipur City. As such in view of

provisions contained in Rule 19 of the General Rules (Civil) 1986 it can safely be held that if cause of action arises in Sanganer, the Court of District Judge, Jaipur City has jurisdiction to entertain the suit based on such cause of action.

The question, as to whether the cause of action arose in Sanganer, is a question of fact which can only be adjudicated after recording the evidence of the parties.

14. Upshot of the above decision is that the challenged order does not poses a problem about a material defect in the procedure adopted by the Court below while dealing with the application submitted u/s 11(6) read with Section 8 of the Act, 1996. No material irregularity or illegality has been committed by the Court below in exercise of jurisdiction vested in it. If the impugned order is allowed to stand it would not occasion failure of justice and the petitioner-company shall not suffer irreparable loss.

15. In the result the revision is dismissed with cost which is quantified Rs. 5,000/-(rupees five thousand).