

(2012) 01 P&H CK 0073

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 4556 of 2011

Alstom Power Systems Gmbh,
Germany and another

APPELLANT

Vs

Haryana Power Generation
Corporation Limited

RESPONDENT

Date of Decision: Jan. 6, 2012

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 11(6), 12, 13, 34, 42
- Constitution of India, 1950 - Article 227

Citation: (2012) 3 ARBLR 153 : (2012) 166 PLR 91

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

This is revision petition under Article 227 of the Constitution of India assailing order dated 25.05.2011 (Annexure P-1) passed by learned Additional District Judge, Panchkula thereby dismissing petitioners" application u/s 42 of the Arbitration and Conciliation Act, 1996 (in short, the Act). There was contract between the parties executed in Haryana. Bank guarantee was furnished by the petitioners. Bank guarantee was obtained from bank at Delhi but furnished in Haryana.

2. Petitioners herein filed petition u/s 9 of the Act in High Court of Delhi seeking to restrain the respondent herein from encashing bank guarantee. Vide order dated 13.05.2001 Annexure P-2, Delhi High Court issued notice of the petition to respondent for 18.05.2001. However, on 18.05.2001, Hon"ble Judge was on leave and the case was adjourned to 25.05.2001. On 25.05.2001, counsel for the petitioner himself stated that the bank guarantee had already been encashed by the respondent and the petitioner had invoked arbitration clause. Accordingly as prayed

for by counsel for the petitioner, the said petition u/s 9 of the Act was dismissed as infructuous vide order dated 25.05.2001.

3. Arbitrator passed award in the arbitration proceedings. Respondent herein filed objections u/s 34 of the Act in District Court at Panchkula. Petitioners herein moved application Annexure P-5 u/s 42 of the Act alleging that in view of earlier petition u/s 9 of the Act having been filed in Delhi High Court, only said High Court has jurisdiction to entertain the petition u/s 34 of the Act and Court at Panchkula has no jurisdiction. The said application has been dismissed by learned Additional District Judge by impugned order Annexure P-1. Feeling aggrieved, petitioners have filed the instant revision petition.

4. I have heard learned counsel for the parties and perused the case file.

5. Learned counsel for the petitioners emphatically referred to Section 42 of the Act, which is reproduced hereunder:

Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other court.

6. It was contended that since petition u/s 9 of the Act was filed in High Court at Delhi, in view of categorical provision of Section 42 of the Act, only High Court at Delhi has jurisdiction to deal with petition u/s 34 of the Act and Court at Panchkula has no jurisdiction. Reliance in support of this contention has been placed on two judgments of Delhi High Court i.e. S.K. Contractor and Engineers v. Hindustan Petroleum Corporation Limited,¹ 2008(2) ARBLR 263 (Delhi) and judgment dated 12.10.2009 passed in OMP 191 of 2009 titled Delhi Apartments Pvt. Ltd. v. C.R. Sons Builders and Developers Pvt. Ltd.² and also a judgment of Rajasthan High Court in the case of [Sirojexport Company Ltd. Vs. Indian Oil Corporation Ltd.,](#).

7. On the other hand, counsel for the respondent emphatically contended that Court at Panchkula only has territorial jurisdiction to deal with petition u/s 34 of the Act since the agreement was executed at Panchkula and clause 6.2 of the agreement also refers to exclusive jurisdiction of Courts at Panchkula. It was also contended that High Court at Delhi had no territorial jurisdiction over the matter and therefore, mere filing of petition u/s 9 of the Act in Delhi High Court would not confer territorial jurisdiction on the said Court. Counsel for respondent placed reliance on judgment of Hon"ble Supreme Court in the case of Gharwal Mandal Vikas Nigam Ltd. v. Krishna Travel Agency,⁴ 2008(6) SEC 471.

8. I have carefully considered the rival contentions.

9. If literal construction of Section 42 of the Act is taken, it may, to some extent, tend to support the contention of counsel for the petitioners, but at the same time, it would lead to great absurdity. Suppose in a case, Court at Delhi has exclusive territorial jurisdiction but one party with malafide intention files a petition at Chennai u/s 9 of the Act or under any provision of the Act. Then literal interpretation of 42 of the Act would lead to the absurdity that all subsequent petitions would have to be filed at Chennai notwithstanding that the Court at Chennai had no territorial jurisdiction at all. It would also give right to a party to choose court of any place even if such court has no territorial jurisdiction. Such absurd and unacceptable interpretation cannot be given to the provision.

10. In the instant case, Court at Delhi had no territorial jurisdiction. Petition u/s 9 of the Act filed by the petitioner at Delhi was dismissed as infructuous on request of counsel for the petitioner on the very first date of hearing when it was taken up after notice. Consequently respondent got no opportunity to raise objection relating to territorial jurisdiction of Delhi High Court in that case. On the other hand, Delhi High Court had no territorial jurisdiction over the case in view of the fact that the entire cause of action arose in Haryana. Consequently Court at Panchkula only has territorial jurisdiction to try the objection petition u/s 34 of the Act.

11. Judgments cited by counsel for petitioners are completely distinguishable. In the case of S.K. Contractor and Engineers (supra), earlier petition under Sections 12 and 13 of the Act had been filed at Delhi for removal of Arbitrator. The said petition was disposed off by a detailed judgment rejecting the petitioner's case on merits. At that time, no objection to jurisdiction of the Court at Delhi was raised in that case. Consequently, in view of Section 42 of the Act, subsequent petitions also had to be filed at Delhi. Moreover in that case, part of cause of action had also arisen at Delhi. Consequently this judgment has no applicability to the facts of the instant case because in the instant case, the respondent got no opportunity to raise objection to territorial jurisdiction of Delhi High Court in earlier petition filed u/s 9 of the Act which was dismissed as infructuous on prayer of counsel for the petitioner on the very first date of hearing after notice nor any part of cause of action in this case arose in territorial jurisdiction of Delhi High Court.

12. Judgment in the ease of Delhi Apartments Pvt. Ltd. (supra) also has no applicability to the instant ease. In that case, Court at Haridwar by detailed order held that it had jurisdiction to entertain the petition u/s 9 of the Act. The said order was challenged by writ petition in High Court but the said writ petition was not pursued. Accordingly, the said order attained finality. In this view of the matter, it was held that only District Judge, Haridwar has the jurisdiction to entertain subsequent petition. Thus in that case, there was contested order holding that District Judge, Haridwar had territorial jurisdiction. However in the instant case, there is no order that Court at Delhi had territorial jurisdiction.

13. Judgment in the case of Sirojexport Company Ltd. (supra) also has no applicability to the facts of the instant case. In that case, the petitioner itself had approached Delhi High Court regarding bank guarantee u/s 9 of the Act. Consequently it was held that Court at Jaipur had no territorial jurisdiction to entertain subsequent application u/s 11(6) of the Act. This judgment is also thus completely on different facts.

14. Judgment in the case of Gharwal Mandal Vikas Nigam Ltd. (supra) is also not directly applicable to the facts of the instant case. In that case, Hon'ble Supreme Court had appointed Arbitrator u/s 11(6) of the Act. It was held that objections u/s 34 of the Act against the award would not lie before the Supreme Court but would lie before the concerned District Judge. The issue involved in the instant case was not at all involved in that case. For the reasons aforesaid, I find that Court at Panchkula has exclusive jurisdiction to entertain and decide the objections u/s 34 of the Act filed by respondent herein. Application u/s 42 of the Act filed by the petitioners has been rightly dismissed. There is no illegality or jurisdictional error in impugned order of the lower Court. Accordingly the revision petition is dismissed being meritless.