

Union Of India & Anr vs L.K. Ahuja & Co on 5 April, 1988

Equivalent citations: 1988 AIR 1172, 1988 SCR (3) 402, AIR 1988 SUPREME COURT 1172, 1988 (3) SCC 76, (1988) 2 JT 82 (SC), (1988) 1 ALL WC 698, 1988 2 JT 82

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:
UNION OF INDIA & ANR.

Vs.

RESPONDENT:
L.K. AHUJA & CO.

DATE OF JUDGMENT 05/04/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1988 AIR 1172 1988 SCR (3) 402
1988 SCC (3) 76 JT 1988 (2) 82
1988 SCALE (1) 710

ACT:
Arbitration Act, 1940 -Whether application for appointment of Arbitrator under Section 20-Of-Is barred by limitation-Whether the trial Court is right in dismissing that application as such.

HEADNOTE:
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Four agreements were entered into between the respondent and the appellant Union of India through the Executive Engineer, Northern Railway, followed by a supplementary agreement. All the four contracts were executed and completed by the respondent on diverse dates. The respondent accepted four final bills and gave no-claim declaration in respect of the four contracts. Thereafter, the respondent wrote to the Additional Chief Engineer,

R.E.N.R., that Rs.1,91,137 were due on account of work executed and asked for a reference of the dispute to the Arbitrator. A reply was sent to the respondent that there was no dispute between the parties and no question of appointment of any Arbitrator arose. The respondent then filed an application in the Court of Civil Judge for the appointment of an Arbitrator under Section 20 of the Arbitration Act, 1940 ('the Act'). The application was dismissed as being barred by limitation. An appeal from the decision of Civil Judge was allowed by the High Court. The appellants then moved this Court for relief by this appeal.

Dismissing the appeal, the Court,

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HELD: The sole question involved in this appeal was whether the Civil Judge was right in dismissing the application and whether the application under section 20 was within time. [404H]

It is well-settled in view of the decision of this Court in Kerala State Electricity Board, Trivendrum v. T.P.K.K. Amsom and Besom, Kerala, [1977] 1 SCR 996 that Article 137 would apply to any petition or application filed under any Act in a Civil Court. The words "any other application", this Court held under Article 137, cannot be read on the principle of ejusdem generis to be applications under the Civil Procedure Code other than those mentioned in Part I of the third division. [405A-B]

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There are two aspects of the matter. One is whether the claim made in the arbitration is barred by limitation under the relevant provisions of the limitation Act, and secondly, whether the claim made for application under section 20 is barred. To be a valid claim for reference under section 20 of the Arbitration Act, 1940, it is necessary that there should be an arbitration agreement and secondly, differences must arise to which the agreement in question applied, and thirdly, that must be within time as stipulated in section 20 of the Act. In this case, there was an arbitration agreement as found by the High Court, covering the disputes. It was also obvious that differences had existed. There was assertion of claim and denial of it. As such, the dispute was liable to be referred to arbitration in terms of the agreements between the parties. The question was whether there was a valid claim under section 20 of the Act to be referred in accordance with law. [407C-E, G-H]

In view of the well-settled principles, it would be entirely wrong to mix up the two aspects, namely, whether there was any valid claim for reference under Section 20 of the Act and, secondly, whether the claim to be adjudicated by the arbitrator was barred by lapse of time. The second is a matter which the arbitrator would decide unless on admitted facts a claim is found at the time of making an order under Section 20 of the Act, to be barred by time. To be entitled to ask for a reference under section 20 of the

Act, there must be entitlement to money and a difference or a dispute in respect of the same. It is true that on completion of work the right to get payment would normally arise and it is also true that on settlement of the final bill, the right to get further payment gets weakened but the claim subsists, and whether it does subsist is a matter which is arbitrable. In this case, the claim for reference was made within three years commencing from April 16, 1976, and the application was filed on December 18, 1976. [408A-D]

The High Court was right in this case. See in this connection the observations of this Court in Major (Retd.) Inder Singh Rekhi v. D.D.A., [1988] 3 SCR 351. The appeal failed. [408D]

Kerala State Electricity Board, Trivandrum v. T.P.K.K. Amsom and Besom, Kerala, [1977] 1 SCR 996; Wazirchand Mahajan & Anr. v. Union of India, [1967] 1 SCR 303; Mohd. Usman Military Contractor, Jhansi v. Union of India, Ministry of Defence, [1969] 2 SCR 233; Jiwnani Engineering Works P. Ltd. v. Union of India, [1978] AIR Cal. 228 and Major (Retd.) Inder Singh Rekhi v. D.D.A., [1988] 3 SCR 351 referred to.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No 757 of 1988.

From the Judgment and Order dated 14.8.1986 of the Allahabad High Court in F.A. No. 448 of 1978.

G. Ramaswamy, Additional Solicitor General, Pramod Swarup and P. Parmeshwaran for the Appellants.

R.P. Gupta for the Respondent.

