
(2005) 04 DEL CK 0074

In the Delhi High Court

Case No : LPA 1072 of 2004 and CM 14449 and 14450 of 2004

Societe Pepper Grenoble S.A.R.L.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 20-04-2005

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16
Constitution of India, 1950 — Article 14
Contract Act, 1872 — Section 23

Citation : (2005) 04 DEL CK 0074

Hon'ble Judges : B.C. Patel, C.J.; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Aparna Vishwanath, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, C.J.

C.M.14450/04

1. Allowed, subject to just exceptions.

LPA 1072/2004 and C.M.Nos.14449/04

2. Present Appeal is preferred against the order passed by the learned single Judge in C. W. 5797/2003 decided on 18.5.2004. As there is gross delay in preferring the appeal, application for condensation of delay is also filed, being C.M.14449/04 to condone the delay of 142 days. Only ground given in the opinion of this Court as indicated in paras 7 and 8 of the prayer clause in the application are reproduced herein below:-

7. The applicant/appellant submits that the Hon'ble Court may be pleased to condone the unavoidable delay of one month after the receipt of the order of the learned Arbitrator dated September 29, 2004 reviving the arbitration proceedings.

8. The applicant/appellant further submits that the institution and the

maintenance of the appeal would have been infructuous during the six month period of suspension of the arbitral proceedings until September 29, 2004. There is no sufficient and bonafide Explanation for preferring the appeal after delayed period. Merely because the proceedings were suspended for the time being, it is not a sufficient cause not to approach the Court in time. We are not satisfied with the grounds for delay indicated in the application.

3. That apart, we have examined the matter on merits. Learned Single Judge has pointed out that the petition was filed for quashing an order dated 1.3.2005 made by the Arbitrator on the ground that the contract is void u/s 23 of the Indian Contract Act. The application was filed u/s 16 of the Arbitration and Conciliation Act, 1996 challenging the jurisdiction of the Tribunal to adjudicate upon the disputes between the parties. The sole ground was that the Arbitrator was appointed by the other side. There is no dispute that the Arbitrator is appointed in terms of the agreement entered into between the parties and the provisions contained in the Arbitration and Conciliation Act, 1996. When arbitration clause in the agreement specifically refers to the appointment of an Arbitrator it is not open for the party to back out from the contract which the party has entered into. The question of unequal bargaining power is not required to be accepted in the present case. In all the contracts, parties are entering into an agreement and it is in view of the agreement entered into between the parties, Arbitrator is appointed. When a retired Judge is appointed as an Arbitrator, we fail to understand as to how the appellant is aggrieved with the arbitration on the ground that the contract is void. We have gone through the decision cited by the counsel for the appellant in case of *Hindustan Times v. State of Uttar Pradesh* AIR 2003 SCC 250 and *Central Inland Water Transport Corporation Limited v. Brojo Nath* AIR 1986 SCC 1571. In case of *Central Inland Water Transport Corporation* (supra), the Court pointed out as under:-

"90. Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of nineteenth-century theories? Should the strong be permitted to push the weak to the wall. Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample under foot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract,

entered into between parties who are not, equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equator almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power.

These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."

4. Thus when two business men have entered into a contract, the petitioner who is a foreign company engaged in a business has entered into a contract with the Union of India cannot be allowed to say that the agreement is bad in law on account of unequal protection. On reading the text of the judgment, it appears that the judgment is not in any way helping the appellant but on the contrary it goes against the appellant. In *Hindustan Times v. State of U.P* (supra), the case was pertaining to labour legislation and the question was about the issuance of advertisements and deducting the amount of 5% from the advertisements being on account of pension fund. The Court pointed out that it is well settled that every executive action which operates to the prejudice of any person must have the sanction of law. The executive cannot interfere with the rights and liabilities of any person unless the legality thereof is supportable in any court of law. The issue of the unjust condition was relatable to the bargaining power of the State and the newspapers in matters of release of advertisement which was found to be unequal. It is in view of this the impugned action of the State was not accepted. In the instant case, the agreement is entered into between the parties in accordance with law and when the contract is entered into by the parties they are required to be governed by the terms of the agreement.

5. We find no merit in the appeal and the same is required to be dismissed.

6. The appeal as well as the applications are accordingly dismissed.