

(2008) 03 GAU CK 0003
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 20 of 2006

Union of India

APPELLANT

Vs

Kuttichand & Sarojini and Ors.

RESPONDENT

Date of Decision : 04-03-2008

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 36, 36

Citation : (2008) 4 GLR 381

Hon'ble Judges : H.Baruah, J

Bench : Single Bench

Advocate : Albert V.L.Nghaka, Helen Dawngliani, S.N.Meitei, S.Pradhan,
Advocates appearing for Parties

Judgement

1. Heard Mr. S.N. Meitei, learned counsel for the petitioner. Also heard Mrs. Helen Dawngliani, Govt. Advocate for respondent Nos. 2 and 3. Mr. S. Pradhan and Mr. V.L. Nghaka for respondent No. 1

2. This writ petition has been filed for issuance of an appropriate writ, order or direction of like nature to the respondent authority for disposal of the Arbitration Case No. 1 of 1998 in accordance with law.

3. The case in brief for the petitioner is that an agreement was entered into between the Union of India represented by Chief Engineer, Project Setuk, C/o 99 A.P.O. and respondent No. 1, M/s. Kuttichand & Sarojini Brick Kiln, Motor Stand, Panisagar, Dharmanagar, District North Tripura represented by its proprietor Shri Pradip Purkayastha, for execution of the contract work namely "Supply of Road Materials such as over Burnt Jhama Brick Metal 90.40 mm, 63.40 mm, 50.20 mm and Stone Chips 13.20/12.50 mm, 11.20/11.10 mm and 6.70 mm/6.30 mm Stone Chips between Km 170 and km 184 on Chauribari road of National Highway 44."

4. The said contract was duly accepted by the respondent No. 1 with all conditions stipulated therein, vide his letter of acceptance contained in the

contract agreement itself and accordingly work Order was issued in respect of the said contract work on 29.11.1991.

5. Dispute arose between the parties. A sole arbitrator was appointed with the consent of both the parties. The sole arbitrator after hearing the parties awarded Rs. 31,41,899 in favour of the writ petitioner by the award dated 16.2.1998.

6. For execution of the award, an application was preferred before the District Magistrate, Aizawl under the Provision of Section 36 of The Arbitration and Conciliation Act, 1996. The learned District Magistrate on filing of the application was pleased to reject the application vide order dated 15.1.1999 holding that the said court is not competent to entertain the said application since the value of the dispute was more than Rs. 20 lakhs, in view of the Notification No. HC.XI01/96/11797 RC, dated 25.3.1998 issued by the hon"ble High Court (Annexures VI and VII). Being aggrieved thereby this Writ petition has been filed by for issuance of appropriate writ, order or direction of like nature under article 226/227 of the Constitution of India.

7. Mr. S.N. Meitei, learned counsel for the appellant while arguing the case submits that the contract agreement was entered between the parties at Aizawl for execution of the Contract work at North Tripura. Therefore, a part of cause of action arose in Aizawl also. The writ petitioner, therefore, for execution of the said award filed application before the District Magistrate, Aizawl but fortunately the District Magistrate was pleased to reject the said application by Order dated 15.1.1999 after taking into consideration of the Notification issued by the hon"ble High Court which is apparently not applicable. The Notification in which the learned Deputy Commission put reliance is in the context of appointment of arbitrator by the hon"ble High Court under the Provisions of section 11 of the Act. By the said Notification the Chief Justice of the Gauhati High Court was pleased to designate and empower the senior most Judges of the station for the Outlying Benches and the hon"ble the Chief Justice at the Principal Seat in case of dispute involving Rs. 5,00,000 or above and the District Judges of the concerned District, dispute involving less than Rs. 5,00,000 to appoint arbitrator. This Notification thus cannot come on the way while disposing an application made under section 36 of the Act. Mr. S.N. Meitei, therefore, in view of the facts appearing in the case urges the court to issue an appropriate direction to the appropriate court to entertain the application for execution of the award.

8. Learned counsel for the respondents strongly objects in making such a direction on the ground that the Principal Judge at Aizawl does not have any jurisdiction to entertain an application under section 36 of the Act, since cause of action arose at North Tripura where the contract was executed. The learned District Magistrate rightly dismissed the application, he argues. That apart, the writ petitioner does not have any locus standi to file writ petition since he is not authorized to file as such. This argument is not tenable since he has represented the Union of India, the writ petitioner.

9. It is noticed that no application under section 34 of the Act has been filed challenging the judgment and award passed by the learned sole arbitrator. Section 36 of the Arbitration and Conciliation Act, 1996 reads as under:

"36. Enforcement. Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the court."

10. "Court" has been "defined under section 2 of the Act. Therefore, every Principal Judge of the District has jurisdiction to entertain such application.

11. In view of the facts appearing in the writ petition and the substantive law as provided under the Act, the impugned order passed by the learned District Magistrate, Aizawl dated 15.1.1999 is set aside and quashed. The matter is remanded back to the court of ADM (J), Aizawl for disposal of the application so made in accordance with law.

12. The writ petition is accordingly disposed with the above direction.