

(2015) 12 PAT CK 0065

In the Patna High Court

Case No : Miscellaneous Appeal No. 422 of 2015

The State of Bihar and Others

APPELLANT

Vs

Rashtriya Pariyojna Nirman Nigam Ltd.

RESPONDENT

Date of Decision : 15-12-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2, 2(1)(e), 2(i)(e), 34
Civil Procedure Code, 1908 (CPC) — Section 15
Constitution of India, 1950 — Article 133

Citation : (2015) 12 PAT CK 0065

Hon'ble Judges : Shivaji Pandey, J.

Bench : Single Bench

Advocate : D.K. Sinha, Senior Advocate, AAG-2, Sudhir Kumar, AC to AAG-2 and Alok Kumar Rahi, AC to AAG-2, for the Appellant; Rajesh Kumar Sharma and Nand Kishore Singh, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Shivaji Pandey, J.—Heard counsel for the appellant and the respondent.

2. In this case, appellant is challenging the judgment/order dated 15th July 2015 whereby and whereunder the objection filed by the appellant u/s. 34 of the Arbitration and Conciliation Act 1996 has been rejected by the Sub-Judge-I, Gopalganj in Misc. Case No. 35 of 2006/Misc.Case No. 16A of 2012.

3. In the present case, apart from dealing with necessary facts, there is no need to enter into the deep of the matter, as jurisdictional issue has been raised that the Sub-Judge-I does not have jurisdiction to entertain objection which are filed before the said Court against the arbitration awards.

4. On reference, the Arbitrator passed the award in favour of the Rashtriya Pariyojna Nirman Nigam Limited and being aggrieved by the said award objection u/s. 34 of the Arbitration Act was filed before Sub-ordinate Judge-I, Gopalganj, by the State of Bihar, present appellant.

5. The limited question that has been raised before this Court is about the jurisdiction of Sub-Judge to consider the objection that was filed by the appellant under Section 34 of the Arbitration & Conciliation Act 1996 (Hereinafter, referred to as the "Act"). It is a fact that all the objections were to be adjudicated by the Court of Sub-Judge, as Principal Civil Court in terms of Section 2(i)(e) of the Act.

6. The jurisdiction of Sub-Judge as Principal Civil Court in terms of Section 2(i)(e) of the Act came for consideration, the matter was referred for authoritative pronouncement, the Division Bench in Shivam Housing Pvt. Ltd. and Others Vs. Thakur Mithilesh Kumar Singh and Others--> categorically dealt with the issue as to who will be the Principal Civil Court in terms of Section 2(i)(e) of the Act. It will be relevant to quote the paragraph 1 of the said judgment to understand the question of law referred is as follows:

Para-1: In the miscellaneous appeal learned Single Judge of this Court under order No. 20 dated 25.02.2011 referred the appeal for authoritative consideration by a Division Bench of this Court to decide the question as to whether Subordinate Judge or the District Judge is Principal Civil Court of original jurisdiction in a district within the meaning of Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act"). In this connection, learned Single Judge doubted the correctness of the judgment of this Court in the case of The Executive Engineer, C.P.W.D. and Others Vs. R.L. Singh Civil Engineer, and the subsequent decisions of this Court in the case of Md. Sadique (in 2448), Md. Amin (in 2446) Vs. State of Bihar, , Thakur Prasad Singh Vs. The State of Bihar and Another, and Bhopal Singh and Others Vs. Nagendra Narain Singh and Others--> in the reference order.

7. The Division Bench has considered different facets of Section 2(i)(e) and Section 34 of the Act and Section 18 of the Civil Court Act and arrived to the conclusion that the Court of Sub-Judge is not the Principal Civil Court in terms of Section 2(i)(e) of the Act. It will be proper to quote paragraph Nos. 32, 33 and 34 of the said judgment:

Para-32: In the miscellaneous appeal learned Single Judge of this Court under order No. 20 dated 25.02.2011 referred the appeal for authoritative consideration by a Division Bench of this Court to decide the question as to whether Subordinate Judge or the District Judge is Principal Civil Court of original jurisdiction in a district within the meaning of Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act"). In this connection, learned Single Judge doubted the correctness of the judgment of this Court in the case of The Executive Engineer, C.P.W.D. and Others Vs. R.L. Singh Civil Engineer, and the subsequent decisions of this Court in the case of Md. Sadique (in 2448), Md. Amin (in 2446) Vs. State of Bihar, , Thakur Prasad Singh Vs. The State of Bihar and Another, and Bhopal Singh and Others Vs. Nagendra Narain Singh and Others--> in the reference order. original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-mater of a suit, but does not include any civil

Court of a grade inferior to such principal civil Court, or any Court of Small Causes;" From perusal of definition it appears Principal Civil Court of original jurisdiction in a district also includes the High Court in exercise of its ordinary original civil jurisdiction having jurisdiction to decide the questions forming the subject-matter of the arbitration provided the same had been the subject-matter of a suit. It, however, does not include any civil court of a grade inferior to such Principal Civil Court or any court of small causes. It is, thus, evident that the Principal Civil Court of original jurisdiction in a district may include a High Court in exercise of its original jurisdiction provided the High Court has jurisdiction to decide the question forming the subject matter of arbitration by entertaining a suit but does not include any civil court of a grade inferior to such Principal Civil Court or any court of small causes. It is, thus, obvious that the court entertaining the application to set aside the arbitral award under Section 34 of the Act has to be the civil court of original jurisdiction highest in grade and may also include the High Court exercising ordinary original civil jurisdiction to try a suit. The civil court considering the arbitral award cannot be of a grade inferior to the Principal Civil Court. Patna High Court having no original civil jurisdiction to try a suit, there is no difficulty in concluding that in the State of Bihar the court within the meaning of Section 34 of the Act vested with the jurisdiction to consider the validity of the arbitral award is the court of District Judge, which has also the original civil jurisdiction and is not of a grade inferior to any other civil court within the same jurisdiction. The court of Subordinate Judge being a grade inferior to the court of District Judge may not be the competent court within the meaning of Section 34 read with sub-section (1)(e) of Section 2 of the Act to consider the validity of the arbitral award.

