

(1953) 12 CAL CK 0026

In the Calcutta High Court

Case No : In the matter of Award No. 86 of 1952

Union of India (UOI)

APPELLANT

Vs

Nalini Ranjan Guha

RESPONDENT

Date of Decision : 07-12-1953

Acts Referred:

Arbitration Act, 1940 — Section 39, 39(2)

Constitution of India, 1950 — Article 133, 133(3), 135

Citation : AIR 1955 Cal 257

Hon'ble Judges : Chakravartti, C.J;S.R. Das Gupta, J

Bench : Division Bench

Advocate : G.P. Kar, for the Appellant; R. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

Chakravartti, C.J.—This is an application for leave to appeal to the Supreme Court from an order passed by Bachawat J. on 5-5-1953, sitting- singly. By that order he directed that, all matters in difference between the petitioner, the Union of India, and the respondent be referred to the arbitration of Mr. K.K. Basu, Barrister-at-law. The petitioner asks for a certificate from this Court to prefer an appeal from that order.

2. In view of the several patent objections to the petition, it is surprising that such a petition should have been filed at all. . The petition purports to ask for leave to appeal to the Supreme Court and it must be presumed that the said prayer was intended to be made under the Constitution of India. But the Constitution is not even named in the petition. The petitioner refers only to the Indian Arbitration Act and seems to have been advised that even under that Act, this Court could be asked to grant a certificate for the purposes of leave to the Supreme Court.

Mr. Kar, "representing the petitioner, drew our attention to Sub-section (2) of Section 39, Indian Arbitration" Act where it is provided that nothing in Section 39

would affect or take away any right to appeal to the Supreme Court. He seems to have thought that a right of appeal to the Supreme Court was implied in Sub-section (2) of Section 39, Arbitration Act and if such a right existed, his client could properly ask this Court for a certificate. The Impression upon which the petitioner acted was Obviously erroneous.

Section 39, Arbitration Act cannot possibly confer any jurisdiction on the Supreme Court which, that court does not possess under the Constitution itself. The section mentions His Majesty-in-Council and probably it has now been adapted so as to substitute a reference to the Supreme Court, although the adaptation Was not shown to us. But, in any event, the section has only been "adapted", which means it has been brought into conformity, with the Constitution. The Indian Parliament has not yet legislated and conferred some further Jurisdiction on the Supreme Court. In so far as the present petition purports to proceed under the provisions of the Arbitration Act, it is clearly misconceived.

3. Turning now to the Constitution, Sub-clause (3) of Article 133" states in the clearest possible terms that no appeal shall lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court unless Parliament, by law, otherwise provides. It is not contended that the Parliament has yet provided otherwise. That being so, so far as Article 133 is concerned, there could not possibly "be a certificate under that Article in view of the clear bar contained in Sub-clause (3).

4. Mr. Kar submitted that he would rely on Art, 135, but even that Article could not avail him in the least. In the first place, in order to make, out a right of appeal under that Article, he had to establish that such an appeal lay to the Federal Court immediately before the commencement of the Constitution. Mr. Kar was unable to contend that immediately before the commencement of the Constitution, an appeal would lie to the Federal Court from an order of the present kind passed by a Judge of the High Court, sitting singly. In the second place, Article 135 does not seem to contemplate any certificate to be granted by the High Court at all. The provisions for a certificate are incorporated only in Arts. 132, 133 and 134. Article 135 is expressed in general terms and merely provides that the Supreme Court shall also have some further Jurisdiction with respect to matters to which provisions of Article 133 or Article 134 do not apply, provided an appeal lay in such matters to the Federal Court immediately before, the commencement of the Constitution. Nothing is said in the Article as regards certificate to be granted by the High Court.

5. For the reasons given above, it appears to me that the application is, on the face of it, unmaintainable. There is also a further ground which appears from the merits of the order sought to be appealed from. By that order Bachawat J. referred the dispute to the arbitration of Mr. K. K. Basu. Unfortunately Mr. K.K. Basu is dead and he had died some considerable time before the present application was drafted and made. In those circumstances, why the petitioner

should have" felt it necessary to present the pre-sent petition at all is, by no means clear.

6. Lastly, the order sought to be appealed from is obviously not a final order. It decided no question of right, merely made, an appointment of an arbitrator and left the arbitration to be held and completed. That being so, it does not, on the face of it, belong to the category of orders, appealable under Article 133.

7. For the several reasons given above, this application must fail and it is dismissed with costs.

S.R. Das Gupta, J.

8. I want to add a few words to what my Lord the Chief Justice has said.

9. In my opinion, the application is not only misconceived, but displays complete muddle headedness on the part of those who might have advised the Government to make the present application. Mr. Kalyan Basu died, as my Lord the Chief Justice has pointed out, long before the application was made. As a result of the death of Mr. Basu the parties are relegated back, again to the same position in which the application u/s 8, Indian Arbitration Act was: made and the order complained of has now become infructuous. As a result of Mr. Basu's death there is now no arbitrator" and the party interested should have made an application again u/s 8, Indian Arbitration Act. In any event as pointed out by my Lord the Chief Justice the application is misconceived from all points of view. It cannot be an application under Article 133, nor can it be an application under Article 134 of the Constitution. If it is an application under Article 135, there is no question of obtaining leave or certificate from this Court. I am surprised that such a frivolous application is made on behalf of the Union of India.

10. For the reasons mentioned above, I agree with my Lord the Chief Justice that the application should be dismissed with costs.