

Precision Engineers and Fabricators Vs. Delhi Jal Board and anr.

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Court : Delhi

Decided On : Nov-22-2002

Reported in : 2003(1)ARBLR606(Delhi); 103(2003)DLT129

Judge : C.K. Mahajan, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 4 and 11

Appeal No. : I.A. Nos. 8588, 8589/2001 in AA No. 179/2000

Appellant : Precision Engineers and Fabricators

Respondent : Delhi Jal Board and anr.

Advocate for Def. : Geeta Mittal, Adv.

Advocate for Pet/Ap. : D. Moitra, Adv

Disposition : Application allowed

Judgement :

C.K. Mahajan, J.

I.A. No. 8589/2001

1. By way of the present application the applicant seeks condensation of delay in filing I.A. No. 8588/2001.

Heard.

2. In the facts and circumstances of the case and for the reasons stated in the application the same is allowed. The delay in filing the I.A. No. 8588/2001 is condoned.

I.A. No. 8588/2001

3. By way of this application the applicant/ respondent seeks recalling the order dated 18th May, 2001.

4. The petitioner filed an application under Section 11 of the Arbitration & Conciliation Act, 1996 praying that the disputes between the parties be referred to an arbitrator as the request made to the Chief Executive Officer of the Delhi Jal Board was not acceded to and the respondents had failed to appoint an arbitrator. None appeared on behalf of the respondents on the date when the order was passed. Counsel for the applicant contents that during the pendency of the arbitration application, the Chief Executive Officer vide his order dated 13.9.2000 appointed Shri B.K. Sharma as the Sole Arbitrator to adjudicate upon the disputes/claims raised by the parties. The arbitrator vide order dated 13.11.2000 directed the parties to submit the claims and counter claims. The petitioner submitted themselves to the jurisdiction of the arbitrator and filed its claim statement on 29.12.2000. The Delhi Jal Board filed its counter claim/statement on 30.3.2001. The arbitration application was listed before this Court on 18th May 2001. The petitioner was fully aware of the case but did not inform this Court of what had transpired before the Arbitrator. The factum of the arbitrator having been appointed and the parties having submitted to his jurisdiction and the petitioner having filed its claim statement before the Arbitrator were concealed from this Court. Had these facts been disclosed, the Court could possibly have come to a different conclusion. It is in these circumstances that a prayer is made for recalling of the order.

5. It is further stated that the counsel for the respondent was busy in a part heard matter and had requested the junior colleague to attend the case and to apprise the Court of the appointment of the arbitrator and the filing of the claims and

counter claims by the respective parties. Her junior colleague was unable to appear and informed the counsel's office that the matter stood adjourned to 24.9.2001. Thereafter, the said junior counsel stopped attending the office. The counsel was not aware as to what had happened on 18th May 2001. The counsel came to know of the passing of the order when she received a letter from the arbitrator Shri B.K. Sharma.

6. The petitioner has opposed the application and contends that the Court has no power to review its order. Reliance is placed on *Konkan Railway Corporation Ltd. v. Rani Construction* : [2002]1SCR728 and it is contended that the order dated 18th May, 2001 being an administrative order cannot be reversed or recalled by this Court. He contended that the said order attained finality in terms of Section 11 of the [Arbitration and Conciliation Act, 1996](#) and any order reversing the same would amount to removal of the Arbitrator so appointed by this Court from the arbitration proceedings de-hors the provisions of the Act.

7. I have heard counsel for the parties and perused the pleadings and the documents placed on record.

It is settled law that when an order is obtained by fraud and by not disclosing complete facts to the Court, the Court is empowered to review/recall its earlier order.

8. The Supreme Court in *S.P. Chengalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by Lrs. and Ors.* : AIR 1994 SC853 held that:-

'The principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Court of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. A person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation..... A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is cheating intended to get an advantage.....'

9. It is not disputed by counsel for the petitioner that the arbitrator was appointed by respondent vide letter dated 13th September, 2000 and by order dated 13th November, 2000 the parties were directed to submit their claims/counter claims. The petitioner duly filed its claims before the Arbitrator on 29th December, 2000. The respondents also filed their counter claim on 30th March, 2001. Thus the parties have submitted themselves to the jurisdiction of the Arbitrator and participated in the proceedings.

10. The petitioner was duty bound to apprise the Court about the developments in the matter and of the appointment of the Arbitrator and the steps taken in the proceedings before the Arbitrator so appointed. The petitioner did not object to the appointment of the Arbitrator by the respondents.

11. I have also perused the proceedings before the Arbitrator. The petitioner was diligently pursuing the claims before the Arbitrator without having any objection to his appointment. Even after passing of the order on 18th May, 2001, the petitioner vide letter dated 25th May, 2001 requested the Arbitrator for extension of time for filing the rejoinder. The petition again sought time for filing rejoinder vide letter dated 25th June, 2001 before the Arbitrator and did not choose to inform the Arbitrator of the order passed on 18th May, 2001. there is no document on record to show that the petitioner raised any objection to the appointment of the Arbitrator. The petitioner waived its rights as per Section 4 of the Arbitration and Conciliation Act which reads as under:-

'4. Waiver of right to object - A party who knows that -

(a) any provision of this Part from which the parties may derogate, or

(b) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating his objections to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.'

12. The petitioner deliberately suppressed the aforesaid material facts when the order was passed on 18th May, 2001. There is not an iota of an averment by the petitioner that the respondent has already appointed the Arbitrator and they were diligently pursuing their claim before the Arbitrator. The petitioner has thus abused the process of the Court by not disclosing the material facts. The petitioner is, therefore, guilty of suppression. The petitioner has participated in the arbitration proceedings without reserving its right to challenge the application or without prejudice and withheld vital and material facts thereby playing a fraud upon this Court.

13. Suppression of material fact by itself is a sufficiently ground to decline the discretionary relief. A party must approach the Court with clean hands and disclose all material facts which may in one way or the other have a direct bearing on the outcome of the case. A person guilty of concealment of material facts is not entitled to discretionary relief. He must make honest disclosure thereof would amount to an abuse of the process of the Court.

14. From a perusal of the facts stated hereinabove, it is clear that the petitioner misled the Court by concealing material facts and obtained an order by taking unfair advantage of the absence of the counsel for the respondent.

15. Having regard to the facts and circumstances of the case, the application is allowed. The order dated 18th May, 2001 is recalled.

AA No. 179/2000

16. The Arbitrator had already been appointed by the respondents and the petitioner is also participating in the arbitration proceedings. In the circumstances this petition has become infructuous and is dismissed as such.

17. The Arbitrator Shri B.K. Sharma, so appointed by the respondents shall continue with the proceedings and make an award in accordance with law.

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