

## Municipal Council, Bhandara, Thr. Its Chief Officer Vs J.H. Construction Pvt. Ltd., Nagpur Thr. Director, Shri Nandkumar Harchandani

**Court:** Bombay High Court (Nagpur Bench)

**Date of Decision:** Jan. 30, 2025

**Acts Referred:** Constitution of India, 1950 " Article 32, 226, 227, 368

Arbitration and Conciliation Act, 1996 " Section 5, 11(6), 16, 19, 19(1), 19(3), 34, 35, 36, 37

**Hon'ble Judges:** M.S. Jawalkar, J

**Bench:** Single Bench

**Advocate:** M.P. Khajanchi, M.I. Dhatrak, A.S. Dabadghao

**Final Decision:** Dismissed

### Judgement

M. S. Jawalkar, J.

1. Heard learned Counsel for petitioner and learned Counsel for respondent.

2. The respondent filed his reply. By way of this reply, preliminary objection is raised by the respondent that petition is not maintainable. It is

contended that in view of the scheme of the Arbitration and Conciliation Act, 1996 (hereinafter referred as "the Arbitration Act"), does not

permit challenge to the interlocutory orders under Article 226/227 of the Constitution of India. It is submitted that the Hon'ble Apex Court has

time and again emphasized that except where Section 37 specifically provides a right of appeal, the aggrieved party must await for the final award to

raise challenges to interim orders. Such challenges can then be raised in proceedings under Section 34 of the Arbitration Act. The Arbitral Tribunal

being a forum chosen by parties through agreement, must be allowed to function without premature judicial intervention.

3. The primary challenge of the petitioner relates to the learned Arbitrator's decision to exhibit certain documents of the answering respondent,

subject to the petitioner's objections, to be decided at the time of final hearing. It is contention of the petitioner that those objections ought to have

been decided then and there only. It is further contention that the objections were duly raised by the petitioner.

4. The Arbitrator exhibited the documents and it was directed that objections will be heard at the time of final hearing. Most important fact is that even

photocopy of Audit Report is marked as Exhibit- 50, as such, it demonstrates the arbitrary, unlawful and erroneous decision making process, which

petitioner challenge in this petition.

5. It is contended that when specific objection is raised that Audit Report below Exhibit-50 is marked as exhibit, it was brought to the notice to the

Arbitrator that the original of the Audit Report is not filed and that the Author of the document is also not examined then it was the jurisdictional

obligation of the learned Arbitrator to apply mind and should have refrained from exhibiting the documents which needs interference by this Court.

6. As against this contention of the respondent is that in view of Section 19 of the Arbitration Act, expansive discretion is given to the Arbitral Tribunal

in conducting the proceedings is granted. Section 19(1) explicitly provides that the Arbitral Tribunal shall not be bound by the Code of Civil

Procedure, or the Indian Evidence Act. However, Section 19(3) specifically empowers the Arbitration Tribunal to conduct the arbitration in such

manner as it considers appropriate, including the power to determine the admissibility, relevance, materiality and weight of any evidence. It is

submitted that the learned Arbitrator's decision to exhibit documents while reserving objections falls squarely within the statutory discretion and is

aimed at ensuring efficient conduct of proceedings.

7. It is submitted by the learned Counsel for respondent that the petitioner is having opportunity to argue on the same objection as decision on objection

deferred at the time of final hearing, as all grounds of challenge remain available. Moreover, the final award can be challenged under Section 34 of the

Arbitration Act.

8. The learned Counsel for petitioner relied on L. Chandra Kumar Vs. Union of India and others (1997) 3 SCC 261, in support of his contention

that the review is a basic and essential feature of the Constitution of India. In L. Chandra Kumar (supra), the Hon'ble Supreme Court held as

under:

"To express our opinion on the issue whether the power of judicial review vested in the High Courts and in the Supreme Court under Articles 226/227 and 32

is part of the basic structure of the Constitution, we must first attempt to understand what constitutes the basic structure of the Constitution. The doctrine of basic

structure was evolved in Kesavananda Bharati case. In Kesavananda Bharati case a thirteen-Judge Constitution Bench, by a majority of 7:6, held that though, by

virtue of Article 368, Parliament is empowered to amend the Constitution, that power cannot be exercised so as to damage the basic features of the Constitution

or to destroy its basic structure. The identification of the features which constitute the basic structure of our Constitution has been the subject-matter of great

debate in Indian Constitutional law. The difficulty is compounded by the fact that even the judgments for the majority are not unanimously agreed on this aspect.

The aspect of judicial review does not find elaborate mention in all the majority judgments. Kesavananda Bharati case did not lay down that the specific and

particular features mentioned in that judgment alone would constitute the basic structure of our Constitution.

