
(1980) 07 PAT CK 0017
In the Patna High Court
Case No : Civil Revision No. 540 of 1980

Union of India (UOI) and Others

APPELLANT

Vs

Lakshmi Narayan Sinha

RESPONDENT

Date of Decision : 08-07-1980

Acts Referred:

Arbitration Act, 1940 — Section 20, 20(4)
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1981 Patna 99 : (1981) 29 BLJR 179

Hon'ble Judges : S.K. Jha, J

Bench : Single Bench

Advocate : Ashwani Kumar Sinha, for the Appellant; Prem Lall and Parmanand Sharan Sinha, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Jha, J.—The defendants of Title 93 of 1976 Suit No. ----- who are the peti- 74 of 1977 tioners here, have attacked the order dated 14th January, 1980, passed by the learned Subordinate Judge, Patna, by which the reference to an arbitrator, namely, Shri L. T. Jaichandran, Superintending Surveyor of Works, 20 Ashoka Road, New Delhi, has been recalled and Shri Sheo Chandra Prasad, a retired Judge of this Court, has been appointed an arbitrator on the ground that the arbitrator, initially appointed, had not submitted his award within the period of limitation and no prayer was made for extension of time.

2. This is a peculiar civil revision application on behalf of the Union of India where the learned Senior Standing Counsel for the petitioners wants a relief from this Court which he had not wanted in the court below. I fail to see as to how this Court, in its revisional jurisdiction, can travel beyond the scope of Section 115 of the CPC and go into matters which are not relevant for the purpose of testing the jurisdictional error committed by the court below. Some interesting facts have, in the fitness of things, to be noted.

3. The sole opposite party, being the highest tenderer, was entrusted with the

construction of Post and Telegraph building at Forbeeganj, Bihar, after a duly executed contract was entered into between the parties. Shorn of all details, it appears that in relation to that work, some dispute arose between the parties and an application was, therefore, filed in the court below by the opposite party u/s 20(1) of the Arbitration Act, 1940 (hereinafter to be referred to as "the Act") and a prayer was made to direct the defendants (petitioners in this application) to file the agreement with the prayer that an arbitrator be appointed by the court to arbitrate the dispute between the parties. In the court below an objection was taken by the present petitioners to dismiss the application of the opposite party on the ground that it was premature. That objection was decided by an order dated 15th July, 1977. That order, inter alia, said -

"Therefore I order that arbitration agreement be filed as provided u/s 20(4) of the Act. As regards order of reference to the arbitration as per contract or otherwise will be passed after hearing the parties on the next date i. e. 26-7-1977."

Against that order this Court was never moved. The matter was taken up thereafter in the court below in pursuance of the aforesaid order for appointment of an arbitrator. The opposite party in his application, named three arbitrators in the court below whereas the present petitioners took time to name the arbitrator on their behalf. No name, however, was ultimately furnished by the present petitioners. By an order dated 9th September, 1977, the court below directed the plaintiff of the aforesaid Title Suit 92/74 of 1976/77 to take steps for sending the reference as per Clause 25 of the agreement. Against that order the plaintiff (opposite party in this application) came up to this Court in Civil Revision No. 1555 of 1977 which was decided by this Court on 15th September, 1978. A copy of the aforesaid order passed by this Court has been marked Annexure "C" to the Civil Revision application itself. This Court held that the Court below ought to have proceeded, in the circumstances of the case, u/s 20(4) of the Act to appoint an arbitrator either by agreement between the parties or if no agreement could be arrived at, then the Court below should have appointed a suitable arbitrator itself. In this Court the learned Senior Standing Counsel for the Union of India, Mr. Ashvani Kumar Sinha, stated in course of the hearing of that application that Shri Jaichandran had been already appointed as the arbitrator by the Chief Engineer. Learned Counsel for the opposite party in this case, who was the petitioner in the earlier civil revision application, agreed to the appointment of the said arbitrator and stated that he had no objection to his appointment to arbitrate in the said dispute. This Court, therefore, ultimately set aside the order passed by the Court below on 9th September, 1977, and sent the case back to the Court below to pass order in accordance with the direction given in the order. The Court below, accordingly, nominated Shri Jaichandran, an arbitrator in the case. Obviously, this High Court in the aforesaid civil revision application had acted in terms of the provisions of Section 20(4) of the Act and not under Clause 25 of the agreement as is contended for by Shri Ashwani Kumar Sinha on behalf of the petitioners.

4. Then began another chapter. Admittedly, Shri Jaichandran did not submit his award even till long after the period of four months as was required by the Statute. Admittedly again, no petition for extension of time was filed by either the petitioners or the arbitrator. The opposite party, therefore filed an application before the Court below for recalling the reference from the arbitrator Shri Jaichandran and for appointing Shri Sheo Chandra Prasad a retired Judge of this Court, as the arbitrator. No objection to the appointment of Shri Sheo Chandra Prasad was raised in the Court below by the petitioners. All that was argued there was that the Court had extensive jurisdiction to extend the time for filing the award. The Court below did not extend the time for filing the award, as was prayed for orally by learned counsel for the petitioners in the Court below. Having not extended the time, the learned Subordinate Judge further withdrew the reference from the arbitrator Shri Jaichandran aforementioned, and appointed Shri Sheo Chandra Prasad as the arbitrator, manifestly, u/s 20(4) of the Act.

