
(2007) 12 AHC CK 0097

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22485 of 2006

State of U.P.and others

APPELLANT

Vs

District Judge, Allahabad and another

RESPONDENT

Date of Decision : 24-12-2007

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 36

Civil Procedure Code, 1908 (CPC) — Section 47

Uttar Pradesh Reorganisation Act, 2000 — Section 42, 55

Citation : (2007) 12 AHC CK 0097

Hon'ble Judges : Janardan Sahai, J and Janardan Sahai, J

Final Decision : Dismissed

Judgement

Janardan Sahai, J.—It appears that certain disputes regarding the payment for work done by the respondent No. 2 in the Khumbh Mela of 1998 at Hardwar arose between the petitioner State of U. P. and the 2nd respondent. There was an arbitration Clause No. 29 in the contract and in pursuance of the said arbitration clause the dispute was referred to arbitration of the named arbitrator, the Commissioner, Saharanpur Division. The Commissioner, Saharanpur partly allowed the claim of respondent No. 2 and awarded a sum of Rs. 72,71,222.40 paisa. Learned standing counsel for the petitioners and the counsel for the respondent No. 2 are on common ground that the provisions of Arbitration and Conciliation Act, 1996 were applicable. The award was put into execution by the respondent No. 2 at Allahabad where the office of the petitioner No. 3, the Inspector General of Police, Allahabad who was opposite party in the execution case is situate. Objections under Section 47 of the C.P.C. were filed by the petitioners. The case of the petitioners in the objections was that in view of the provisions of Section 55 of the U. P. Reoroginization Act, 2000 the liability for payment was that of the State of Uttaranchal. The objections have been dismissed by the impugned order dated 9.1.2006 passed by the District Judge, Allahabad.

2. I have heard learned standing counsel for the petitioners and S/Sri R. R.

Agarwal and Ashish Agarwal counsel for respondent No. 2.

3. Reliance was placed by the learned standing counsel upon Section 55 of the U. P. Reorganization Act, which is as follows:

"Contracts.(1) Where, before the appointed day, the existing State of Uttar Pradesh"has made any contract in the exercise of its executive power for any purposes of the State, that contract shall be deemed to have been made in the exercise of the executive power:

(a) if the purposes of the contract are, on and from the appointed day, exclusive purposes of either of the successor States of Uttar Pradesh and Uttaranchal and

(b) in any other case, of the State of Uttar Pradesh, and all rights and liabilities which have accrued, or may accrue under any such contract shall, to the extent to which they would have been rights liabilities of the existing State of Uttar Pradesh, be rights or liabilities of the State of Uttaranchal or the State of Uttar Pradesh, as the case may be:

Provided that in any such case as is referred to in clause (b), the initial allocation of rights and liabilities made by this subsection shall be subject to such financial adjustment as may be agreed upon between the successor States of Uttar Pradesh and Uttaranchal or in default of such agreement, as the Central Government may, by order, direct.

(2) For the purposes of this section, there shall be deemed to be included in the liabilities which have accrued or may accrue under any contract:

(a) any liability to satisfy an order or award made by any Court or other Tribunal in proceedings relating to the contract: and

(b) any liability in respect of expenses incurred in or in connection with any such proceedings."

4. Learned standing counsel submits that the contract was entered into by the existing State of Uttar Pradesh for Kumbh Mela work at Hardwar, now in the State of Uttaranchal and it was therefore done for the purposes of the successor State of Uttaranchal and therefore the rights and liabilities arising out of the contract would also be those of the State of Uttaranchal which is liable to pay the amount awarded by the arbitrator and not the successor State of Uttar Pradesh. It is not in dispute that such an objection was not raised before the arbitrator. In fact the objection raised by the petitioners before the arbitrator was that in view of the provisions of Section 91 of the U. P. Reorganization Act, the proceedings were liable to be transferred to the State of Uttaranchal. It appears that In view of the objections of the petitioners, the Commissioner, Saharanapur before whom the arbitration proceedings were pending was not proceeding in the matter. Aggrieved the respondent No. 2 filed Writ Petition No. 34521 of 2002 in this Court. An application was made in that writ petition by the present petitioners who were respondents in that writ petition that they were withdrawing their

objections regarding the jurisdiction of the Commissioner, Saharanpur. The writ petition was accordingly disposed of with the direction to the arbitrator to decide the case. Consequently the arbitrator proceeded and gave his award.

