

Engineering Projects (India) Limited Vs. Greater Noida Industrial Development and anr.

Engineering Projects (India) Limited Vs. Greater Noida Industrial Development and anr.

SooperKanoon Citation : sooperkanoon.com/695961

Court : Delhi

Decided On : Jul-29-2004

Reported in : 2004(2)ARBLR607(Delhi); [2005]128CompCas918(Delhi); 113(2004)DLT465; 2004(76)DRJ230

Judge : Vikramajit Sen, J.

Acts : Code of Civil Procedure (CPC) - Sections 20; Registration Act - Sections 30(2); [Arbitration and Conciliation Act, 1996](#) - Sections 9 and 42

Appeal No. : OMP No. 221/2004

Appellant : Engineering Projects (India) Limited

Respondent : Greater Noida Industrial Development and anr.

Advocate for Pet/Ap. : C.M. Chopra, Adv

Disposition : Petition rejected

Judgement :

Vikramajit Sen, J.

1. The question that arises in the present case is whether this Court should exercise territorial jurisdiction in respect of the present application under Section 9 of the Arbitration & Conciliation Act, 1996. The facts in brief, as per the narration in the Petition, are that the Petitioner has its Registered and Head Office at New Delhi with Regional and Branch Offices in many other parts of India. The Greater Noida Industrial Development Authority (G. Noida in brief) engaged the Petitioner for the construction of 60 M wide road in Greater Noida, at the contract value of Rs. 5.37 crores. For reasons that need not be dilated in detail, including an increase in the price of store ballast, the Petitioner had sought a Revision of rates, which was not acceded to. Consequently, a demand for the appointment of an Arbitrator was made by the Petitioner. Certain Fixed Deposits Receipts (FDRs) are stated to have been encased in the interregnum. Pursuant to their Agreement, the Petitioner has furnished a Bank Guarantee of Syndicate Bank, New Delhi in regard to which it apprehended an invocation by G. NOIDA. An injunction has accordingly been prayed for.

2. On the first date of hearing I had disclosed to learned counsel for the Petitioner my opinion that this Court ought not to exercise territorial jurisdiction since the substantial part of the cause of action had arisen in Greater Noida, where the subject matter of the contract was to be performed and where the contesting Defendant had its concerned office. The matter has been extensively argued on 12th July, 2004, 22nd July, 2004, 26th July, 2004 and 27th July, 2004.

3. Ms. Chopra, learned counsel for the Petitioner has relied on M/s Matanhella Brothers and others Versus M/s Shri Mahabir Industries Pvt. Ltd., : AIR1970 Pat91 for the proposition that the communication of a breach of the contract or its cancellation would be indicative of the arising of a part of a cause of action. M/s Gulati Construction Co., Jhansi Versus Betwa River Board and another, : AIR1984 Delhi299 has been referred to for the purposes of overcoming the term in the Arbitration Clause reposing the power of an appointment of an Arbitrator. Reliance has also been placed on State of Maharashtra and others Versus M/s. Ranjeet Construction, : AIR1986 Bom76 ; Vindhya Telelinks Ltd. Versus Mahanagar Telephones Nigam Limited & Anr. 2002 II AD (DELHI) 778; Jagson Airlines Ltd. & Anr. Versus Bannari Amman Exports (P) Ltd. & Anr. 2003 (62) DRJ 490; Larson &

Toubro Ltd. Versus Maharashtra State Electricity Board & Others, : AIR 1996 SC334 and M/s Mowmore Pvt. Ltd. Versus National Thermal Power Corporation Ltd. & Anr. 1995 (1) ALR (DELHI) 88.

4. There is no quarrel with the proposition articulated in these decisions and I shall assume for the present that a part of the cause of action has arisen in New Delhi. However, in my view this is of no avail to the Petitioner since the fundamental inquiry is now to be directed towards determining the place where the substantial or predominant part of the cause of action has arisen. My observation in Cement Corporation of India Versus M/s. S. Sultan and Another, bearing Suit No. 2357-A/1997 is not in context for the reason that I had to consider in that case the legality and legitimacy of the ouster/restrictive Clause reserving jurisdiction to Courts in New Delhi. There can be no gainsaying today that parties cannot agree to have disputes adjudicated at a place which does not otherwise enjoy jurisdiction.