The Judgment of the Court was delivered by SBYASACHI MUKHARJI, J. Special leave granted. The appeal is disposed of by the judgment hereunder.

It appears that on or about 18th September, 1969, four agreements were entered into between M/s. L.K. Ahuja & Co. and Union of India, represented by the Executive Engineer, Northern Railway, Allahabad, for the construction of certain quarters. It was followed by supplementary agreement entered into sometime in 1972. It is stated that all the four contracts were executed and completed by the first respondent on diverse dates. The last one was on 30th May, 1971. Between 29th May, 1972 to 19th June, 1972, the respondent accepted the four final bills and gave no claim declaration in respect of the four contracts. The respondent wrote a letter to the Additional Chief Engineer, R.E.N.R. Allahabad, stating that Rs.1,91,137 were due on account of the work executed and requested him to refer the dispute to the Arbitrator. On 4th June, 1976 a reply was sent to the above letter stating that there was no dispute between the parties and, hence, no question of appointment

of any Arbitrator arose. On 13th December, 1976, an application was filed by the respondent in the Court of Civil Judge, Allahabad, for appointment of an Arbitrator under Section 20 of the Arbitration Act, 1940 (hereinafter called 'the Act'). That application was dismissed on 10th February, 1978 as being barred by limitation. There was an appeal from the said decision to the High Court of Allahabad and the High Court by its impugned Judgment and Order dated 14th August, 1986 allowed the appeal. Hence, this appeal.

The sole question, involved in this appeal, is whether the High Court was right in dismissing the application. In matters of this nature, the main question is whether the application under Section 20 was within time. Though there was some doubt before but now it is well-

settled in view of the decision of this Court in Kerala State Electricity Board, Trivandrum v. T.P.K.K. Amson & Beson, Kerala, [1977] 1 SCR 996 that Article 137 would apply to any petition or application filed under any Act to a Civil Court. The Words "any other application" this Court held under Article 137, cannot be read on the principle of ejusdem generis to be applications under the Civil Procedure Code other than those mentioned in part I of the third division.

The aforesaid view has to be harmonised with the view of this Court in Wazirchand Mahajan & Anr. v. Union of India, [1967] 1 SCR 303. There this Court found that the second appellant had purchased from the Himachal Pradesh Government the right to extract and collect certain medicinal herbs from the forests of Chamba District. The period of agreement was one year from September 1, 1960. Under an arbitration clause in the agreement all disputes between the parties were to be referred to the Deputy Commissioner, Mandi District Himachal Pradesh. The second appellant transferred all his rights under the agreement to the first appellant with the consent of the State of Himachal Pradesh. Disputes arose between the parties in October, 1950. On May 30, 1952 the appellants addressed a letter to the Chief Conservator of Forests, Himachal Pradesh requiring that officer to submit the matters in difference to the arbitration of the Deputy Commissioner, Mandi Distt. By a letter dated June 23, 1952, the Chief Conservator declined to agree to a reference contending that the matters desired to be referred were outside the arbitration clause. On June 22, 1955 the appellants applied to the District Court of Chamba for an order that the agreement be filed in Court and the disputes between them and the State be referred to the sole arbitration of the Deputy Commissioner of Mandi Distt. The State of Himachal Pradesh contended, inter alia that the application for filing the arbitration agreement was barred by law of limitation as the right to apply if any arose in 1950 and not in June, 1952 as alleged. The Court of First Instance held in favour of the appellants. In appeal the Judicial Commissioner reversed the order of the Trial Court. In the view of the Judicial Commissioner an application for filing an arbitration agreement under Section 20 of the Act was governed by Article 181 of the Limitation Act, 1908 and since the period of three years prescribed thereby commenced to run from the date on which the differences arose between the parties from the month of September, 1950 and in any case on September 1, 1951, the application of the appellants was held to be barred. The Judicial Commissioner was in error, hence, according to this Court in rejecting the application of the appellants for filing the arbitration agreement as barred under Article 181 of the Limitation Act. It was reiterated that the terms of Article 181, though general and apparently not restricted to applications under the Code of Civil Procedure have always been interpreted as so restricted. In the aforesaid background this Court

directed the arbitration agreement to be filed.