5. Learned Senior Standing Counsel for the Union of India, arguing in support of this application here, prays that an order be passed by this Court in supersession of all previous orders either of this Court or of the Court below holding that this was a case where an arbitrator should have been appointed and must be appointed in terms of Clause 25 of the agreement between the parties and not u/s 20(4) of the Act. Such an argument was not canvassed in the Court below. This was not the point at issue between the parties before the learned Subordinate Judge. It is for the first time that, with his usual ingenuity, Mr. Ashwani Kumar Sinha has sought to sidetrack the issue involved and that also for a peculiar reason which appears from the civil revision application itself. In Paragraph 7 of the instant civil revision application it has been stated categorically by the petitioners themselves that on the 5th of February, 1980, Shri L. T. Jaichandran wrote to the Chief Engineer (Civil) that he had resigned from the office of the arbitrator and that he did not like to continue as an arbitrator in the case. On such an averment the civil revision itself would have become infructuous and has become infructuous. The only point that was taken on behalf of the petitioners in the Court below was, and I think rightly, that the court below has even suo motu powers in appropriate cases to extend the time for filing the award. In view of the fact that the arbitrator appointed, as already stated above, u/s 20(4) of the Act, having resigned from the office and having refused to act any further as the arbitrator, the question of extension of time for submission of award by him was no longer available to the petitioners. It is, therefore, that learned Counsel for the petitioners now prays that this Court do order that an arbitrator should be appointed not in pursuance of Section 20(4) of the Act but in pursuance of Clause 25 of the agreement itself. I am afraid, this point is not available to learned counsel for the petitioners for the simple reason that in the earlier civil revision application, of which I have made a mention earlier, this Court had specifically held that it, was a case in which the Court should have acted u/s 20(4) of the Act. It was a mere coincidence that the name of the arbitrator was

agreed upon by learned counsel for the parties. Merely because the arbitrator was appointed with the agreement of the parties, the case cannot, in law, be said to be taken out from the purview of Section 20(4) of the Act.

6. So far as the nomination of Shri Sheo Chandra Prasad as arbitrator is concerned, I have already stated earlier that the petitioner did not raise any grievance to his appointment. Learned Counsel for the petitioners very fairly stated before this Court that the petitioners could possibly have no grievance against the integrity or conduct of the arbitrator who was appointed but the only contention put forward and pressed was that, in any event, his appointment ought to be held as without jurisdiction as the case is beyond the purview of Section 20(4) of the Act which contention I have already overruled.

7. In pursuance of the impugned order of the court below, Shri Sheo Chandra Prasad aforementioned, entered upon the reference on 28th January 1980. In the counter affidavit filed on behalf of the opposite party it has been stated that the petitioners in the present case have already appeared and participated in the proceedings before the arbitrator (Shri S. C. Prasad) while evidence of the witness of the plaintiff-opposite party was being recorded by the arbitrator. This statement of fact has not been controverted by any affidavit. All that was submitted by Mr. Sinha was that the petitioners did not presumably participate in the proceedings before the arbitrator on account of the fact that they were intending to file a civil revision application in this Court. It is clear to note that although the arbitrator entered upon the reference on 28th January 1980 and began his sittings therefrom and continued thereafter on different dates, it was not till 9th April, 1980, that the present civil revision application was filed in this Court and it was put up for admission on 14th May, 1980, when a rule nisi was issued by this Court. Then Mr. Prem Lall was called upon by me to produce the ordersheet of the arbitrator in support of the assertion made that the petitioners have submitted to the jurisdiction of the arbitrator, a copy of the ordersheet was produced before me. On the date of the second sitting, i.e. 31st March, 1980. all the parties were present before the arbitrator and the petitioners filed a petition to the effect that the hearing be kept in suspense because they intended to file a civil revision application in the High Court. The arbitrator thereupon fixed 15th April 1980 as the next date and directed the petitioners to obtain an order of stay from this Court by that date. On 15th April, 1980, the date of the third sitting of the arbitrator, the parties were present before him and the Assistant Government Pleader, representing the present petitioners was also present before the arbitrator. He filed an application for two weeks time because he had received no instruction and further on the ground that the Government Pleader Shri Mundrika Prasad Sinha was out of India and that he had no instruction as to whether a civil revision application has been filed in this Court or not. Mr. Ashwani Kumar Sinha, learned Senior Standing Counsel for the Union of India, contended that this cannot be said to be submitting to the jurisdiction of the arbitrator. I do not feel persuaded to accept this contention of learned Counsel for the petitioners. If while appearing before a Court, time is prayed for on the

ground of absence of senior counsel is not submitting to the jurisdiction of the Court or a domestic Tribunal of the parties" choice, I fail to see what else can be submitting to the jurisdiction of the Court or that forum.

8. In the circumstances aforementioned and for the reasons set out above I hold that this application has become infructuous and must be dismissed as such, and I further hold that it is no longer open to the petitioners in this case to contend that the nomination of the arbitrator should have been under Clause 26 of the agreement and not u/s 20(4) of the Act since that was already a closed chapter after this Court's decision in the earlier Civil Revision No. 1565 of 1977. In the circumstances of the case, however, I shall make no order as to costs.