5. Assuming for the sake of arguments that a part of the cause of action has arisen in New Delhi, I am still of the considered opinion that this Court should abjure from exercising jurisdiction since there are other Courts which are better suited to entertain the disputes that have been raised in this Petition (see Mrs. Gupta Sanitary Stores Versus Union of India and another, : AIR1985 Delhi122). The decision of the M/s. Patel Roadways Limited Bombay vs . M/s. Prasad Trading Company, : [1991]3SCR391 immediately comes to mind. The ratio of the Judgment is that if a Corporation has a subordinate office in the place where the cause of action arises, litigation must be commenced in that place alone, regardless of apparently wider enabling provision in Section 20. The Court adopted a realistic, businesslike and expedient approach in opining that - 'It would be a great hardship if, in spite of the Corporation having a subordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place where the Corporation has its principal place. That place should be convenient to the plaintiff; and since the Corporation has an office at such place, it will also be under no disadvantage'. The significance of this Judgment is that it restricts jurisdiction, whether a contractual clause of this nature exists or not, to the particular place

where the cause of action has substantially arisen, overruling other places which may have jurisdiction under Section 20 of the CPC.

6. In Sector Twenty One owners Welfare Association vs . Air Force Naval Housing Board & Ors. : 65(1997)DLT81 (DB), a Division Bench of this Court has held that a trivial or insignificant part of the cause of action arising at a particular place would not be enough to confer writ jurisdiction on the court to entertain the lis. The Division Bench noticed from the various decisions that the emphasis had shifted from the residence or location of the person or authority sought to be proceeded against to the situs of the accrual of cause of action. There is no reason why the observations pertaining to writ petitions should not be extrapolated to petitions such as the present one. The Bench held as follows :-

'13. The law as reflected by the above-said decisions is that the emphasis has shifted from the residence or location of the person or authority sought to be proceeded against to the situs of the accrual of cause of action wholly or in part. It is also clear that a trivial or insignificant part of the cause of action arising at a particular place would be not enough to confer writ jurisdiction; it is the cause of action mainly and substantially arising at a place which would be determinative factor of territorial jurisdiction. So also it shall have to be kept in view who are the real persons or authorities sought to be proceeded against or against whom the writ to be issued by the Court would run. Joining to proforma or ancillary parties and certainly not the joining of unnecessary parties, would be relevant for the purposes of Article 226(1).

14. Reverting back to the case at hand, it is clear that the cause of action has wholly arisen in NOIDA within the State of U.P. The principal and substantial grievance of the petitioner-association is against the respondents No. 2 and 3 though incidentally, the respondent No. 1 may also be required to be bound by the writ. The reverse is not correct. The writ, if any, to be issued by the Court would not serve any purpose if issued against respondent No. 1 alone. In the matter of registration of the sale deed-cum-sub-lease deed merely because a document can be registered at Delhi by virtue of Section 30(2) of the Registration Act, territorial

jurisdiction in the Courts at Delhi cannot be inferred. Moreover, the petitioner-association is already having some litigation before the Courts of U.P. And at one point of time the Delhi High Court had declined to entertain the petitioner-association's writ for want of territorial jurisdiction in Delhi.'

7. In *Oil & Natural Gas Commission vs . Utpal Kumar Basu and others*, : (1994)4SCC711 , where certain works were to be executed in the State of Gujarat, the advertisement inviting tenders was published in the Times of India, which was read by the contractor at Calcutta, the contractor submitted the offer from Calcutta, made representation from Calcutta, received a reply at Calcutta and challenged the action of ONGC in rejecting its tender before the Calcutta High Court by way of a writ petitioner which was entertained by the High Court, the Supreme Court held that the Calcutta High Court had no jurisdiction to deal with the matter. While setting aside the decision of the Calcutta High Court, the Supreme Court observed as follows:-

'8. From the facts pleaded in the writ petition, it is clear that NICCO invoked the jurisdiction of the Calcutta High Court on the plea that a part of the cause of action had arisen within its territorial jurisdiction. According to NICCO, it became aware of the contract proposed to be given by ONGC on reading the advertisement which appeared in the Times of India at Calcutta. In response thereto, it submitted its bid or tender from its Calcutta office and revised the rates subsequently. When it learnt that it was considered ineligible it sent representations, including fax messages, to EIL, ONGC, etc. at New Delhi, demanding justice. As stated earlier, the Steering Committee finally rejected the offer of NICCO and awarded the contract to CIMMCO at New Delhi on January 27, 1993. thereforee, broadly speaking, NITCO claims that a part of the cause of action arose within the jurisdiction of the advertisement in Calcutta, it submitted its bid or tender from Calcutta and made representations demanding justice from Calcutta on learning about the rejection of its offer. The advertisements itself mentioned that the tenders should be submitted at New Delhi and that a final decision whether or not to award the contract to the tenderer would be taken at New Delhi. Of course, the execution of the contract work was to be carried out at Hazira in Gujrat. thereforee, merely because it read the advertisement at Calcutta and submitted the offer from

Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action. Besides the fax message of January 15, 1993, can not be construed as conveying rejections of the offer as that fact occurred on January 27, 1993, We are, thereforee, of the opinion that even if the averments in the writ petition are taken as true, it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High Court. ...

