

Visva Bharati Vs. Sarkar and Sarkar

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Court : Kolkata

Decided On : Apr-23-2008

Reported in : 2008(3)CHN1013

Judge : Ashim Kumar Banerjee and ;Tapas Kumar Giri, JJ.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 11, 11(6), 16, 34 and 42

Appeal No. : APO No. 322 of 2006 and AP No. 248 of 2006

Appellant : Visva Bharati

Respondent : Sarkar and Sarkar

Advocate for Def. : Kumkum Das, Adv.

Advocate for Pet/Ap. : Debraj Bhattacharjee and ;Madhurima Das, Advs.

Judgement :

1. The appellant filed an application under Section 34 of the [Arbitration and Conciliation Act, 1996](#) before the learned Single Judge. The learned Single Judge dismissed the said application on the ground that this Court lacked territorial jurisdiction as the award was valued less than Rs. 10 lakh. The learned Single Judge also considered the Seven Judge Bench decision in the case of SBP & Co. v. Patel Engineering Ltd. and Anr. reported in 2005(8) SCC 618. His Lordship distinguished the said decision and held that the ratio decided therein had no

application in the instant case inasmuch as an application under Section 11(6) was not covered by Section 42 of the said Act of 1996.

2. Hence, this appeal by the appellant.

3. Mr. Debraj Bhattacharjee, learned Counsel appearing in support of the appeal contends that once the Apex Court in the case of SBP & Co. held that any order passed under Section 11(6) would be treated as judicial order that would automatically debar any other Court other than the High Court to entertain any further application under said Act of 1996 including the application under Section 34 in view of the non obstante Clause stipulated in Section 42.

4. In support of his contention Mr. Bhattacharjee has relied on a single Bench decision of the Delhi High Court in the case of Damayanti Builders v. Union of India reported in 2003(3) ARBLR 530 where on an identical issue the Delhi High Court observed that Section 34 application would lie to the High Court and not any other Court.

5. Mrs. Kumkum Das, learned Counsel appearing for the respondent in her usual fairness submits that the observation of the learned Single Judge was perhaps not correct. In support of her contention she has relied upon a Single Bench decision of this Court in the case of J.G. Engineers Pvt. Ltd. v. Union of India and Ors. reported in 2002(3) CLT 106.

6. We have considered the submissions made on behalf of the parties. We have carefully perused the decision in the case of SBP & Co. (supra). Paragraph 23 of the said decision being relevant herein is quoted below:

23. Then came Konkan Rly. Corporation Ltd. v. Mehul Construction Co. in which the first question framed was, what was the nature of the order passed by the Chief Justice or his nominee in exercise of his power under Section 11(6) of the [Arbitration and Conciliation Act, 1996](#)? After noticing the Statement of Objects and Reasons for the Act and after comparing the language of Section 11 of the Act and the corresponding article of the Model Law, it was stated that the Act has designated the Chief Justice of the High Court in cases of domestic arbitration and

the Chief Justice of India in cases of international commercial arbitration, to be the authority to perform the function of appointment of an arbitrator, whereas under the Model 'Law, the said power was vested with the Court. When the matter is placed before the Chief Justice or his nominee under Section 11 of the Act it was imperative for the Chief Justice or his nominee to bear in mind the legislative intent that the arbitral process should be set in motion without any delay whatsoever and all contentious issues left to be raised before the Arbitral Tribunal itself. It was further held that at that stage, it would not be appropriate for the Chief Justice or his nominee, to entertain any contention or decide the same between the parties. It was also held that in view of the conferment of power on the Arbitral Tribunal under Section 16 of the Act, the intention of the legislature and its anxiety to see that the arbitral process is set in motion at the earliest, it will be appropriate for the Chief Justice to appoint an arbitrator without wasting any time or without entertaining any contentious issue by a party objecting to the appointment, of an arbitrator. The Court stated: (SCC p.207, para 4)

Bearing in mind the purpose of legislation, the language used in Section 11(6) conferring power on the Chief Justice or his nominee to appoint an arbitrator, the curtailment of the powers of the Court in the matter of interference, the expanding jurisdiction of the arbitrator in the course of the arbitral proceeding, and above all the main objective, namely, the confidence of the international market for speedy disposal of their disputes, the character and status of an order appointing an arbitrator by the Chief Justice or his nominee under Section 11(6) has to be decided upon. It is held that an order under Section 11(6) is a judicial or quasi-judicial order then the said order would be amenable to judicial intervention and any reluctant party may frustrate the entire purpose of the Act by adopting dilatory tactics in approaching a Court of Law even against an order of appointment of an arbitrator. Such an interpretation has to be avoided in order to achieve the basic objective for which the country has enacted the Act of 1996 adopting the UNCITRAL Model.

7. Under the said Act of 1996 the Arbitrator is empowered to rule on his own jurisdiction. Such power was interpreted by the Apex Court in paragraph 20 of the said decision. The Apex Court was of the view that since an order passed by the

Chief Justice or any other Judge so assigned identical duty by the Chief Justice under Section 11(6) was a judicial order it would not be open to the arbitral tribunal to go into such question again under Section 16.

8. On a plain reading of paragraph quoted (supra) and paragraph 20 thereof we thus find that the power to rule on his own jurisdiction vested under Section 16 is no more available to the Arbitrator in case he is appointed under Section 11(6).

9. Considering the observations of the Apex Court referred and quoted above we are of the view that 'any other application' as contemplated under Section 42 should also include an application under Section 11(6) and thus the said application under Section 34 should lie to this Court and not any other Court.

10. The appeal thus succeeds. The order under appeal is set aside. The matter is remanded back to the learned Single Judge for being heard on merits.

11. Urgent certified copy of this order be supplied to the parties, if applied for, subject to compliance with all requisite formalities.