

Union of India Vs. Electronic Controls and Instrument Engineers

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Court : Delhi

Decided On : Aug-22-1997

Reported in : 1997VIAD(Delhi)28; 1997(2)ARBLR691(Delhi); 68(1997)DLT739; 1997(43)DRJ100; (1998)119PLR33

Judge : Devinder Gupta and; K.S. Gupta, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 20

Appeal No. : First Appeal No. 250 of 1996

Appellant : Union of India

Respondent : Electronic Controls and Instrument Engineers

Advocate for Pet/Ap. : F. Hasan and; R. Rajappa, Advs

Judgement :

Devinder Gupta, J.

(1) The appeal has arisen against an order passed on 21.3.1996 by learned Single Judge of this Court allowing the respondent's application under Section 20 of the [Arbitration Act, 1940](#) (hereinafter referred to as 'the Act') and appointing Shri D.B.Chachad, Engineer, residing at A/1297, Safderjung Enclave, New Delhi as an arbitrator with direction to him to enter upon reference, to hold arbitration proceedings at Patiala and make his award in accordance with law.

(2) One of the grounds, which was raised by the appellant before the learned Single Judge and has also been raised in this appeal is the jurisdiction of the Court at Delhi to entertain and decide the application under Section 20 of the Act.

(3) The undisputed facts are that the appellants invited open tenders for the work described as 'Provision of street lightening in the D.C.W.Colony Patiala'. The aforementioned tenders were invited by Deputy Chief Electrical Engineer, D.C.W. Patiala. The tenders were submitted at Patiala. Contract was also awarded to the respondent at Patiala and the same was also to be executed at Patiala. Payments were also released at Patiala. Even under the terms of the contract, work was to be carried out at Patiala and the work was to be supervised by the Executive Engineer stationed at Patiala.

(4) The appellant's objection was turned down by learned Single Judge placing reliance upon Full Bench decision of this Court in *Shri Ram Rattan Bhartia v. Food Corporation of India and Anr.*, : AIR1978 Delhi183 , holding that this Court has jurisdiction to entertain the application. It was held that apart from the Court within whose jurisdiction cause of action to sue arises, the Court within the local limits of whose jurisdiction the respondent or each of the respondents at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, will also have the jurisdiction to entertain the proceedings under the Arbitration Act in terms of Clauses (a) and (b) of Section 20 of Civil Procedure Code. In this case Punjab and Haryana High Court on account of cause of action taking place in its jurisdiction and this Court on account of the residence of the respondent has jurisdiction to entertain proceedings between the parties.

(5) The claim of the respondent in the application under Section 20 of the Act was that its contract was illegally terminated by the appellant without assigning any reason as such disputes had arisen between the parties for which the respondent issued notice to the appellant to refer the disputes to an arbitrator. Since respondent's request was not acceded to, application under Section 20 of the Act was filed for making reference.

(6) Section 20 of the Act enables a party to apply to a Court having jurisdiction in the matter to which the agreement relates that agreement be filed in Court. Before a person applies under Section 20 of the Act, four conditions must be fulfilled:-

i) there must be an agreement between the parties. ii) the agreement with respect to the subject matter of a suit was entered into before filing of the suit; iii) the differences have arisen between the parties to the agreement; iv) the Court to which the application is made has jurisdiction in the matter to which agreement relates.

(7) Court has been defined under the Act by Clause (c) of Section 2 to mean a Civil Court having jurisdiction to decide the questions forming the subject matter of the reference if the same had been the subject matter of a suit, but does not, except for the purpose of arbitration proceedings under Section 21, include a Court of Judge Small Causes. Section 31 of the Act defines the jurisdiction of the Court. The purpose of enacting Section 31 is to make one Court as venue and all the matters connected with the arbitration agreement and award and also to make applications. The intention of enacting Section 31 appears to be to make explicit that no proceedings of any kind would lay in this behalf in any other Court. Scope of Section 31 of the Act has been explained by the Supreme Court in *Kumbha Mawji v. Union of India*, : [1953]4SCR878 saying:-

'that while Sub-section (1) determines the jurisdiction of the Court in which an award can be filed the remaining three sub-sections are intended to make that jurisdiction effective in three ways: (1) by vesting in one court the authority to deal with all questions regarding the validity, effect or existence of an award or arbitration agreement, (2) by casting on the persons concerned the obligation to file all applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings in one court and (3) by vesting exclusive jurisdiction in the court in which the first application relating to the matter is filed.'

