

(2015) 03 MP CK 0130
In the Madhya Pradesh High Court
Case No : A.A. No. 28 of 2007

State of M.P. and Others

APPELLANT

Vs

Indermal Samrathmal

RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 33, 34, 34(2), 34(2)(a)(b)

Citation : (2015) 03 MP CK 0130

Hon'ble Judges : Alok Verma, J

Bench : Single Bench

Advocate : Mini Ravindran, Learned Dy. G.A., for the Appellant; Sumit Samvatsar, Learned Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

Alok Verma, J.

1. This appeal is filed under section 37 of the Arbitration and Conciliation Act 1996 (hereinafter referred to as "the Act") and is directed against the order passed by the learned 5th Additional District Judge (FT), Ratlam in Misc. Civil Case No. 35/2003 dated 02.02.2005 under section 34 of the Act.

2. The facts of the case are mostly admitted. That the respondent is a registered Private Company Ltd. whose Head Office is located at the City of Ratlam, District Ratlam. Appellant No. 1 is State of Madhya Pradesh and appellant No. 2 is Dispute Redressal Committee provided in the agreement entered into between appellant No. 1 and the respondent.

3. Under this agreement, the respondent undertook to construct the road from Lebad to Jaora and some other minor roads total length of which was 130.4 kms. The work included construction of bridges and culverts. The work order was issued on 15.04.1999 and the period of agreement was 3147 days. As per the agreement in first six months, the respondent was expected to complete certain initial work, after which inspection was to be done by the concerning Executive

Engineer and on his certificate, as per the condition of the agreement, the respondent was to be given right to recover toll tax on the road from the vehicles plying on the road. The notification in this respect was issued in the official gazette on 14.03.2000 and the respondent was given right to recover toll tax w.e.f. 17.03.2000.

4. The terms of the agreement was that the respondent was to complete construction of road including bridges and culverts in first three years excluding the rainy season. For the purpose of calculation of period of rainy season, 16th June to 15th October would be considered as rainy season. 50% of this period that is instead of 4 months, 2 months would be taken into consideration for calculating the period of agreement. The first year should be counted from the date from which the respondent was given right to recover toll tax i.e. on 17.03.2000.

5. It was alleged by the present appellant that the respondent failed to complete work in first 3 years of the agreement and, therefore, a dispute arose between concerning executive engineer and the respondent and matter was referred to appellant No. 2 - Dispute Redressal Committee, constitution of which was provided in the agreement itself.

6. After going through the contentions of both the parties, the committee gave the following findings:--

7. Prior to the findings given by the Redressal Committee, the respondent filed a civil suit before the Additional Judge to the Court of First Additional Civil Judge Class-I, Ratlam which was registered as Civil Suit No. 139-A/2001. Respondent filed an application under order 39, rules 1 and 2. In this civil suit, as an interim measure on 16.10.2001, the learned Civil Judge passed an interim order to the following effects:--

8. A joint account between the concerning Executive Engineer and the respondent was opened in UCO Bank mention of which may be found in para 7 of the findings given by the redressal committee.

9. However, while disposing of the application filed by the respondent under order 31, rules 1 and 2 on 29.10.2001, the learned Civil Judge found the suit as not maintainable and subsequently, the suit was dismissed as not maintainable. Meanwhile, it appears from the record that the daily collection from toll tax was deposited by the respondent in the joint account opened in the UCO Bank, in compliance of the Court's order referred to above. Total amount of approximately Rs. 67,00,000/- was deposited in the account which still remains deposited and is the main issue of dispute in this case. It further appears from the record that the respondent opened an escrow account on 23.11.2001 in Indian Bank for the purpose of obtaining loan from Industrial Development Bank of India, Bhopal. Some amount of toll tax was also deposited in this account as well.

10. Against the findings given by the redressal committee, the respondent filed an appeal before the learned 5th District Judge (FT) Ratlam. The appeal was disposed of by the impugned order dated 02.02.2005. In this appeal, it was contended by the respondent that the committee had directed to deposit daily recovery of toll tax in the joint account opened in compliance of courts order in UCO Bank, however, the toll booth established by the respondent were closed as the agreement was rescind by the concerning Executive Engineer and the toll booth stopped working w.e.f. 31.12.2001. Challenging the findings of the redressal committee, it was contended that the amount deposited in the joint account should be allowed to be withdrawn by the respondent. The Additional District Judge allowed the appeal and directed that the amount deposited in the joint account in the UCO Bank may be permitted to be withdrawn by the respondent with help of concerning Executive Engineer. Against this order, this present appeal was filed by the present appellant under section 37 of Act challenging the impugned order passed by the learned Additional Sessions Judge under section 34 of the Act.

11. Before proceeding to consider the appeal on merit, it may be mentioned here that the counsel for the appellant as well as respondent submitted before the Court at bar that the arbitrator has been appointed in this case and the matter is pending before the arbitrator. It was further admitted by them that all the issues including withdrawal of money from the joint account shall be dealt with by the arbitrator.

12. After going through the record of the case and taking various facts into consideration in our considered opinion, this appeal deserves to be allowed and the impugned order is liable to be set aside due to following reasons.

13. Section 34 of the Act provides only a limited scope to the Appellate Court. Under this section, the Appellate Court cannot sit like a regular Appellate Court and appreciate all the issues of facts and law. The appeal can be filed only on the ground stated in the section 34(2) of the Act. The provisions of the section 34 may be reproduced below:--

"34. Application for setting aside arbitral award.--(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with Sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if -

(a) the party making the application furnishes proof that -

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the

appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matter beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that -

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation.-Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award, or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter..... "

14. We may see that section 34(2)(a)(b) provides the grounds on which appeal can be filed. None of these grounds has been taken up by the appellant before the learned Appellate Court and therefore, in our opinion, it appears that the appeal on the ground that committee constituted in accordance with the provisions of the contract for resolution of dispute, erred in any of its findings as reproduced above, is not maintainable.

15. The second aspect of the matter is that as admitted by all the parties before the Court, an arbitrator is appointed under section 11 of the Act and, therefore, all the disputes between parties including the amount deposited in the joint account at the instance of the Civil Judge would be subject matter of arbitration in this matter. In this view of the matter, we are of the considered view that the

order passed by the learned 5th Additional District Judge (FT), Ratlam in Misc. Civil Case No. 35/2003 dated 02.02.2005 under section 34 of the Act liable to be set aside.

16. Accordingly, the appeal is allowed. The impugned order is set aside with liberty that the respondent may raise all the disputes between the parties including the dispute in respect of money deposited in the joint account at the instance of the Civil Judge, before the arbitrator appointed in this matter under section 11 of the Act.

17. With this observation and direction, this appeal stands disposed of.