
(2005) 09 P&H CK 0097
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9747 of 2005

State of Haryana

APPELLANT

Vs

Distt. Judge and Others

RESPONDENT

Date of Decision : 02-09-2005

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(6), 12
Constitution of India, 1950 — Article 226, 227

Citation : AIR 2006 P&H 69 : (2006) 2 ARBLR 74 : (2006) 142 PLR 87 : (2005) 4 RCR(Civil) 664

Hon'ble Judges : D.K. Jain, C.J.; Hemant Gupta, J

Bench : Division Bench

Advocate : Arun Walia, A.A.G, for the Appellant; A.P.S. Shergil, for the Respondent

Judgement

D.K. Jain, C.J.—By this writ petition, under Articles 226 and 227 of the Constitution of India, Director, Haryana State Lotteries calls into question the legality and validity of order, dated 30.4.2005, passed by the Distt. Judge, Chandigarh u/s 11(6) of the Arbitration and Conciliation Act, 1996 (for short, "the Act"). By the impugned order, the learned Judge has allowed the application and appointed a retired District and Sessions Judge as the sole Arbitrator to adjudicate upon the disputes between the petitioner and one M/s Focus Information System Pvt. Ltd., respondent No. 2 herein. The District Judge, the Arbitrator and the Finance Secretary, Government of Haryana, have also been impleaded as respondents No. 1, 3 and 4 respectively.

2. Briefly stated, the material facts giving rise to the present petition are as follows:

On 3.7.1988, an agreement was entered into between the petitioner and respondent No. 2, whereby the said respondent agreed to become the approved party for computerised facilities management and consultancy, designing, creation, maintenance and continuous change of internet website for Haryana

State Lotteries for the period from 3.7.1998 to 2.7.1999. The period was extended by another one year. It appears that some disputes arose between the said parties. Accordingly, invoking Clause 37 of the arbitration agreement, respondent No. 2, vide letters dated 4.4.2002 and 28.6.2002 requested respondent No. 4, the persona designata, to adjudicate upon the disputes. Having failed to get any response from the said respondent, within 30 days, the said respondent filed an application u/s 11 of the Act before the Civil Judge (Senior Division), Chandigarh on 23.8.2002, for appointment of an independent Arbitrator, on the plea that respondent No. 4 had forfeited his right to arbitrate in the matter.

3. The application was contested by the petitioner. Issues were thus, framed by the Civil Judge and evidence was led by the both the parties before him. However, before the application could be disposed of by the Civil Judge, on 17.9.2003 a notification was issued by the Chief Justice, Punjab and Haryana High Court, whereby in supersession of the earlier scheme, published on 19.12.1996, a fresh scheme under the Act was framed. Paragraph 3 of the said scheme provided that request for appointment of Arbitrator, wherein the value of the subject-matter did not exceed 25 lac rupees shall be dealt with by the District Judge, whereas the request for appointment of Arbitrator involving the subject-matter exceeding 25 lac rupees shall be dealt with by the Chief Justice himself or he may designate any judge of the High Court for this purpose, by a general or special order.

4. The claim of respondent No. 2, being more than Rs. 25 lacs, in the light of the amended scheme, the Civil Judge, vide order dated 6.5.2004, referred the application to the District Judge for further proceedings. By the impugned order, the District Judge has disposed of the application. Hence the writ petition.

5. The order is assailed on three main grounds, namely, (i) the 2003 scheme, not being retrospective in operation, the Civil Judge should not have referred the application to the District Judge and ought to have dealt with it at his own level; (ii) on receipt of the reference, the District Judge ought to have returned the case back to the Civil Judge and (iii) if the scheme was to take effect retrospectively, even then the District Judge should have referred the case to the Chief Justice because the subject-matter of the dispute involved was Rs. 29,22,500/- i.e., more than Rs. 25 lacs. In other words, under none of the contingencies, the District Judge was competent to deal with the application. It is thus, pleaded that the impugned order, being without jurisdiction is per se illegal and deserves to be quashed.

6. The petition is resisted by respondent No. 2 mainly on the ground that once the Arbitrator had been appointed, the only remedy available to the petitioner was by way of an application u/s 12 of the Act. It is also alleged that the matter was not relegated to the Civil Judge because of the consent of both the parties before the District Judge and therefore, the present petition is not maintainable.

7. We have heard Mr. Arun Walia, learned Senior Additional Advocate General, Haryana appearing on behalf of the petitioner and Mr. A.P.S. Shergil, learned Counsel appearing on behalf of respondent No. 2.

8. Since admittedly, the matter had not been referred back to the Civil Judge by the District Judge, the question whether the Civil Judge was competent to deal with the application, the same having been filed prior to the 2003 scheme, does not arise for our consideration. Therefore, the only issue, which we are required to adjudicate, is as to whether the District Judge had the jurisdiction to deal with the said application and grant the relief sought for.

9. We are of the considered view that looked at from any angle, the District Judge lacked inherent jurisdiction to deal with the application. Admittedly, at the time when the application u/s 11 of the Act was filed, the scheme, published on 19.12.1996, was in vogue and in terms of this scheme, the Civil Judge (Senior Division), Chandigarh was competent to deal with the application as the delegatee of the Chief Justice. At the time when the application was disposed of by the District Judge, vide order dated 30.4.2005, the scheme, published on 17.9.2003, whereby the District Judge was designated as the competent authority to entertain the request for appointment of an Arbitrator, was in force. Nonetheless, he could deal with an application under the said provision, only where the value of the subject-matter did not exceed Rs. 25 lacs. In other words, under both the schemes, the District Judge did not have the jurisdiction to deal with the application.

10. We are unable to agree with learned Counsel for respondent No. 2 that since both the parties had agreed before the District Judge not to permit the matter back to the Civil Judge, being a consent order, the petitioner is now estopped from challenging the jurisdiction of the District Judge to deal with the matter.

11. There is no gain saying that the competence of a Court to try a case goes to the very root of its jurisdiction and where it is lacking, it is a case of inherent lack of jurisdiction, which cannot be cured by consent of parties or waiver. (See: Seth Hiralal Patni Vs. Sri Kali Nath, and Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs., . It is equally well-settled that a Court, which has no jurisdiction in law, cannot be conferred with the jurisdiction. (See: Smt. Isabella Johnson Vs. M.A. Susai, .

12. In view of the above, the District Judge did not have jurisdiction to try the petition. Under these circumstances, we are constrained to hold that the order passed by the District Judge, appointing an Arbitrator, being coram nonjudice, would, as held in M/s. East India Corporation Ltd. Vs. Shree Meenakshi Mills Ltd., , be a nullity and therefore, cannot be sustained.

13. In the result, the writ petition is allowed; the impugned order is set aside and in order to cut short the life of litigation, it is directed that the application filed by respondent No. 2 shall be transferred to this Court for disposal in accordance with law. At this stage, it is pertinent to note that before the District

Judge, the petitioner did not raise any objection in regard to his jurisdiction, with the result that only the precious court time of the District Judge has been wasted, the adjudication of the disputes between the parties has also been considerably delayed unnecessarily. That part, the claimant, namely, respondent No. 2 has also been made to suffer monetary loss on account of payment of his share of fee to the Arbitrator, as fixed in the impugned order. We feel that under these circumstances, it would be just and fair that the petitioner is made to bear the entire burden of the fee paid to the Arbitrator. Accordingly, we direct that the petitioner shall reimburse to respondent No. 2 an amount of Rs. 10,000/-, if the fee, in terms of the impugned order, has been paid to the Arbitrator.

14. The petition stands disposed of accordingly.