

(2016) 01 TP CK 0028
In the Tripura High Court
Case No : CRP No. 123 of 2015

The State of Tripura

APPELLANT

Vs

Subhas Chandra Datta

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16, Section 17, Section 34, Section 37, Section 9

Constitution of India, 1950 — Article 226, Article 227

Citation : (2016) 01 TP CK 0028

Hon'ble Judges : S.C. Das, J.

Bench : Single Bench

Advocate : B.C. Das, Advocate General and J. Majumder, Advocate, for the Appellant; A. Bhowmik, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. The petition is taken up for disposal at the admission stage itself.
2. Heard learned Advocate General, Mr. B.C. Das, assisted by learned counsel, Mr. J. Majumder for the petitioner and learned counsel, Mr. A. Bhowmik for the respondent.
3. The petitioner challenged order dated 16.02.2015 passed by sole arbitrator, Er. Asit Bhaumik, Additional Chief Engineer, Project, PWD(R&B) in case No. 1/ARB/AB/2008.
4. In terms of Agreement No. 35/E-In-C/SE-II/EE/TLM/2001-02, for the construction of RCC bridge over river Khowai near Kalyanpur, dispute arose between the petitioner and the respondent, contractor in respect of execution of the work and the dispute was referred to sole arbitrator for decision and award. The sole arbitrator taking into account the dispute, framed issues by order dated 06.08.2011 with the consent of both the parties.
5. The State-petitioner represented by the Executive Engineer, Teliamura Division

filed a counter claim and prayed for recasting the issues. By impugned order dated 16.02.2015 the sole arbitrator rejected the prayer of recasting the issues with the following order:

"In view of the counter claims of the Respondent has not been referred to the claimant contractor and these are not the counter claims against the disputes already raised by the claimant contractor at any point of time before appointment of Sri Sukomal Bhattacharjee as Sole Arbitrator by the Chief Engineer, PWD(R&B) vide his No. F 6(12)-PWD(C)/2007, dt. 27-06-2007 nor any reference of denial of such counter claims by the claimant contractor exist, it is decided that the issue stated above shall not be included as an issue alongwith the issues already framed."

6. Aggrieved by the order the State represented by Executive Engineer, Teliamura Division filed the present petition under Article 227 of the Constitution of India.

7. An arbitral proceeding is an Alternative Dispute Resolution Forum as per the provisions prescribed in Arbitration and Conciliation Act, 1996. The jurisdiction of ordinary Court of Law is very limited in respect of an arbitral proceeding. The High Court in exercise of its supervisory power under Article 227 of the Constitution of India can interfere in an order passed by an inferior Court or Tribunal only in the event the order suffers from want of jurisdiction, error of law, perverse finding or gross violation of natural justice.

8. The sole arbitrator was appointed according to law and there is nothing to show that the arbitrator was wanting in jurisdiction or that there was any violation of principles of natural justice since both the parties were heard and thereafter the order was passed based on the materials placed before the arbitrator and hence there was no perversity in the order.

9. Learned Advocate General, Mr. Das has submitted that the arbitrator committed error while rejecting the prayer of recasting the issues since the counter claim is to be submitted only after the claim is raised by the contractor. Issues were framed on the basis of the dispute raised by the contractor and the State represented by the Executive Engineer, Teliamura Division thereafter submitted the counter claim and the counter claim has to be decided along with the original claim raised by the contractor. The arbitrator committed gross error in law by refusing to recast the issues based on the counter claim and hence a petition under Article 227 is maintainable and this Court in exercise of its supervisory power may pass appropriate order directing the arbitral Tribunal to entertain the counter claim and to recast the issues.

10. Learned counsel, Mr. Bhowmik on the other hand has submitted that there was no dispute raised by the State represented by Executive Engineer before the reference was made. Clause 25 of the agreement clearly stipulates that the party has to specify the dispute or disputes to be referred to arbitration which means the dispute should be raised by the Executive Engineer before reference was

made for settlement through arbitrator. He has also submitted that an order passed by the arbitrator cannot be challenged under Article 227 of the Constitution, since the law in this regard has been settled by the apex Court in the case of *SBP & Co. v. Patel Engineering Ltd. & Anr.* reported in , (2005) 8 SCC 618 (para 45, 46). He has also submitted that the law settled in the case of *SBP & Co.* (supra) has been reiterated by the apex Court in the recent decision in the case of *Lalitkumar V. Sanghavi & Anr. v. Dharmadas V. Sanghavi & Ors.* reported in , (2014) 7 SCC 255. According to Mr. Bhowmik there is nothing wrong in the order passed by the arbitrator and only to delay the arbitral proceeding, the State has filed the present petition under Article 227 of the Constitution.

11. The sole arbitrator has assigned reason in support of rejecting the prayer of the petitioner. Annexure-P10 to the petition shows that the arbitrator recorded the minutes of hearing and thereafter passed the order. It appears that the petitioner, i.e. the Executive Engineer did not specify any dispute for invoking arbitration whereas the respondent-contractor specified the dispute for invoking arbitration and in pursuance of that dispute specified by the contractor the arbitral proceeding was initiated. After framing of issues on 06.08.2011 the petitioner, i.e. the State represented by the Executive Engineer submitted counter claim and prayed for recasting the issues after more than two years. Since there was no dispute specified by the Executive Engineer the arbitrator refused to recast the issues. I find no gross error of law in the decision of the arbitrator.

12. Section 37 under Chapter IX of the Arbitration and Conciliation Act, 1996 deals with the provision of appeal which reads thus:--

"37. Appealable orders.--(1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:--

(a) granting or refusing to grant any measure under section 9;

(b) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a Court from an order granting of the arbitral tribunal.--

(a) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

13. There is nothing in the above provision that an interim order passed by arbitrator refusing to recast issue is appealable. While an appeal is not permissible and there is also no provision under the Act to otherwise challenge

such an order, I find no reason at all to entertain a petition under Article 227 of the Constitution against the order passed by the arbitrator.

14. The Supreme Court in the case of SBP & Co. (supra) in para 45 and 46 has clearly held--

"45. It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by the High Courts is not permissible.

45. The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution of India against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage."

15. In the later decision of Lalitkumar V. Sanghavi (supra), the apex Court reiterated its earlier decision in the case of SBP & Co. (supra).

16. The very purpose of Arbitration and Conciliation Act shall frustrate if the settlement of dispute takes such a long time. As it appears the arbitral proceeding is long pending and it should be disposed of at the earliest. If the petitioner feels aggrieved by the award, they may take the recourse of law as prescribed under the Arbitration and Conciliation Act.

17. The revisional application is found to be devoid of any merit and hence stands dismissed.

18. The sole arbitrator is directed to dispose the proceeding at the earliest.