

(2001) 08 DEL CK 0169

Delhi High Court

Case No: Suit No. 2114-A of 1998

A.T. Patel

APPELLANT

Vs

Delhi Development Authority
and Others

RESPONDENT

Date of Decision: Aug. 13, 2001

Acts Referred:

- Arbitration Act, 1940 - Section 14, 16, 17, 28, 29
- Arbitration and Conciliation Act, 1996 - Section 85, 85(2)

Hon'ble Judges: Vinod Sagar Aggarwal, J

Bench: Single Bench

Advocate: V.K. Sharma, for the Respondent

Final Decision: Dismissed

Judgement

V.S. Aggarwal, J.

Shri A.T.Patel, as the sole proprietor of M/s.Gita Consultants, has filed the present petition u/s 14 of the Indian Arbitration Act, 1940 for filing of the award and for making the award a rule of the court.

2. The facts alleged are that disputes had arisen between the parties within the meaning of Arbitration Act,. The same were referred to the sole arbitrator, designated by the Chief Engineer, Delhi Development Authority. The arbitrator had given the award on 19.9.1998. Needless to state that the Award has since been filed and the Joint Registrar (O), on 8.10.1998 had directed the issuance of the notice to the arbitrator and thereupon to the parties.

3. In pursuance of the notice issued, objections have been filed by the Delhi Development Authority u/s 30 and 33 of the Arbitration Act, 1940 against the award dated 19.9.1998. It has been asserted that the work was completed on 29.2.1992. The petitioner had given the undertaking on 6.3.1992 and is now estopped from raising the claim. Otherwise, there was no record to suggest that undertaking was

given under some duress.

4. Different objections were raised with respect to the claim, which has been allowed, which pertain basically to the facts. In the reply filed, the petitioner countered the said assertions of the objector-DDA.

5. At this stage, it is worth pointing that vide I.A.No. 4997/2001 it has been pointed that keeping in view the decision of the Supreme Court in the case of [Thyssen Stahlunion Gmbh Vs. Steel Authority of India Ltd.](#), the matter has to be dealt under the Arbitration and Conciliation Act, 1996 and objections, Therefore, must fail.

6. During the course of arguments, it was put to the learned counsel for the objector/respondent as to how the objections of DDA can be gone into, particularly, when the award has been pronounced after the coming into force of the Arbitration and Conciliation Act, 1996 (for short "the Act"). Learned counsel for the objector answered that objections should be gone into because the arbitrator was appointed under the Arbitration Act, 1940 and in any case, according to the learned counsel, it is the court which had issued notice calling upon the objections. It is a common case of the parties that reference was made while Arbitration Act, 1940 was in force. It is also a common case of the parties that by the time the award was pronounced, the said Act had been repealed and Arbitration and Conciliation Act, 1996 had come into force. Section 85 of the Act provides the necessary guidelines in this regard. It reads :

Repeal and saving - (1) The Arbitration (Protocol and Convention) Act, 1937 (6 of 1937), the Arbitration Act, 1940 (10 of 1940) and the Foreign Awards (Recognition and Enforcement) Act, (45 of 1961) are hereby repealed.

(2) Notwithstanding such repeal-

(a) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force;

(b) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act.

7. It is crystal clear from what has been reproduced above that though the Arbitration Act, 1940 has been repealed still the provisions of the said enactment shall apply in relation to arbitral proceedings which commenced before this Act. If the parties agree otherwise the Arbitration and Conciliation Act subsequently also will not apply.

8. In the present case in hand attention of the court has not been drawn to any agreement between the parties to come to a conclusion that the proceedings after

the award were also to continue under the Arbitration Act, 1940. When there is no such agreement in that event the Delhi Development Authority cannot take recourse to Sub-section 2(a) of Section 35 of the Arbitration and Conciliation Act, 1996. It will have no role to play.

9. A similar controversy had arisen before this Court in the case of Bhai Sardar Singh & Sons v. Delhi Development Authority in Suit No. 2560-A/98, decided on 2.8.2001. Repelling the similar argument, it has been held :

9. As regards the question as to what would be the position when there is no agreement to the contrary it becomes unnecessary for this court to ponder further. The matter in question is concluded by the decision of the Supreme Court in the case of [Thyssen Stahlunion Gmbh Vs. Steel Authority of India Ltd.](#) . A group of cases had come up for consideration before the Supreme Court. In the case of Rani Construction Pvt. Ltd. with which we are presently concerned a contract was for construction of certain works of Himachal Pradesh State Electricity Board. Dispute had arisen between the parties and referred to arbitrator on 4-10-1993. Arbitrator gave his award on 23.2.1996 after the Arbitration and Conciliation Act, 1996 had come into force. The short question is as to whether old or the new Act would apply. Agreement between the parties was that matter would be governed by any enactment or rules that may have been framed. The Supreme Court held that matter would be governed by the provisions of the Arbitration and Conciliation Act after the award was pronounced. The findings of the court are:

We also hold that clause 25 containing the arbitration agreement in the case of Rani Constructions (P) Ltd v. H.P. SEB (Civil Appeal No. 61 of 1999) does admit of the interpretation that the case is governed by the provisions of the Arbitration and Conciliation Act, 1996.

10. Thus it is abundantly clear from aforesaid that the proceedings could not continue under the Arbitration Act, 1940.

11. Thus, the conclusions are obvious that proceedings could not continue under The Arbitration Act, 1940 and once the Award had been pronounced after coming into force part of Chapter IV provides for jurisdiction of the arbitral tribunals while Chapter V pertains to conduct of the arbitral proceedings. The award is made in terms of Section 28 to 33 of the said Act. While Section 34 gives an independent recourse to the aggrieved persons against the arbitral award, the awards are executed in terms of Section 36 as if it was a decree of the court.

12. Once, the award had been pronounced and as referred to above it has to be in terms of the Arbitration and Conciliation Act, 1996, the remedy of the Delhi Development Authority obviously would be to have a recourse u/s 34 of the Act. Even if incidentally by mistake the notice has been issued by the court still it will not permit this court to run contrary to the plain language of law. Any other interpretation even if equitable would mean doing injustice to the plain language of

Section 34 and 36 of the Arbitration and Conciliation Act, 1996. If the law does not permit the court will not take recourse to the Arbitration Act, 1940 and consequently the contention raised by the learned counsel for Delhi Development Authority must fail. The objections in the present form Therefore would not be maintainable and it must follow that notice given by the Joint Registrar (O) in pursuance of the filing of the award to the parties would also be null and void.

13. It provides the answer to the arguments of learned objector's counsel.

14. As a result of the aforesaid, the objections must fail. It is also held that application u/s 14 is no more maintainable. The applicant may take recourse and necessary steps under the provisions of the Arbitration and Conciliation Act, 1996. No opinion is expressed on the merits of the matter.