
(2020) 06 UK CK 0006

Uttarakhand High Court

Case No: Writ Petition No. 824 Of 2020 (M/S)

M/s Ravindra Kumar
Gupta And Sons

APPELLANT

Vs

Union Of India And
Others

RESPONDENT

Date of Decision: June 9, 2020

Acts Referred:

- Arbitration And Conciliation Act, 1996 - Section 17, 17(1), 17(2), 34, 36, 37
- Constitution Of India, 1950 - Article 226

Hon'ble Judges: Sharad Kumar Sharma, J

Bench: Single Bench

Advocate: Aditya Pratap Singh, Rakesh Thapliyal, Sanjay Bhatt

Final Decision: Dismissed

Judgement

Sharad Kumar Sharma, J

1.Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, This Writ Petition is heard through Video Conferencing.

2.Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Under, Part VII, Chapter V of the Constitution of India, by its 44th Amendment, which was introduced with effect from

01.08.1979, the classification of the Writs under Article 226 of the Constitution of India, have been spilited into; Writ of Certiorari; Writ of Quo

Warranto and Writ of Mandamus. The condition precedent therein for invoking the Writ Jurisdiction under Article 226 of the Constitution of India has

been confined to from the view point of enforcement of any rights conferred and envisaged for the person invoking the Writ Jurisdiction under Part III

of the Constitution of India. Meaning thereby, invocation of Writ Courts is only in an event of an apparent breach of a Fundamental Right, guaranteed

under Part-III of the Constitution.

3. The petitioner, in the present Writ Petition, admittedly, is a partnership Firm and a Contractor, to whom a certain work contract

was executed and during the course of contract, certain dispute arose between the petitioner and respondent employer and, consequently, the

petitioner had invoked arbitration proceedings as contemplated under the Contract being Contract CA No.CEB/DDN/Hills/11 of 2012/13. At the time,

when the arbitration proceedings were pending consideration before the Arbitrator, the petitioner's application, which was preferred under Section

17 of the Arbitration and Conciliation Act; for the grant of an interim order was considered by the Arbitrator and the same was granted in his favour

by an order dated 28.03.2017, as passed by the Arbitrator and, as a consequence thereto, the direction was issued for the return of the deposit of the

FDRs made by the petitioners to the tune of Rs.33 lakhs, for the purposes of surety for execution of the work contract. Section 17 of the Arbitration

and Conciliation Act, 1996, reads as under, which contemplates the power of an Arbitrator to pass orders as interim measures, viz,

"17. Interim measures ordered by arbitral tribunal" (1) A party may, during the arbitral proceedings or at any time after the

making of the arbitral award but before it is enforced in accordance with Section 36, apply to the arbitral tribunal,

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely,

(a) the preservation, interim custody or sale of any goods which are the subject matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject matter of the dispute in arbitration, or as to

which any question may arise therein and authorising for any of the aforesaid purposes any person to enter

upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or

experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information, or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral

tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any

proceedings before it.

(2) Subject to any orders passed in an appeal under Section 37, any order issued by the arbitral tribunal under this section shall

be deemed to be an order of the court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the

same manner as if it were an order of the court.

4. Any order passed by way of an interim arrangement by the Arbitrator during the pendency of the Arbitration Proceedings by

virtue of Sub-section (2) of Section 17 of the Arbitration Act has been made executable through the process of drawing the proceedings as

contemplated for execution under the Code of Civil Procedure, which is quoted hereunder:

(2) Subject to any orders passed in an appeal under Section 37, any order issued by the arbitral tribunal under this section shall be

deemed to be an order of the court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same

manner as if it were an order of the court.

5.Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Be that as it may. The fact remains that ultimately, the Arbitration Proceedings has been decided finally by the Arbitrator on

10.01.2019 and a final award has been passed. In accordance with the finding and the observations made in para 28 in the award, it observes that the

interim award dated 28.03.2017 has already been published, hence has been legally made executable under Section 17 Sub-section (2) of the Act of

1996; and hence, it becomes executable. It further provided in its para 2.1 that final award would be read in conjunction with the interim award dated

28.03.2017. The respondents, as against the interim award dated 28.03.2017, had filed an application invoking Section 34 of the Act and also filed an

application under Section 34 of the Act of 1996 as against the final award dated 10.01.2019. Yet again, an application, which was preferred by the

respondents under Section 34 of Arbitration and Conciliation Act, had been finally decided on merits by learned Commercial Courts.