9. Learned Counsel for petitioner, also, relied on Full Bench decision of this Court in Hemendra Rasiklal Ghia Vs. Subodh Mody

2008(6) Mh.L.J., in support of his contention that objection raised to the exhibition of the documents itself ought to be decided then and there only,

wherein Full Bench of this Court held as under:

“75. If the objection to the proof of document is not decided and the document is taken on record giving tentative exhibit, then the right of the cross-examiner is

seriously prejudiced. Once the document is used in cross-examination, then the document gets proved and can be read in evidence as held by the Supreme Court

in the case of Ram Janki Devi vs. Ms Juggilal Kamlatpat, 1971 (1) SCC 477. If the cross-examiner decides not to cross-examine based on unexhibited document

and, ultimately, at the fag end of the trial, the document is held to be admissible and proved, then, the cross-examiner as a rule of fair play would be entitled to

further opportunity to cross-examine based on that document resulting in delayed trial defeating the very object and purpose of the amendment to the Civil

Procedure Code.

10. Learned Counsel for petitioner also relied on Shri Guru Gobind Singhji Institute of Engineering and Technology Vs. M/s. Kay Vee

Enterprises, through its Proprietor Chandrashekhar Reddy in Writ Petition No.9868/2024, at Aurangabad Bench, wherein this Court relied on

the judgment of L. Chandra Kumar (supra) held as under:

“27. Considering the legal position as discussed above by following the judgment in L. Chandra Kumar (supra), we are of the considered view that our

jurisdiction under Article 227 is not excluded from examining the validity of the interlocutory orders for which prayers are made in paragraph 37(a) to

paragraph 37(g).

11. In the reply, the learned Counsel for respondent relied on Hindustan Alloys Pvt. Ltd. Vs. Maa Sheetla Ventures Limited in Writ Petition (C)

No.10561/2024 of Delhi High Court, wherein reliance is placed on the citation of Bhaven Construction Vs. Executive Engineer Sarovar Narmada

Nigam Ltd., (2022) 1 SCC 75, wherein it is held that:

“It clearly indicates that while exercising writ jurisdiction, the Court must consider the nature of challenge and also of the nature of the impugned order.

Moreover, in the opinion of the Court, this already circumspect scope of interference under Article 226 becomes even narrower when it is an order of the Arbitral

Tribunal in relation to the conduct of arbitration proceedings that is called into question.

12. Learned Counsel for respondent also relied on judgment of this Court in *Inox Leisure Limited Vs. Indo Pacific Project Ltd.*, in Writ Petition

No.798/2020, wherein reliance is placed on the judgment of the Hon'ble Apex Court in *SBP & Co. Vs. Patel Engineering Ltd. & Anr.* (2005)

8 SCC 618, wherein legal position is settled as under:

“45. It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable

of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the

arbitral tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-

between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act. The party aggrieved by any order of the

arbitral tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the

scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the

occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral

tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that

any order passed by the arbitral tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an

intervention by the High Courts is not permissible.

46. The object of minimizing judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court

could be approached under Article 227 or under Article 226 of the Constitution against every order made by the arbitral tribunal. Therefore, it is

necessary to indicate that once the arbitration has commenced in the arbitral tribunal, parties have to wait until the award is pronounced unless, of

course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.”

13. Learned Counsel for respondent also relied on *SBP & Co.* (supra), wherein in paragraph No.142, the conclusions are recorded. The said judgment

is mainly on the point of power of Chief Justice under Section 11(6) of the Act. In the said judgment, observation in paragraph No.142 is as under:

“(i) “142. (i) “

(viii) While exercising extraordinary jurisdiction under Article 226 of the Constitution, however, the High Court will be conscious and mindful of the relevant

provisions of the Act, including Sections 5, 16, 34 to 37 as also the object of the legislation and exercise its power with utmost care, caution and

circumspection.Ã¢â€

14. In view of the legal position, in my considered opinion, considering the facts that the document is merely exhibited and parties are free to argue on

its admissibility in evidence at the time of final hearing kept challenge open. As such, impugned orders passed by the Arbitral Tribunal is an

interlocutory order, which cannot be challenged in writ petition under Article 227 of the Constitution of India. In view of this matter, the writ petition is

not maintainable and the same is dismissed as such.

15. However, it would be earnest request to the Arbitrator that to consider paragraph No. 75 of Full Bench Decision in Hemendra Rasiklal Ghia

(supra), which expects the objection to be decided then and there only. Though it is a discretion of Arbitrator to adopt this procedure and C.P.C. or

evidence may not be applicable, however, it would be appropriate to avoid serious prejudice being caused to either of the party.

16. At this juncture, learned Counsel for petitioner requests to continue the interim arrangement as per order dated 14.11.2024. The same shall be

extended for another 8 weeks.