(8) Full Bench of this Court in *Shri Ram Rattan Bhartia's case* (supra) held that apart from a Court having jurisdiction to entertain the proceedings under the Act within whose jurisdiction the cause of action to sue arises, the Court within the local limits of whose jurisdiction the defendant or each of the defendants at the

time of the commencement of the suit, actually and voluntarily resides, or carries on business or personally works for gain, will also have jurisdiction to entertain the proceedings under the Act in terms of Clauses (a) and (b) of Section 20 of the Code.

(9) The Supreme Court in *Patel Roadways Limited, Bombay v. Prasad Trading Company*, : [1991]3SCR391 , interpreted the Explanation to Section 20 of the Code saying that the Explanation clarifies the scope of Clause (a) to Section 20, which is in two parts, one before the word 'or' occurring between the word 'office in India' and the words 'in respect of' and the other thereafter. The Explanation applies to the defendant, which is a Corporation. The first part of the Explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event the Courts within whose jurisdiction the sole or principal office of the defendant situate will also have jurisdiction in as much as even if the defendant may not be actually carrying on business at that place, it will 'be deemed to carry on business' at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. If the case falls within the latter part of the Explanation, it is not the Court within whose jurisdiction the principal office of the defendant is situate but the Court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction 'in respect of any cause of action arising at any place where it has also a subordinate office.'

(10) Learned Single Judge of this Court in *Kamal Pushp Enterprises v. Chairman-cum-Managing Director G.A.I.L. and Ors.*, : 56(1994)DLT259 relying upon the decision of *M/s. Patel Roadways'* case (supra) held that where Corporation has a subordinate office at a place where cause of action arose, it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. It was held that the territorial jurisdiction for a court depends upon the determination of the question, namely, what are the question, which form the subject matter of reference to arbitration and secondly, which would be a competent court to decide the said questions, which would be the subject matter of reference. Judgment of Division Bench of Madras High Court. In *M.*

Venkatasamiappa v. Srinidhi Ltd. (1950) 1 MLJ 709 was relied upon, which has laid down the following proposition:-

'(A)The Arbitration Act does not contemplate nor does provide the Court having jurisdiction as the Court within the limits of whose territorial jurisdiction any of the parties resides. Had it been so then the Legislature could have sufficiently and simply employed such expression; (b) The jurisdiction of the Court is made depend not on the place where the parties dwell or carry on business or personally work for gain, but solely on the subject matter; there is no reference to any other circumstance in Section 2 or Section 31(1) of the Act. At least one good reason why the Court having jurisdiction should have been defined in relation to the subject matter of the dispute or action is: otherwise the Court having jurisdiction might depend on the accident as to who first raised the dispute or decided to file a suit; (c) It is only when the subject matter of the dispute itself makes the jurisdiction dependent on residence that the question of residence need arise at all; (d) Section 2(c) and Section 31(1) of the Act do not contemplate the place in which the agreement was entered into being relevant for deciding territorial jurisdiction of the Court.'

(11) The decision in M.Venkatasamiappa's case (supra) has been reiterated and followed in a latter decision of Madras High Court in Union of India v. P.Anantharam (1991) 1 M.L.J.286.

(12) In another decision in Arun Khosla v. Union Bank of India : 1995(32)DRJ94 , learned Single Judge of this Court relying upon the decision in M.Venkatasamiappa's case (supra) held that Court at a place where contract was performed alone will have jurisdiction and not where it was signed or revoked, nor where appointing authority is stationed. It was held that Section 20 of the Code has no application in these matters.