This question was again considered by this Court in *Mohd. Usman Military Contractor, Jhansi v. Union of India, Ministry of Defence*, [1969] 2 SCR 233. There the appellant had entered into a contract with the Government of India. The contract contained an arbitration clause. For certain supplies made under the contract the appellant made representations to the Government for payment and for arbitration of disputes. On or about July 10, 1958 Government refused to refer the matter for arbitration. On July 11, 1961 the appellant filed an application in the Court of District Judge under Sections 8 & 20 of the Act, for filing the arbitration agreement and for an order of reference of the disputes to an arbitrator appointed by the Court. The respondent contended that the application was barred by Limitation. The learned District Judge allowed the application, holding that there was no limitation for making an application under Sections 8 & 20 of the Act. The defendant's appeal was dismissed by the High Court as incompetent insofar as it challenged the order under Section 8 but was allowed insofar as it challenged the order under Section 20 of the Act. The High Court held that an application under Section 20 was governed by Article 181 of the Indian Limitation Act, 1908. In coming to this conclusion the High Court took into account the settled judicial view that the operation of Article 181 was limited to applications under the Code of Civil Procedure and reasoned that Article 181 should be construed as if the words 'under the Code' were added in it. The Arbitration Act, 1940 repealed para 17 of the second schedule to the Code and re-enacted it in Section 70 with minor modifications. That being so Section 8(1) of the General Clauses Act, 1897 applied and the implied reference in Article 181 to para 17 of the second schedule to the Code should be construed as a reference to Section 20 of the Act. In the appeal by certificate this Court held that by the Arbitration Act, 1940 the Legislature amended Articles 158 and 178 of the Limitation Act and made them applicable to the relevant proceedings under the Arbitration Act but no similar change was made in Article 181. It was manifest that save as provided in Articles 158 & 178 there would not be any limitation for other application. In the circumstances the Court found it impossible to construe the implied reference in Article 181 as a reference to the Arbitration Act, or to hold that Article 181 applied to applications under that Act. In the premises the Court held that an application under Sections 8 & 20 of the Arbitration Act, 1940 was not governed by Article 181 of the Limitation Act. In that view of the matter the application was held to be barred by limitation. The question is now concluded as mentioned hereinbefore vide this Court's decision in *Kerala State Electricity Board, Trivandrum v. T.P.K.K. Amsom & Besom*, (supra).

It appears that these questions were discussed in the decision of the Calcutta High Court in *Jiwnani Engineering Works P. Ltd. v. Union of India*, [1978] AIR Cal. 228 where (one of us-Sabyasachi Mukharji) was a party and which held after discussing all these authorities the question whether the claim sought to be raised was barred by limitation or not, was not relevant for an Order under Section 20 of the Act. Therefore, there are two aspects. One is whether the claim made in the arbitration is barred by limitation under the relevant provisions of the Limitation Act and secondly, whether the claim made for application under Section 20 is barred. In order to be a valid claim for reference under Section 20 of the Arbitration Act, 1940, it is necessary that there should be an arbitration agreement and secondly differences must arise to which the agreement in question applied and, thirdly, that must be within time as stipulated in Section 20 of the Act.

In the instant case it appears that there was an arbitration agreement as found by the High Court covering the disputes. It is also obvious that differences existed. There was an assertion of claim and denial of the same. It is stated in the judgment of the High Court that under the agreement the appellants had claimed a sum of Rs. 1,91,636 and, as such, the dispute was liable to be referred to arbitration in terms of the agreements entered into between the parties. Further, for the purpose of getting an arbitrator appointed, a letter dated June 4, 1976 was sent by the appellant to the Additional Chief Engineer, Allahabad. The respondent did not take any step in time. The appellant filed an application on 4.6.1976 under Section 20 of the Act. It was contended before the learned Trial Judge that the work under all the four contracts had been fully executed by the appellant on different dates and the respondents claimed that the appellant had accepted full and final payment of the agreements which had been executed by it and no claim declaration in respect of the same had been given by the appellant. It was, therefore, submitted that since there was no dispute, the application filed under Section 20 of the Act, was misconceived. The Trial Court held that the Court had no jurisdiction under Section 20 of the Act. The respondent came up in appeal before the High Court. The question, therefore, was whether there was a valid claim under section 20 of the Act to be referred in accordance with law.

In view of the well-settled principles we are of the view that it will be entirely a wrong to mix-up the two aspects, namely, whether there was any valid claim for reference under Section 20 of the Act and, secondly, whether the claim to be adjudicated by the arbitrator, was barred by lapse of time. The second is a matter which the arbitrator would decide unless, however, if on admitted facts a claim is found at the time of making an Order under Section 20 of the Arbitration Act, to be barred by limitation. In order to be entitled to ask for a reference under Section 20 of the Act, there must be an entitlement to money and a difference or dispute in respect of the same. It is true that on completion of the work, right to get payment would normally arise and it is also true that on settlement of the final bill, the right to get further payment gets weakened but the claim subsists and whether it does subsist, is a matter which is arbitrable. In this case the claim for reference was made within three years commencing from April 16, 1976 and the application was filed on December 18, 1976. We are, therefore, of the view that the High Court was right in this case. See in this connection the observations of this Court in *Major (Retd.) Inder Singh Rekhi v. D.D.A.*, [1988] 3 SCR

351. In the aforesaid view of the matter this appeal must fail and is accordingly dismissed. The costs of this appeal would be the costs in the arbitration proceedings.

S.L.

Appeal dismissed.