

M/S Vidyawati Construction Company vs Union Of India on 7 January, 2025

Author: Abhay S. Oka

Bench: Abhay S. Oka

2025 INSC 101

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).215 OF 2025
(ARISING OUT OF S.L.P (CIVIL) NO(S).6053/2021)

M/S VIDYAWATI CONSTRUCTION COMPANY

VERSUS

UNION OF INDIA

J U D G M E N T

ABHAY S. OKA, J.

1. Leave granted.

2. Heard the learned senior counsel appearing for the appellant and the learned ASG appearing for the respondent.

3. The respondent executed a contract in favour of the appellant to construct a building for the office of the General Manager, Railway Electrification Project, Allahabad. There was a dispute regarding the amount to be paid to the appellant under the contract. The contract provided for appointing an Arbitral Tribunal consisting of three Arbitrators. Initially, on an application made by the respondent, the learned Chief Justice of the High Court appointed two Arbitrators with a direction to them to appoint an Umpire. As the Arbitrators did not nominate the Umpire, the respondent filed another application before the learned Chief Justice. Ultimately, an order was passed appointing one Shri P.K. Sharma as the Umpire.

4. ASHISH KONDLE Date: 2025.01.23 16:48:49 IST Subsequently, the said Shri P.K. Sharma resigned. Therefore, Reason:

the appellant filed an application seeking modification of the earlier order contending that a presiding Arbitrator may be appointed who may not belong to any Government department. On that application, on 26th September, 2003, the learned Chief Justice

appointed a retired Chief Justice of the High Court as the sole Arbitrator.

5. The proceedings commenced before the sole Arbitrator. After filing the statement of defence, an objection to the jurisdiction of the sole Arbitrator was raised on the ground that the arbitration clause in the contract provided for the appointment of three Arbitrators. The learned sole Arbitrator rejected the said objection. Ultimately, an award was made on 21 st February, 2008, which was challenged by the respondent on various grounds by filing a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, “the Arbitration Act”) before the learned District Judge, Allahabad. In the exercise of powers under Section 34 of the Arbitration Act, the learned District Judge proceeded to set aside the award only on the ground that the composition of the Arbitral Tribunal was illegal as the sole Arbitrator could not have been appointed. In an appeal preferred under Section 37 of the Arbitration Act by the appellant, the High Court has confirmed the judgment of the learned District Judge.

6. The submission of the learned senior counsel appearing for the appellant is that in the proceedings dated 5 th December, 2003, it is recorded that the respondent agreed and accepted the order of the learned Chief Justice of appointing the sole Arbitrator. He pointed out that the respondent filed the statement of defence on 14th February, 2004. Thereafter, time was granted by the Arbitral Tribunal to the respondent to apply for modification of the statement of defence. He submitted that the issue of jurisdiction of the sole Arbitrator was not raised in the statement of defence. On 24th April, 2004, instead of making an application for modification of the statement of defence, the respondent moved an application for challenging the composition of the Arbitral Tribunal. The Arbitral Tribunal rejected the said application. The submission of the learned senior counsel appearing for the appellant is that apart from the fact that the conduct of the respondent shows that it accepted the appointment of the sole Arbitrator, in view of sub-section (2) of Section 16 of the Arbitration Act, it was impermissible to raise a plea of the lack of jurisdiction in the Arbitral Tribunal after filing of the statement of defence. He would, therefore, submit that it was not open for the respondent to challenge the jurisdiction of the sole Arbitrator and, hence, Sections 34 and 37 Courts have committed an error.

7. The learned ASG submitted that when the learned Chief Justice on 26th September, 2003 passed an order appointing the sole Arbitrator (a retired Chief Justice of the High Court), the law was that the order under Section 11 was an administrative order. He submitted that the statement of defence, which was filed before the sole Arbitrator, was the one which was filed before the Arbitral Tribunal constituted earlier. He, therefore, submitted that, at that stage, the objection to the jurisdiction could not have been incorporated in the statement of defence as the statement of defence was filed before the Arbitral Tribunal consisting of three Arbitrators. He would, therefore, submit that the respondent was well within its rights to raise the objection under Section 16 of the Arbitration Act on 24th April, 2004. He would, therefore, submit that on a plain reading of the arbitration clause in the contract, the sole Arbitrator could not have been appointed and, hence, the issue of jurisdiction was validly raised before the sole Arbitrator. He would, therefore, submit that no interference is called for with the impugned judgments.

8. We have considered the submissions. By the order dated 26 th September, 2003, the learned Chief Justice appointed the sole Arbitrator. The sole Arbitrator entered into the arbitral proceedings and, on 5th December, 2003, a meeting was held in the presence of the Advocates representing both the parties. What is recorded in the proceedings dated 5th December, 2003, is very relevant which reads thus:

“Learned counsel for both the parties stated that earlier the matter in dispute had been referred for arbitration to two arbitrators. They agree that under orders of the Chief Justice constituting this tribunal appointment of two arbitrators made by them earlier stands superseded and that present arbitrator has to act as sole arbitrator.

They also agree that respective statements of claim and defense already filed by them before previous arbitrators should form the basis of adjudication in the present proceedings. Claimant to file a copy of his statement of claim by 2nd January 2004. Respondent to file copy of his statement of defense by 15th January 2004.