33. The view taken by the learned Single Judge in the case of Executive Engineer v. M/s. R.L. Singh (supra), Md. Sidique (supra), Thakur Prasad Singh (supra) and Bhopal Singh (supra) appears to have been rendered without taking note of Section 34 read with Section 2(1)(e) of the Act as also without taking note of Section 18 of the Civil Courts Act which, inter alia, provides the extent of original jurisdiction of District, Subordinate Judge to all original suits cognizable by civil courts subject to Section 15 of the Code of Civil Procedure which provides that the suit shall be instituted in the court of the lowest grade competent to try it. The scheme of the Act, however, is contrary to the scheme of the Code of Civil Procedure which requires a suit to be instituted, tried by the court of lowest grade competent to try the suit, as in terms of Section 34 read with sub-section (1)(e) of Section 2 the arbitral award is required to be assailed before the Principal Civil Court of original jurisdiction which will not include any civil court of a grade inferior, as such, in terms of the Act it is only the District Judge who has jurisdiction to consider the challenge made to the arbitral award.

34. In view of our finding above, both the impugned orders dated 21.04.2007, 21.01.2011, passed by Sub-Judge-I, Patna City, Sub-Judge-III, Rohtas at Sasaram in Miscellaneous Application No. 03 of 2007, Miscellaneous Case No. 20/06 respectively are set aside. Both the miscellaneous cases are now required

to be dealt with by the District Judge in accordance with law which may also include Additional District Judge. Both the miscellaneous applications have remained pending for long, as such, it is directed that the Subordinate Judge concerned should transfer the miscellaneous cases to the District Judge, who shall either deal with the same himself or transfer the cases to any other Additional District Judge but the matter must be disposed of as early as possible, in any case, within 60 days from the date of receipt of this judgment in the court below.

8. In view of the Division Bench judgment which is binding on this Court having no other alternative but to hold that the Sub-Judge of the Civil Court is not the proper authority to consider the objection under Section 34 of the Act rather the District Judge is the Principal Civil Court in terms of Section 2(i)(e) of the Act.

9. Next question has been raised by the respondent that this judgment will not have a retrospective effect and it will not affect the order passed by the Sub-Judge, in such view of the matter, the Division Bench will not affect the present impugned order. It is well settled principle of law that the judgment has always retrospective effect subject to the prospectivity given by the Court that too, power lies only with the Hon"ble Supreme Court, not with this Court. It will be appropriate to place reliance on General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi and Others, where it has been held, judicial decisions are retrospective in nature and they would be prospective in nature only if it has been provided therein. It will be appropriate to quote paragraph 29 of the said judgment:

Para-29: "Submission of the learned counsel for the respondents is that the said decision in Umadevi (3) case is not applicable:

(a) as it was rendered in 2006 whereas the cause of action for filing the writ petition arose in 2002; and

(b) a distinction must be made between the appointment on ad hoc basis and appointment on compassionate ground.

As to the first submission above, it is worth mentioning that judicial decisions unless otherwise specified are retrospective. They would only be prospective in nature if it has been provided therein. Such is clearly not the case in Umadevi (3). Accordingly, even though the cause of action would have arisen in 2002 but the decision of Umadevi (3) would squarely be applicable to the facts and circumstances of the case. Secondly, before a person can claim a status of a government servant not only his appointment must be made in terms of the recruitment rules, he must otherwise fulfill the criterion therefor. Appointment made in violation of the constitutional scheme is a nullity. Rendition of service for a long time, it is well known, does not confer permanency. It is furthermore not a mode of appointment."

10. Counsel for the respondent has submitted that judgment in personam will

not have retrospective effect as this principle will apply to the judgment in rem. The Division Bench judgment is in rem as well as in personam also, so it is submitted that it will not affect the judgment and award passed by the Sub-Judge. This submission cannot be accepted in view of the Hon''ble Supreme Court judgment.

11. In such view of the matter, this Court holds that the judgment will apply to the old proceeding unless it is finally settled. In such view of the matter, the order passed by Sub-Judge, Gopalganj order dated 15.07.2015 passed in Miscellaneous Case. No. 16A of 2012 by the Sub-Judge-I, Gopalganj is hereby set aside. The matter is remanded back to the Sub-Judge with the direction that the entire file be transferred to the District Judge, Gopalganj who will hear this matter either himself or will refer the same to any of the Additional District Judge who will decide the case in accordance with law.

12. With this observation, this appeal is allowed.

13. Counsel for the respondent has sought oral leave under Article 133 of Constitution of India to approach the Hon''ble Supreme Court for an authoritative decision. It is a very important issue affecting large number of the cases, disposed of prior to the judgment of this Division Bench. As consistently this Court has taken the view that the Sub-Judge is the Principal Civil Court and large number of cases have been dealt with by the Sub-Judge, but in view of Division Bench scenario has changed by declaring that District Judge is the Principal Civil Court and the Sub-Judge does not have jurisdiction to entertain any objection filed by the appellant under Section 34 of the Act.

14. In such view of the matter, the leave is granted for approaching the Hon''ble Supreme Court for authoritative pronouncement on the issue which has been raised by the Division Bench which is binding on this Court.