6.Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, As far as the proceedings under Section 34 of the Arbitration and Conciliation Act are concerned in both the cases, i.e. interim

award and final award, in accordance with the pleading of the Writ Petition, the same has attained finality by an order dated 27.02.2020, as passed by

the learned Commercial Courts. Though, there had been slight modification made by the Commercial Courts, to the Arbitrator award dated

10.01.2019, but that modification of the award may not hold us for long for the reason being that as against the modification of the award dated

10.01.2019 by the Commercial Courts order dated 27.02.2020, that has attained finality for the reason being that the respondents had not challenged

the judgment of the Commercial Court dated 27.02.2020 before any superior Appellate Court, by invoking the provisions contained under Section 37 of

the Arbitration and Conciliation Act, 1996, hence, it has attained finality.

7.Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, The grievance of the petitioners in the present Writ Petition, is that despite of there being an interim award dated 28.03.2017,

the FDRs for an amount of Rs.33 lakhs, which was directed to be returned back has not been remitted to him and, consequently, he had sought to

redress his grievance for its return, initially by filing representation before the respondents on 27.02.2020 and on various other occasions. He further

submits that when no action was taken on the representation, he had furnished the reminders also. But when it was of no avail and no action was

taken, he had filed the present writ petition with the following relief:-

i) Issue a writ, order or direction in the nature of mandamus by directing the respondents to return the deposited FDRs amounting to

Rs.33,00,000/- to the petitioner in a time bound manner.

ii) Issue a suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

ii) To award the cost of the petition to the petitioners.

8. After having heard the Counsel for the petitioner at length, this Court is of the view that a Writ of Mandamus is a prerogative

Writ Petition, provided under Article 226 of the Constitution of India as amended by its 44th Amendment in the Constitution of India, which could only

be invoked, when there is a breach of Fundamental Rights provided and guaranteed to a citizen, under Part III of the Constitution of India, and that

too, it ought to be a mandatory duty/statutory duty, which has been casted upon the statutory authority to act in accordance with law and on a request

being made by the person enforcing rights under Part-III of the Constitution of India, the authority concerned has declined to or has not acted upon it,

thus there is failure to perform duty, which could only enable the person aggrieved to invoke a Writ Jurisdiction. This is not the situation in the instant

case. In the present case, admittedly, the entire controversy has arisen out of a contract, all proceedings, rights and liabilities are governed under the

Act of 1996, which ultimately in view of the provisions attracting the Arbitration Clause has culminated in a final award dated 10.01.2019.

9. In such an eventuality, even if, the interim award dated 28.03.2017, if at all, it could be said that it sustains and is still

enforceable, even after the final award dated 10.01.2019, because it has become part of final award dated 10.01.2019, then too, the statutory remedy

available to the petitioner would be strictly governed under the light of the provisions contained either under Sub-section (2) of Section 17; to be read

with Section 36 of the Arbitration and Conciliation Act, which contemplates that an award passed by an Arbitrator; under the Act of 1996, takes the

shape of a decree and it would be executable as a decree, under the provisions of Code of Civil Procedure, meaning thereby the provisions of Order

21, had been made attracted for the purposes of enforcement of the award, as a decree of Civil Court. Hence, Special Statute cannot be overridden

by general law by filing a Writ of Mandamus to enforce the interim award dated 28.03.2017.

10.Ã, Ã, Ã, Ã, Ã, Ã, For the reasons aforesaid, this Court is of the view that a Writ of Mandamus for a return of the FDRs as directed by the interim

award under Section 17 (1) of the Act of 1996 dated 28th March, 2017, cannot be enforced by invoking the Writ of Mandamus under Article 226 of

the Constitution of India, but rather the appropriate remedy available to the petitioners would be to approach the Executing Court in the light of the

provisions contained under Section 17 (2) to be read with Section 36 of the Arbitration and Conciliation Act of 1996.

11.Ã, Ã, Ã, Ã, Ã, Ã, With the aforesaid liberty, since the petitioner has got a statutory remedy under Special Act governed by the terms of contract,

which is still available to him, he may have his recourses to it but as far as the present Writ of Mandamus is concerned, since there is no apparent

breach of Fundamental Rights, guaranteed under Part-III, Writ Petition is not tenable. Hence, the Writ Petition is dismissed subject to the aforesaid

liberty.