(13) Another learned Single Judge of this Court in Haryana Breweries Ltd. v. Haryana Beer Agencies & Ors., : 58(1995)DLT682 followed the ratio of the decision in Arun Khosla's case (supra).

(14) The Supreme Court in *Aligarh Muslim University and Anr. v. Vinay Engineering Enterprises (P) Ltd. and Anr.* : (1994)4SCC710 held that proceedings pertaining to all matters connected with an arbitration agreement, award and regarding conduct of arbitration proceedings can be initiated only in a court within whose territorial jurisdiction cause of action has arisen. Contract in that case was executed at Aligarh. Construction work was also to be carried out at Aligarh and even the contract provided that in the event of disputes Aligarh Courts alone will have jurisdiction. The arbitrator was also from Aligarh and was to function from that place. It was held that the mere fact that the contractor was a Calcutta based firm, where no part of cause of action had arisen, High Court of Calcutta had no jurisdiction in the matter.

(15) In another decision in I.A.10053/90 and Suit No.3386/90, titled as *R.K.Constructions v. National Thermal Power Corporation Ltd. and Ors.*, decided on 8.3.1996, following the decision in *Kamal Pushp's case (supra)* and *Arun Khosla's case (supra)* and noticing the decision in *M/s.Patel Roadways Limited's case (supra)* and *Aligarh Muslim University's case (supra)*, it was held that this Court will have no jurisdiction to entertain the petition under Section 20 of the Act for filing of an arbitration agreement and making direction for appointment of an arbitrator in a case where contract was awarded at Bhubneshwar by the Regional Office of National Thermal Power Corporation Ltd. The entire performance of the contract was to be at Orissa, the act of invocation of the bank guarantee had also taken place at Orissa; bank guarantee was also furnished at Cuttack; on invocation of the bank guarantee, the amount was also payable at Bhubneshwar. The mere fact that National Thermal Power Corporation Ltd. was having its principal office at Delhi and carrying on business at Delhi will not confer jurisdiction in this Court.

(16) It may be noticed that in none of the cases, namely, *Kamal Pushp's case (supra)*, which was followed in *Arun Khosla's case (supra)*, *M/s.Haryana Breweries's case (supra)* and *M/s.R.K.Construction's case (supra)*, the decision of Full Bench of this Court in *Shri Ram Rattan Bhartia's case (supra)* was noticed.

(17) We are of the view that rightly the decision of the Full Bench in Shri Ram Rattan Bhartia's (Supra) was not noticed in as much as the said decision in view of the decision of Supreme Court in M/s.Bakhtawar Singh Bal Krishan v.Union of India and Ors., : AIR 1988 SC1003 cannot be said to be holding the field for the reason that the decision of a Division Bench of this Court in Binani Bros. Ltd. v. Union of India I.L.R. (1975) 2 Del 196 has been fully approved by Supreme Court in Bakhtawar Singh's case (supra).

(18) In Binani Bros' case (supra) the petitioner company having its head office at Calcutta entered into a contract with the Director of Supplies and Disposals at Bombay. The latter unilaterally altered a clause of the contract in regard to payment of Sales Tax and sent a demand to the company at Calcutta for refund of the amount already paid to it. A dispute was raised. The Director in terms of the contract called upon the Director General of Supplies and Disposal, New Delhi to enter upon reference and decide the disputes. The company thereafter filed a petition under Section 33 of the Arbitration Act in a Court at Delhi. It was held in these proceedings that Courts at Delhi had no jurisdiction to entertain the application. The company preferred an appeal in which the Division Bench held that reading section 2(c) of the Arbitration Act and Section 20 of the Code of Civil Procedure together, it is obvious that the court having jurisdiction under the Act would be the court competent to entertain a suit in regard to the subject matter of reference i.e. the dispute which is sought to be referred to arbitration. It was further held that the expression 'voluntarily resides' appearing in Section 20 of the Civil Procedure Code refers to natural persons and not to legal entities. Reliance was placed on the decisions in Duni Chand Telo Mal v. Gurmukh Singh A.I.R. 1930 Lah 818; Dominion of India v. Nath & Co. : AIR1950 Cal207 ; Azizuddin & Co. v. Union of India : AIR1955 Mad345 ; and Bafrinarayan v. Excise Commissioner A.I.R. 1962 A P 382. Likewise the expressions 'carries on business' or 'personally works for gain' were held to be not referable to functions carried on by the Union of India in discharge of its executive powers conferred by Article 298 of the Constitution. While Article 299 of the Constitution provides that all contracts made in the exercise of the executive power of the Union shall be expressed to be made by the President, Clause (2) of this Article states that the President shall not be personally liable in respect of any contract or assurance made or executed on his

