
(2008) 05 SC CK 0086

In the Supreme Court Of India

Case No : Civil Appeal No's. 1151-1152 of 2001

Union of India (UOI) and Another

APPELLANT

Vs

Raunaq International Ltd.

RESPONDENT

Date of Decision : 08-05-2008

Acts Referred:

Arbitration Act, 1940 — Section 20, 20(1)

Citation : (2008) 4 ALLMR 435 : (2008) 4 ALT 47 : (2008) 2 ARBLR 297 :
(2008) 3 AWC 2704 Supp : (2008) 4 PLJR 1 : (2008) 7 SCALE 355 : (2009) 17
SCC 323

Hon'ble Judges : Tarun Chatterjee, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : T.S. Doabia, Rekha Pandey, Manpreet Singh Doabia and Anil Katiyar,
for the Appellant; S.B. Upadhyay Shiv Mangal Sharma and T.N. Singh, for the
Respondent

Final Decision : Dismissed

Judgement

Dalveer Bhandari, J.—These civil appeals are directed against the judgment of the Madhya Pradesh High Court of Judicature at Jabalpur delivered in Miscellaneous Appeal Nos. 479/1996 and 501/1996 dated 1st December, 1999.

2. The legal issue involved in these appeals is:

Whether the Court while deciding the application u/s 20 of the Arbitration Act, 1940 can consider the issue as to what is arbitrable and what is not arbitrable, or judicial officer's role is only ministerial or mechanical in nature i.e. referring the dispute to arbitrator if there is an arbitration agreement and some disputes have arisen out of the contract between the parties?

3. Brief facts which are necessary to dispose of these appeals are as under:

In the present case, the respondent/contractor had demanded arbitration as per Clause 64 of the General Conditions of the Contract and had raised five claims.

4. The appellants herein agreed to refer for arbitration only claim No. 4 and the rest of the claims were "excepted" matters and were specifically excluded from the purview of the arbitration by virtue of Clause 63 of the General Conditions of the Contract as well as by virtue of Special Conditions of the Contract.

5. The respondent thereafter approached the District Judge by filing an application u/s 20 of the Arbitration Act, 1940 for the appointment of two independent arbitrators for settling all his five claims. The District Judge vide his judgment/order dated 11.12.1995 referred claims No. 3, 4 & 5 to be considered for arbitration by the arbitrators already appointed for considering the claim No. 4.

6. Being aggrieved, both the appellants as well as the respondent/contractor approached the High Court. The High Court vide impugned judgment dated 01.12.1999 held that the Additional District Judge should have referred all the five claims raised by the respondent/contractor to be decided by the arbitrator in accordance with law.

7. According to the learned Judges of the High Court, the order passed by the Additional District Judge is not sustainable in law. The relevant findings of the High Court are reproduced as under:

Now the question is whether the learned Additional District Judge could have gone into the question whether the claims made by the claimant are arbitrable or not or they are excepted or they fall in the category of excepted items. In our considered opinion, at that stage, the Civil Court has only a jurisdiction to decide a very limited question whether there is arbitration agreement or not and the issues which have been raised are subject matter of the agreement or not. Once it is decided by the District Court that there is an arbitration agreement and the difference has arisen out of the agreement, thereafter the act of the Court is only ministerial to refer the matter to the arbitrator.

8. The High Court further held that according to Section 20 of the 1940 Act, it is clear that the court need not enter into other matters after it is decided that there is an arbitration agreement and the difference has arisen from the agreement. It has to forward the case, good or bad, to the arbitrator. The High Court further held that the court should not take it upon itself the task of deciding which items are arbitrable or not. The High Court observed as under:

It is not the function of the Court to see that certain items fall under the excepted or non excepted category and whether the claim is vague or justified or not. This is not the stage of the Court to enter into that adjudication. The jurisdiction of the Court comes to an end the moment it is decided that there is an arbitration agreement and the difference has arisen out of the agreement. It is only administrative or ministerial job of the court to refer the matter to Arbitrator.

9. The learned Counsel appearing for the Union of India submitted that in view of

the pronouncement of this Court in 277598 , the controversy is no longer res integra. This Court had an occasion to deal with exactly similar controversy. This Court observed as under:

10. ...While dealing with a petition u/s 20, the court has to examine: (i) whether there is an arbitration agreement between the parties, (ii) whether the difference which has arisen is one to which the arbitration agreement applies, and (iii) whether there is a cause, shown to be sufficient, to decline an order of reference to the arbitrator. The word "agreement" finding place in the expression "where a difference has arisen to which the agreement applies", in Sub-section (1) of Section 20 means "arbitration agreement". The reference to an arbitrator on a petition filed u/s 20 is not a function to be discharged mechanically or ministerially by the court; it is a consequence of judicial determination, the court having applied its mind to the requirements of Section 20 and formed an opinion, that the difference sought to be referred to arbitral adjudication is one to which the arbitration agreement applies....

This Court further referred to the passage from celebrated book on Arbitration by Russell (21st Edn. 1997 para 1-027 at p. 15). We deem it appropriate to reproduce the said passage as under:

Arbitrability.--The issue of arbitrability can arise at three stages in an arbitration; first, on an application to stay the arbitration, when the opposing party claims that the Tribunal lacks the authority to determine a dispute because it is not arbitrable, second, in the course of the arbitral proceedings on the hearing of an objection that the Tribunal lacks substantive jurisdiction and third, on an application to challenge the award or to oppose its enforcement. The New York Convention, for example, refers to non-arbitrability as a ground for a court refusing to recognize and enforce an award.

While concluding the matter, this Court in the aforementioned case observed as under:

17. ...(i) while deciding a petition u/s 20 of the Arbitration Act, 1940, the court is obliged to examine whether a difference which is sought to be referred to arbitration is one to which the arbitration agreement applies. If it is a matter excepted from the arbitration agreement, the court shall be justified in withholding the reference, (ii) to be an excepted matter it is not necessary that a departmental or an "in-house" remedy for settlement of claim must be provided by the contract. Merely for the absence of provision for in- house settlement of the claim, the claim does not cease to be an excepted matter, and (iii) an issue as to arbitrability of claim is available for determination at all the three stages -- while making reference to arbitration, in the course of arbitral proceedings and while making the award a rule of the court.

10. In view of the clear enunciation of law, these appeals are allowed and consequently, the impugned judgment of the Division Bench of the High Court delivered in Miscellaneous Appeal Nos. 479/1996 and 501/1996 is set aside and

the order of the learned Addl. District Judge is restored.

11. In the facts and circumstances of the case, we direct the parties to bear their own costs.