Parties also agree that apart from the Arbitrators fee for each sitting fixed by the Chief Justice, they will also share and bear the secretarial and other administrative expenses of these proceedings in equal proportion. Such expenses for each sitting will be calculated @ 10% of Arbitrators fee and paid along with it.

...” (underlines supplied)

9. Thus, it is crystal clear that the respondent agreed in so many words that the Arbitrator appointed under the order dated 26 th September, 2003 was to act as the sole Arbitrator. A specific agreement on the part of the respondent to that effect has been recorded in the proceedings dated 5th December, 2003. It is pertinent to note that the respondent expressly agreed to file the same statement of defence which was filed before the earlier arbitrator by 15th January, 2004. In fact, in the order dated 20th October 2004, while rejecting the preliminary objection, the sole Arbitrator had recorded that the time granted earlier to file a statement of defence was extended on 15th January 2004. Instead of filing a fresh statement of defence, on 14 th February, 2004, the respondent filed a copy of the statement of claim filed before the earlier Arbitral Tribunal. It is pertinent to note the following factual aspects recorded in the order dated 20 th October, 2004 by the sole Arbitrator:

“...On that date after hearing the parties certain instructions were given for facilitating further proceedings in the case and 12th March 2004 was fixed for the purpose. On that day learned counsel for the respondents urged that the Claimant had filed a number of annexures which as their record showed were not available to them at the time of drafting of their reply. Accordingly it had become necessary for them to modify their statement of defence in the light of those annexure. They were granted one month’s time to take steps for modifying their statement of defence and 12th April, 2004 was fixed for further proceedings in the case, which date was on the request made by the respondents, advanced to 24th April 2004.

On 24 April, 2004 the respondents, instead of filing any application for modification of their statement of defence, moved present application, questioning tribunals jurisdictions to continue the proceedings in substance on following two grounds:

(1) According to the agreement, the dispute raised by the claimant fell in the category of excepted matters which had made non arbitrable, and (2) Composition of the tribunal, not being in accordance with the agreement between the parties, has been rendered illegal.”

10. Thus, time was granted to the respondent on more than one occasion to come out with an application for modification of the statement of defence. Notwithstanding the grant of time, the respondent did not come out with any application for modification of the statement of defence and on 24 th April, 2004, the respondent filed an application objecting to the jurisdiction.

11. Thus, within the time granted by the sole Arbitrator, a copy of the statement of defence filed earlier was filed on record by the respondent on 14th February, 2004, which will have to be treated as the statement of defence of the respondent for all purposes as no application was moved for modification or amendment of the same.

12. Sub-Section (2) of Section 16 of the Arbitration Act reads thus:

“16. Competence of arbitral tribunal to rule on its jurisdiction.—(1) ... (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

...”

13. Hence, there is a clear bar on raising a plea of the lack of jurisdiction of the Arbitral Tribunal after submission of the statement of defence. Therefore, after 14 th February, 2004, the respondent could not have objected to the jurisdiction of the sole Arbitrator. Hence, the objection raised by way of an application dated 24th April 2004 was rightly rejected by the learned Arbitrator by the order dated 20th October, 2004.

14. In so many words, on 5th December, 2003, the respondent submitted to the jurisdiction of the sole Arbitrator and agreed to file a statement of defence before the sole Arbitrator. We have already quoted that portion of the proceedings dated 5 th December, 2003. After submitting to the jurisdiction of the sole Arbitrator, the respondent could not have belatedly objected to the jurisdiction of the sole Arbitrator on 24th April, 2004.

15. In view of the respondent's conduct and sub-Section (2) of Section 16 of the Arbitration Act, Sections 34 and 37 Courts were not right in upholding the respondent's objection to the jurisdiction of the Arbitral Tribunal. Therefore, the impugned judgments cannot be sustained.

16. It is brought to our notice that apart from the challenge to the award based on the issue of jurisdiction, there were other challenges incorporated in the petition under Section 34 of the Arbitration Act filed by the respondent. However, perusal of the impugned judgment passed by the Section 34 Court shows that no other contention was considered. Therefore, after setting aside the impugned judgments, the petition under Section 34 of the Arbitration Act filed by the respondent will have to be revived.

17. Accordingly, the impugned judgment dated 17th November, 2020 passed by the High Court and the impugned judgment dated 9 th September, 2013 passed by the District Judge, Allahabad, are set aside. Arbitration Case No.25/2008 is restored to the file of the learned District Judge, Allahabad, which shall be listed on 7th February 2025. We direct the parties to this Appeal to appear before the learned Principal District Judge, Allahabad, on the morning of 7th February, 2025. The learned District Judge, Allahabad, shall hear and decide Arbitration Case No.25/2008 on merits. We, however, make it clear that the issue of jurisdiction of the sole Arbitrator stands concluded and the said issue cannot be agitated by the respondent. All the contentions of the parties, except the contention of bar of jurisdiction in the petition, pleaded in the petition under Section 34 of the Arbitration Act, are kept open.

18. Considering the fact that the restored Petition is of the year 2008, the learned District Judge, Allahabad, will give the necessary priority to the disposal of the restored Petition. If the Principal District Judge finds that the jurisdiction to decide the petition under Section 34 of the Arbitration Act vests in the Commercial Court, he shall transfer the restored Petition to the appropriate Commercial Court.

19. The Appeal is, accordingly, allowed on the above terms.

.....J. (ABHAY S. OKA)J. (UJJAL BHUYAN) NEW DELHI;

JANUARY 07, 2025.