behalf. The President, therefore, cannot be said to be personally liable in respect of any contract or assurance made or executed on his behalf. The President, therefore, cannot be said to be personally working for gain within the meaning of Section 20 of the Code of Civil Procedure. therefore, the Courts at Delhi do not have jurisdiction in regard to disputes relating to contracts executed by Union of India simply because the Union has its 'office' at Delhi.

(19) In Bakhtawar Singh's case (Supra) the Supreme Court fully approved the reasoning and conclusions of Division Bench of this court in Binani Bros' case (supra) and quoted with approval the following passages from the judgment in Binani Bros's case (Supra):-

'The next question is whether the Union of India carried on business or worked for gain through the Director of Supplies and Disposals, New Delhi to confer jurisdiction on the courts at Delhi. The answer has to be in the negative. The expression 'voluntarily resides' in Section 20 is significant. It necessarily refers to natural persons and not to legal entities. Likewise, the expressions 'carries on business' or 'personally works for gain' do not refer to functions carried on by the Union of India in discharge of its executive powers conferred by Article 298 of the Constitution. While Article 299 of the Constitution provides that all contracts made in the exercise of the executive power of the Union shall be expressed to be made by the President, Clause (2) of this Article states that the President shall not be personally liable in respect of any contract or assurance made or executed on his behalf. The President, therefore, cannot be said to be personally working for gain within the meaning of Section 20 of the Code of Civil Procedure. Mr. Justice Prithvi Raj in suit No.394 of 1967, Insortex Pvt. Ltd. v. Union of India, decided on 4th May, 1971 relying on R.J.Wyllie and Co. v. Secy. of State; AIR 1930 Lah 818 Dominion of India v. R.C.K.C.Nath and Co.Khulna; : AIR1950 Cal207 and Azizuddin and Company v. Union of India; : AIR1955 Mad345 has taken the same view.

(20) Reference in this connection may also be made to the observations in Badrinarayan v. Excise Commr.Hyderabad, AIR 1962 A P383 with which we respectfully agree in so far as they go in relation to suits other than suits against

Railway. On page 383 of the report, the Bench Observed:

'Section 20 Civil Procedure Code . has in contemplation people dwelling within the territorial limits of a court and persons indulging in commercial activities within that area even if they do not dwell therein. This section in plain and unmistakable language conveys that idea. The words 'actually and voluntarily' cannot reasonably apply to legal entities. That being so, it is difficult to bring the Government within the import of the expression 'the defendant'.....actually and voluntarily resides.'

(21) In this case the appellant was an 'abkari' contractor for certain villages in the district of Nalgonda. A penalty of Rs. 9,767/8- was imposed on him by the Excise Superintendent for the alleged tapping of 145 toddy and 500 sindhi trees without paying the excise duty. After he failed in his appeal to the Collector and the Excise Commissioner and his representation to the Minister, he filed a suit at Hyderabad impugning the levy of penalty as ultra vires, illegal and void. It was urged that as the Government enjoyed monopoly in regard to 'abkar' business it should be deemed to be carrying on business within the sweep of Section 20 Civil Procedure Code . The contention was rejected. The Court said:

'We consider that in gathering the revenues from various sources, the Government acts in its sovereign capacity and not as a commercial body. The collection of Abkari revenue is not undertaken by a private corporation and much loess by private individuals. thereforee, the concept of carrying on business cannot be imported into activities of this description.'