5. The contention that the liability is that of the State of Uttaranchal in view of Section 55 of the Act was pressed before the District Judge in the objection under Section 47, C.P.C. The District Judge has held that such an objection cannot be allowed to be raised in execution proceedings because it would be going behind the decree. In my opinion the view taken by the District Judge is correct. Certain facts appear to be not in dispute in this petition, namely that the contract related to the Kumbh Mela of 1998 at Hardwar and the work was also performed at Hardwar. It is not disputed by learned standing counsel that the work under the contract had already been completed before the U. P. Reorganization Act, 2000 was passed. The copy of the agreement has been annexed with the counteraffidavit. Clause (XVI) of the agreement specifies the nature of work to be performed by the second respondent as supplying tentage, furniture, tin work and miscellaneous articles like fcarmat encl., dari, chandni, tripal, gadda, takia, bed sheet, table cloth, masnad and blanket etc. on hire to the Police Administration and Health Department working for the Kumbh Mela, 98, Hardwar. It appears from this Clause (XVI) that the work was of a temporary nature and its benefit was availed of in the Kumbh Mela of 1998 and there is nothing to show that the State of Uttaranchal got benefit of the said work which was done before the U. P. Reorganisation Act, 2000. In any case this was a question of fact and it was for the petitioners to have raised the point before the arbitrator. As the petitioners have failed to raise this question before the arbitrator and an award has been passed, it is not open to the executing court to go behind the decree. The view taken by the court below appears to be correct.

6. The apportionment of assets and liabilities is dealt with in Section 60 of the Act, which provides that the successor State of U. P. and Uttaranchal may agree that the benefit or burden of any particular asset or liability be apportioned between them in a manner other than that provided under the foregoing provisions of this Part and such an agreement would prevail, it is not in dispute that neither the award nor the agreement itself has been challenged by the petitioners by an application under Section 34 or under Section 33 of the Arbitration and Conciliation Act, 1996. As it is not in dispute that the 2nd respondent is entitled to the payment under the award and the dispute really is whether it is the liability of the State of Uttar Pradesh or that of Uttaranchal the same can be resolved by appropriate legal proceedings between the two States or as provided under Section 60 of the U. P. Reorganization Act by agreement and there is no reason why the 2nd respondent should suffer in a dispute between two States. In a similar situation the Apex Court was called upon to decide a question whether the refund of the security deposit made by the petitioners of that case to the M. P. Electricity Board was liable to be refunded by the M. P. Electricity Board or by the new Chhattisgarh Electricity Board constituted for the new State of Chhattisgarh. The provisions of the M. P.

Reorganizational Act were considered by the Apex Court and it was held that the question as to which corporation is really to bear the burden was not of consequence and the M. P. State Electricity Board with which the security deposit was made was called upon to refund the security to the petitioner of that case leaving the settlement of disputes between the M. P. Electricity Board and Chhattisgarh Electricity Board to be resolved by appropriate legal proceedings vide *Bhilai Power Supply Co. Ltd. v. State of M. P.*, AIR 2004 SC 650: 2003 (2) AWC 1295 (SC). In *State of U. P. and another v. Sadhu Ram Mittal*, 2006 ACJ 1785: 2006 (4) AWC 4176, a question arose whether the payment under an award given by the arbitrator in respect of certain work done at Joshi Math, Chamoli an area which was included in the territory of the successor State of Uttaranchal was liable to be made by the successor State of Uttaranchal or by the State of U. P. when the contract had been executed before the appointed date defined in the U. P. Reorganisation Act. It was held by this Court that the liability would be that of the State of U. P.

7. Learned standing counsel made another submission on the strength of the provisions of Section 42 of the Arbitration and Conciliation Act, 1996. That provision is quoted below:

"42 Jurisdiction. 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."

The contention of the learned standing counsel is that an application was filed at Hardwar by the respondent No. 2 for setting aside a portion of the award with which the respondent No. 2 was dissatisfied and therefore all consequential proceedings even in respect of execution of the award would be maintainable at Hardwar and not in any Court of U. P. In respect of this submission suffice it to say that no such objection was taken by the petitioners in the objection under Section 47 of the C.P.C. Section 36 of the Arbitration and Conciliation Act, 1996 provides that an award shall be enforced in the same manner as a decree of a civil court. Subsection (3) of Section 21, C.P.C. provides that objections relating to the territorial jurisdiction of the executing court shall not be allowed to be raised in any appellate or revisional court unless the said objection was taken in the executing court at the earliest possible opportunity and unless it has occasioned a failure of justice. Neither was any such objection taken by the petitioner before the executing court nor there is anything to show that there has been any failure of justice. Even otherwise it does not appear that Section 42 would have application to an application for execution of the award. Reliance is placed by the learned standing counsel upon the decisions of the Apex Court in *Kumbha Mawjt v. Dominion of India*, AIR 1953 SC 313 and upon *M/s. Guru Nanak Foundation v. M/s Ratan Singh and Sons*, AIR 1981 SC 2075. Those were

cases in which the provisions of Section 31 (4) of the Arbitration Act, 1940 fell for interpretation. The language of that provision is not in part materia with that of Section 42. However, it is not necessary to go into this question any further in view of the finding given above that the question of territorial jurisdiction in this case cannot be allowed to be raised for the first time in the writ petition.

8. There is no merit in this petition.

Dismissed.