

(2003) 01 MP CK 0110
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5660 of 2002

Union of India (UOI)

APPELLANT

Vs

H.B. Lalwani

RESPONDENT

Date of Decision : 08-01-2003

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6), 16

Citation : (2004) 2 MPHT 1

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : N.S. Ruprah, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Mishra, J.—Heard on question of admission.

2. Petitioner is challenging the order passed by the Vth Addl. District Judge, Bhopal in Arbitration Case No. 52/2002 on 27-6-2002 directing the petitioner to refer the claim Nos. 7, 8, 10, 11, 12, 16 and 17 for adjudication by Arbitrator.

3. The respondents initially raised 17 claims in the letter dated 14-2-95 and as per letter dated 5-5-99 raised in all 23 claims. Claim Nos. 10, 11, 12 and 17 relate to the interest so also the claim No. 23. There was refusal to refer claim Nos. 7, 8, 10, 11, 12, 16 and 17 as per letter dated 12-5-2000 though the other claims were referred to the Arbitration. Respondents preferred an application u/s 11(6) of the Arbitration and Conciliation Act, 1996 for referring the remaining claims also to the Arbitrator.

4. The learned Vth ADJ, Bhopal by the impugned order has directed all the remaining claims to be referred to the Arbitrator and it has been left open that petitioner, Union of India can raise the objection before the Arbitrator whether the claims fall within the excepted category and can not be subject matter of arbitration.

5. It is also observed in the order that the objection with respect to the claim Nos. 7 and 8 being barred by limitation, can be raised before the Arbitrator. As remaining claim has been referred to the Arbitrator the Court below has considered it proper that the claim in question be referred to the Arbitrator and let Arbitrator decide as to objections. This order has been impugned.

6. Shri N.S. Ruprah, learned Counsel for the petitioner, has contended that the claims which were not referred fell within the excepted category and could not be subject-matter of arbitration. Thus, the order impugned directing to make the reference is bad in law and be set aside.

7. Prima facie claim Nos. 10, 11, 12 and 17 are relating to the interest when the other matters have been referred the question of interest, ought to have been referred to the Arbitrator. No interference is required to be made as the petitioner is left free to raise the objection as to jurisdiction of Arbitrator to adjudicate, with respect to the question referred to the Arbitrator that they are excepted matter and any of the claim is barred by limitation u/s 16 of Act. Section 16 of the Arbitration and Conciliation Act, 1996 reads as under :--

"16. Competence of arbitral to rule on its jurisdiction.--(1) The Arbitral Tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose--

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the Arbitral Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the Arbitral Tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an Arbitrator.

(3) A plea that the Arbitral Tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The Arbitral Tribunal may, in either of the cases referred to in Sub-section (2) or Sub-section (3), admit a later plea if it considers the delay justified.

(5) The Arbitral Tribunal shall decide on a plea referred to in Sub-section (2) or Sub-section (3) and, where the Arbitral Tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with Section 34."

8. It is clear from the bare reading of the section that u/s 16 of the Act there is departure from the provisions of Arbitration Act, 1940. The jurisdiction given to

the Arbitrator is wider petitioner can raise the objections as to the jurisdiction, limitation etc. The objections for adjudication require investigation into the facts which can be done by the Arbitrator to whom most of the matters have already been referred.

9. Shri N.S. Ruprah, learned Counsel appearing for the petitioner, has pressed into service the decision in General Manager Northern Railways and Another Vs. Sarvesh Chopra, , in which it has been held that reference to arbitration must be the result of a judicial determination by the Court that dispute sought to be referred is covered by the arbitration agreement. The decision is under old Act, 1940. u/s 16 of Act of 1996, it is open to the petitioner to raise objection before the Arbitrator. Thus, the decision provides no sustenance to the submission raised by the Counsel for petitioner.

10. I find no merit in this writ petition. It is dismissed in limine.