(22) Shri G.R.Chopra placed strong reliance on Union of India v. Ladulal Jain, : [1964]3SCR624 . This appeal arose out of a suit filed against the Railway for non-delivery of goods. In para 7 on page 1683 of the report, the court observed that 'the expression 'voluntarily resides or personally works for gain' cannot be appropriately applied to the case of the Government' but having regard to the fact (as stated in para 11 on the same page of the report) that 'private companies and individuals carried on the business of running railways prior to the State taking them over' it was held that the running of railways would not cease to be a business when they were run by Government and so the court within whose

jurisdiction the head quarters of one of the railways run by the Union was situated had the jurisdiction to try the suit. In the instant case, we find that there is nothing on the record to show that the Director of Supplies and Disposals, New Delhi carried on business at Delhi. It is relevant in this context to refer to the observations of the Supreme Court in *Director of Rationing and Distribution v. Corporation of Calcutta*, : 1960 CriLJ1684 . In this case at the instance of the Corporation of Calcutta, summons under Section 488 of Bengal Act III of 1923 as substituted by the later Act XXXIII of 1951 were issued by the Director of Rationing and Distribution representing the Food Department of the Government of West Bengal. The offence complained of was the 'using or permitting to be used' certain premises for purposes of storing rice without a licence. by way of preliminary objection the contention raised was that the prosecution was not maintainable in law. An argument was raised on behalf of the Corporation that the State as recognised by Article 300 of the Constitution was a legal person and was capable of having rights and was subject to obligations and therefore, the complaint was competent. In answer to the claim of immunity for the State as a sovereign power it was urged that this immunity could not be claimed when it embarked on a business and in that capacity was subject to penal provisions of the statute equally with the other citizens. On page 1360 the Court said:

'The question was not raised below and has not been gone into by the High Court, nor is it clear on the record, as it stands, that the Food Department of the Government of West Bengal, which undertook rationing and distribution of food on a rational basis had embarked upon any trade or business. In the absence of any indication to the contrary, apparently this Department of the Government was discharging the elementary duty of a sovereign to ensure proper and equitable distribution of available food stuffs with a view to maintaining peace and good Government.'

(23) This case was specifically noticed in *Union of India v. Ladulal Jain*, : [1964]3SCR624 of the report but was distinguished primarily on the ground that it concerned the sovereign activities of the State. We do not read the cited case, therefore, to be laying down the rule that the courts in Delhi will have jurisdiction in regard to all disputes relating to all contracts executed by Union of India simply

because the Union has its 'office at Delhi.'

(24) In view of the ratio of the Supreme Court in Bakhtawar Singh's case (supra), which fully approved the decision in Binani Bros' case (supra), the decision of Full Bench in Shri Ram Rattan Bhartia's case (supra), as noticed above cannot be said to be holding the field. The ratio of the decisions in Kamal Pushp's case, Arun Khosla's case, M/s.Haryana Breweries' case and M/s. R.K. Construction's case (supra) thus is in consonance with the ratio of the decision in Binani Bros' case, which has been approved by the Apex Court in Bhaktawar Singh's case (supra) and it is the decision of the Supreme Court, which is a binding precedent under Article 141 of the Constitution of India.

(25) In the instant case, admittedly the work in question was to be carried out at Patiala, which was to be supervised by the Executive Engineer stationed at Patiala and the tenders were also called at Patiala, as such the entire cause of action arose at Patiala, which is not within the jurisdiction of this Court. As all matters connected with an arbitration agreement, award and regarding conduct of arbitration proceedings can be initiated only in a Court within whose territorial jurisdiction the cause of action has arisen, the decision of the learned Single Judge holding this Court also to be having jurisdiction on account of 'residence of the appellant' is liable to be set aside.

(26) The appeal accordingly is allowed. The impugned order is set aside and the application of the respondent is dismissed on the ground that this Court has no jurisdiction to entertain the same. No costs.