

Union of India Vs. Shri Govind Deo Glass Works Limited

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Court : Delhi

Decided On : May-26-1988

Reported in : ILR1989Delhi543

Judge : C.L. Chaudhry, J.

Acts : [Arbitration Act, 1940](#) - Sections 33; [Constitution of India](#) - Article 299

Appeal No. : Original Miscellaneous Petition Appeal No. 53 of 1984

Appellant : Union of India

Respondent : Shri Govind Deo Glass Works Limited

Advocate for Pet/Ap. : K.K. Jaggi,; Anil Bhatnagar and; Rohina Aggarwal, Advs

Judgement :

C.L. Chaudhry, J.

(1) This is a petition on behalf of the Union of India under Section 33 of the Arbitration Act for determination of .the effect .of .the arbitration agreement. The case of the Union is that a contract was entered into between the Union of India and the respondent for supply of certain stores by the respondent detailed in the agreement. In pursuance to the agreement, the respondent offered certain stores which were accepted. Extension of time for supply of remaining stores was asked for by the respondent and it was agreed to by the Union of India. Thereafter,

certain stores were supplied by the respondent which were accepted by the Union of India on 18-12-1967 and also on 27-1-68. The respondent by letter dated 4-6-68 again applied for extension of time. Further extension was granted up to 28-2-1969 with usual R/R clause. During this period also the respondent supplied certain stores which were accepted by the Union of India. Since the respondent failed to supply the contracted stores within the stipulated period, the Union of India cancelled the contract for the supply of remaining quantity at the risk and cost of the respondent by letter dated 15-1-1970. Risk purchase was issued by the Union of India for the balance outstanding quantity. Since the risk purchase did not materialise, the Union of India claimed Rs. 1,32,395.24 on account of risk purchase loss. The respondent repudiated the claim. Disputes and differences having arisen between the parties, the same were referred to the sole arbitration of Shri P. C. Rao in accordance with the arbitration agreement. In the meeting held on 22-1-1972 before the Arbitrator, the respondent raised an objection that the arbitrator had no jurisdiction to proceed with the matter, as the contract out of which disputes had arisen was entered into between the respondent on the one hand and the States of Maharashtra and Tamil Nadu on the other hand and secondly the contract was cancelled by the Union of India and not by the States concerned. The claim was not made on behalf of the States. In view of the objection raised by the respondent the learned Arbitrator adjourned the matter sine die and directed the parties to move the court of competent jurisdiction for decision on the question of jurisdiction of the Arbitrator.

(2) The case of the Union of India is that the contract was entered into for and on behalf of the States by the Union of India. Amendments in the contract were made and issued for and on behalf of the President of India and the indenter is the Director-General Health Services New Delhi. In view of this the objection of the respondent is without merit.

(3) The respondent is contesting the petition. It is denied that the Union of India made any offer which was accepted by the respondent. The tenders submitted by the respondent were accepted by the Governors of Maharashtra and Tamilnadu as purchasers. The contract was between the respondent on the one hand and the States of Maharashtra and Tamilnadu on the other hand. Union of India had no

locus standi to cancel the contract for any reason whatsoever as the respondent had not committed any breach of the contract. The claim for damage has been repudiated. It has been denied that the disputes were referred to the sole arbitration of Shri P. C. Rao. By letter dated 12-7-76 Mr. N. S. Mehta was appointed Arbitrator on the request made by the Governors of Maharashtra and Tamilnadu. Mr. N..S. Mehta entered upon the reference and vide letter dated 25-7-76 directed the Union of India to file the claim though the Union of India was not a party to the contract and there was not privity of contract between the respondent and the Union of India. Thereafter, Mr. P. C. Rao replaced Mr. N. S. Mehta. Union of India at one stage appointed the Arbitrator (Mr. P. C. Rao) that disputes were between the Governor of Maharashtra and Tamilnadu and the respondent and not between the Union of India and the respondent. The respondent submitted an application that the Arbitrator had no jurisdiction to proceed with the arbitration on the grounds mentioned therein On the submission of the Union of India that the disputes were between the States of Maharashtra and Tamil Nadu and the respondent and not between the Union of India and the respondent the cause title of the case before the Arbitrator was amended to substitute the States of Maharashtra and Tamil Nadu instead of Union of India. The Union of India on their own admission and submission has no locus standi to file the prevent petition.

