

(2013) 06 KAR CK 0159
In the Karnataka High Court
Case No : CMP No. 119 of 2011

The Karnataka Urban Water Supply and Drainage Board	APPELLANT
Vs	
M/s. Pragathi Concrete Products Pvt. Ltd.	RESPONDENT

Date of Decision : 18-06-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 37, 43(2), 45(1)

Citation : (2013) 06 KAR CK 0159

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : H.N. Shashidhara, for the Appellant; R.L. Patil, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Nagamohan Das, J.—Petitioner is a statutory Board established under the Karnataka Urban Water Supply and Drainage Board Act, 1974. Petitioner invited tenders on 11.03.1992 for construction of water treatment plant for supply of drinking water to the city of Tumkur. Respondent is one of the tenderer. After processing the tenders the petitioner accepted the tender submitted by the respondent. Accordingly on 13.1.1994 there came to be an agreement between the petitioner and the respondent for execution of the work. During the course of execution of the work there came to be certain disputes between the parties. Accordingly, the respondent invoked the arbitration clause in the agreement and filed CMP No. 31/1998 for appointment of arbitrator. This court vide order dated 06.11.1998 allowed CMP No. 31/1998 and appointed one Sri T.G. Radhakrishna, a retired Chief Engineer as sole arbitrator. Being aggrieved by this order the petitioner filed a civil appeal before the Supreme Court in Civil Appeal No. 4953/1999. The Supreme Court vide order dated 6.9.1999 confirmed the order of this court but appointed another arbitrator by name G.M. Vijay Kumar in place of T.G. Radhakrishna and further observed that in the event of G.M. Vijay Kumar refusing to be the arbitrator then it is open to the parties to approach the High Court for appointment of a new arbitrator. When the matter stood at that stage,

petitioner filed a civil suit in O.S. No. 440/2002 against the respondent for recovery of sum of Rs. 1,80,75,000/-. Respondent entered appearance before the civil court and filed an application u/s 8 of the Arbitration Act to dismiss the suit as not maintainable and to refer the parties for arbitration. The civil court vide order dated 10.06.2004 allowed the application filed by the respondent and directed the parties to go before the arbitrator. This order of the trial Court came to be affirmed by this court in W.P. No. 43486/2004 vide order dated 03.11.2006. Petitioner carried the matter to the Supreme Court in SLP No. 2202/2007. The Supreme Court vide order dated 08.02.2008 disposed the SLP as under:

We are not inclined to interfere in this Special Leave Petition. The same is accordingly, dismissed. However, the question of law is left open so that in future he may argue the matter.

2. Thereafter the petitioner requested Sri G.M. Vijaya Kumar to be the arbitrator to adjudicate the dispute between the parties as per the letter dated 16.07.2008, Annexure-M. Sri G.M. Vijaya Kumar in his reply dated 26.07.2008 expressed his inability to function as arbitrator. In the circumstances, the petitioner is before this court seeking appointment of an Arbitrator.

3. Respondent entered appearance and filed objections interalia contending that the claim of the petitions is barred by time and on this ground the petition is liable to be dismissed.

4. Heard arguments on both the side and perused the entire petition papers.

5. The facts and legal proceedings that had taken place between the parties as stated above are not in dispute. After disposal of Civil Appeal No. 4953/1999 by the Supreme Court on 6.9.1999 the petitioner instead of approaching the arbitrator filed a civil suit against the respondent in O.S. No. 440/2002 for recovery of money. The civil court vide order dated 10.06.2004 directed the parties to go for arbitration. This court in W.P. No. 43486/2004 and Supreme Court in SLP No. 2202/2007 confirmed the order of the civil court in O.S. No. 440/2002 directing the parties to go for arbitration. For the first time, the petitioner approached the arbitrator-G.M. Vijaya Kumar requesting him to adjudicate the dispute on 16.07.2008. Sri G M. Vijaya Kumar in his reply dated 26.07.2008 expressed his inability to be an arbitrator. After lapse of three years, the petitioner has approached this court in the present petition for appointment of an arbitrator. Thus on the face of it there is delay of more than three years in approaching this court seeking appointment of an Arbitrator.

6. Section 45(1) of the Arbitration Act specifies that Limitation Act shall apply to arbitration as it applies to proceedings in the court. Section 43(2) specifies that clock of limitation commences on the date referred to Section 21 of the Act. Section 21 of the Act specifies that the clock of limitation commences on the date on which a party revokes arbitration clause. Further the Supreme Court in Panchu Gopal Bose Vs. Board of Trustees for Port of Calcutta, while interpreting

the provisions of Arbitration Act held as under:

Therefore, the period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued. Just as in the case of civil actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the cause accrued.

In Visakhapatnam Port Trust Vs. Continental Construction Company, it is held as under:

16. It is apparent from the bare reading of Section 37 that the law of limitation is applicable to the proceedings before the arbitrators as it applies to proceedings before the Courts. Under Sub-section (3), arbitration proceedings are to be deemed to have commenced when notice is served by one party upon the other- (i) requiring him to appoint an arbitrator, or (ii) if the arbitrator was named or designated in the arbitration agreement, requiring him to submit the difference to arbitrator named or designated.

From the decisions referred to supra it is clear that this court while considering a petition u/s 11 of the Arbitration Act is entitled to go into the question of limitation. The dispute is pending between the parties from the year 1998. Time and again the trial Court, this court and the Supreme Court held that the dispute between the parties is to be resolved through an Arbitrator. The Arbitrator appointed by the Supreme Court Sri G.M. Vijaya Kumar expressed his inability to function as an Arbitrator on 26.07.2008. After lapse of more than three years the petitioner has filed the present petition on 16.08.2011. On the face of it, there is a delay of more than three years in approaching this court seeking appointment of an arbitrator. Under Art. 137 of the Arbitration Act the petition filed by the petitioner is barred by limitation. Therefore, the petition is liable to be dismissed.

For the reasons stated above, the petition is hereby dismissed.