12. Notwithstanding the strong observations made by this Court in the aforesaid decisions and in the earlier decisions referred to therein, we are distressed that the High Court of Calcutta persists in exercising jurisdiction even in cases where no part of the cause of action arose within its territorial jurisdiction. It is indeed a great pity that one of the premier High Courts of the country should appear to have developed a tendency to assume jurisdiction on the sole ground that the petitioner before it resides in or carries on business from a registered office in the State of West Bengal. We feel all the more pained that notwithstanding the observations of this Court made time and again, some of the learned Judges continue to betray that tendency only recently while disposing of appeals arising out of SLP Nos.10065-66 of 1993, Aligarh Muslim University & Anr. v. M/s. Vinny Engineering Enterprises (P) Ltd. & Anr., this Court observed:

'We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction.' In that case, the contract in question was executed at Aligarh, the construction work was to be carried out at Aligarh, the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction, the arbitrator was appointed at Aligarh and was to function at Aligarh and yet merely because the respondent was a Calcutta based firm, it instituted proceedings in the Calcutta High Court and the High Court exercised jurisdiction where it had none whatsoever. It must be remembered that the image and prestige of a Court depends on how the members of that institution conduct themselves. If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the Court, certain members of

the Court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said Court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation'

8. Primacy has been given to the place where the cause of action has substantially arisen, as is evident from the decision of the Hon'ble Supreme Court in *South East Asia Shipping Co. Ltd versus Nav Bharat Enterprises Pvt. Ltd.*, : [1996]3SCR405 . The admitted position was that performance of the obligations and liabilities under the contract was to be carried out in Bombay. The Court found it wholly irrelevant that the subject Bank Guarantee had been executed at Delhi and transmitted for performance to Bombay and held that Delhi Courts did not possess jurisdiction to decide the dispute. thereforee, assuming for the sake of arguments that the contract in the present case had actually been executed in Delhi, Courts in Hyderabad would be the only proper Courts for purposes of invocation of jurisdiction since the contract was to be performed there, the parties there and the other party has a subordinate office fully equipped and competent to prosecute the litigation.

9. An analysis of the various pronouncements of the Hon'ble Supreme Court reveals that even though the express terms of Section 20 of the CPC permit the filing of a suit against a Corporation at its principal office, preeminence has been accorded to the place where the cause of action had substantially arisen, from amongst those places where it has incidentally or partially arisen. Whilst the Supreme Court has indubitably enumerated in *ABC Laminart vs A.P. Agencies*, : [1989]2SCR1a the several places where the cause of action could be seen to have arisen, this was done primarily to investigate and determine whether the place to which jurisdiction had been restricted by ousting all others, itself enjoyed jurisdiction. The position that obtains today from the enunciation of the law in the

Patel Roadways' case (supra) is that primacy in preference or exclusion of all others is accorded to the place where the cause of action mainly or substantially or predominantly arises. This has great pragmatic purpose, and ensures convenience of investigation, and minimization of expenses. It must be highlighted that the question in the Patel Roadway's case was whether the Defendant could be sued in a place where the cause of action had arisen on the sole criteria of its location, in accordance with a literal reading of Section 20 of the C.P.C. despite a clause in the agreement restricting situs at Bombay. The Apex Court preferred a holistic approach to a pedantic one, and therefore enunciated that the place where the cause of action had arisen and where the Defendant had a subordinate office that venue would be the proper situs for affiliation. The forum of convenience from the perspective of the Plaintiff has been looked askance at. A fortiori, where the Defendant does not have its principal or concerned office and the cause of action has not substantially and overwhelmingly arisen at that particular place, Courts situated there should decline to exercise jurisdiction in preference to the Court possessing an umbilical connection with the cause of action. This will root out the pernicious practice of forum shopping. Courts exercising jurisdiction in the context of the Arbitration and Conciliation Act should be mindful and vigilant in this regard also because Section 42 thereof bars all other Courts from exercising jurisdiction over any further petitions/applications, as spelt out and expanded upon in Arbitration Petition 198/2003 disposed of on 22nd July, 2004.

10. I have already mentioned that I had disclosed my opinion to learned counsel for the Petitioner on the very first date of hearing so that the Petitioner could approach the Courts holding territorial sway over the Greater Noida. It is indeed an onerous task to obtain the injunctive prayers contained in this Petition in view of the repeated stringent observations of the Hon'ble Supreme Court discouraging jural interference in the invocation of Bank Guarantees. Since I am of the opinion that it would not be proper for this Court to exercise territorial jurisdiction on the subject, I abjure from recording any observations on the granting the relief of injunction against the encashment of the Bank Guarantee in question. The matter has been heard at great length on several dates, hence the Petition is dismissed with costs of Rs. 3,000/- payable to the Delhi Legal Services Authority, Patiala House, New Delhi, who should be informed accordingly by the Registry.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com