(4) In the rejoinder filed on behalf of the Union of India, it is stated that the offer was accepted in the name of the Governors of Maharashtra and Tamil Nadu though the invitation to tender was issued in the name of the President of India. The contract showed the purchaser as the Governors of Maharashtra and Tamil Nadu but it was signed for and on behalf of the Union of India. Amendment letters regarding the contract were also issued on behalf of the President of India.

(5) On the pleadings of the parties the following issues were framed :-

1. Whether the respondent had entered into the agreement not with petitioner-Union of India but with the States of Maharashtra and Tamilnadu ?
2. Whether the reference to the arbitrator was barred by limitation ?
3. Relief.

(6) The parties were afforded opportunities for leading evidence by way of affidavit which they have availed of. I have heard the learned counsel for the parties and gone through the record.

(7) My findings are as under :- Issue NO. 1

(8) A copy of the acceptance of tender has been placed on the record. Name of the purchaser in the acceptances is 'Governors of Maharashtra and Madras.' The tender was accepted by Mr. R. H. Benzamin, Assistant Directors Supplies for and on behalf of the Governors of Madras and Maharashtra. So) it is clear that the contract was entered into between the respondent firm and the States of Madras and Maharashtra. Also placed on record is the proceeding before the Arbitrator dated 31-1-79 which reads as under :- 'Union of India Case No, 341-B/76. Versus M/s. Govinddeo Glass Works Ltd. Order Sheet 31-1-1979 I have been appointed as Arbitrator with reference to A/T No. 207/53/307/18-3-66/2237/PACC dated 27-5-1966. I have gone through the proceedings in the case held by the previous Arbitrator. It is seen from the records that Union of India when called upon to file their claim, pointed out that the dispute was between the Governors of Maharashtra and Tamil Nadu on the one hand and M[s. Govinddeo Glass Works Ltd., Calcutta on the other. In view of the above, the Governments of Maharashtra and Tamil Nadu are directed to file the statement of their claim Along with documents which they may like to file in support of their claim with a spare copy by 3rd March, 1979 positively. sd/- (P. Chandrashekhara RAO) Arbitrator

(9) From the proceedings it appears that the position taken by the Union of India was that the disputes were between the Governors of Maharashtra and Tamil Nadu and the respondent. The order sheet dated 12-4-70 is relevant on this point. Time was sought by the States of Maharashtra and Tamil Nadu for filing the claims. An application was also made before the Arbitrator on 31-8-79 by the Assistant Director Litigation reading as under :- 'Before Shri P. C. Rao Sole Arbitrator, In the matter of Arbitration Between Union of India versus Govinddeo Glass Works Ltd Attn : Case No. 341-B/76. It is respectfully submitted that the contract was placed with the contractor for and on behalf of the Government of Tamil Nadu and Maharashtra. It is, therefore, prayed that the title in the above

case may kindly be changed to read as follows : 584 (Through D.G.S. & D. New Delhi) ...CLAIMANT v. Shree Govinddeo Glass Works Ltd., 9, Ezra Street, Calcutta-700001 ... Respondent The arbitrator has also been appointed by the D.G.S. & D. pursuant to the dispute between the purchaser (Government of Tamil Nadu and Maharashtra) and the contractor. In this context the order sheet dt. 21-7-70 by your honour also refers. sd/- R. Doraiswami, Asstt. Director (Lit).

(10) The contention of the Union of India is that the contract was entered for and on behalf of the States by the Union of India. The amendments was issued for and on behalf of the President of India. I am afraid I cannot accept this position. Under Article 299 of the [Constitution of India](#), all the contracts made in the exercise of the executive power of the Union or the State shall b& expressed to be made by the President or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise. Union of India cannot enter into a contract on behalf of a State. A state, can enter into a contract through the Governor. The contention of the Union of India has no force.

(11) From the evidence placed on the record, there is no doubt in my mind to hold that the contract was between the States of Maharashtra and Tamil Nadu and the respondent. Issue No. 1 is decided in favor of the respondent.

(12) Nothing has been brought to my notice that the reference to arbitration was barred by limitation. In my opinion, no time is prescribed for making a reference to the Arbitrator. If the claim is time barred, then the respondent is well within its right to raise this plea before the Arbitrator. This issue is decided against the respondent.

(13) In view of the discussion above, the Arbitrator is competent to decide the disputes, if any, arising between the states of Maharashtra and Tamil Nadu and the respondent. The petition is disposed of.