

Andhra High Court

Government Of Madhya Pradesh And ... vs P.V. Vidyasagar And Ors. on 1 September, 2003

Equivalent citations: AIR 2004 AP 89, 2003 (5) ALD 695, 2004 (1) ARBLR 485 AP

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Bench: B P Rao

ORDER B. Prakash Rao, J.

1. The petitioners, by way of this revision under Article 227 of the Constitution of India, seek to assail the orders dated 11.3.2003 passed by the sole-arbitrator Sri. P. V. Vidyasagar in Arbitration Case No. 3 of 2001 impleading the petitioners as parties to the reference.

2. Heard both sides. The learned Counsel for the respondents raised a preliminary objection as to the maintainability of the revision under Article 227 of the Constitution of India against the proceedings of the arbitrator. A few facts which are necessary for the disposal of this revision are that the arbitration reference has been made to the sole arbitrator appointed at the instance of the parties, in pursuance of an agreement executed in August, 1997 on the plea raised as to the non-joinder of parties namely the petitioners herein. The sole arbitrator impleaded them. The main objection on behalf of the petitioners is that they were impleaded without giving any prior notice and opportunity and further they were sought to be added after a lapse of five years and therefore the same is barred by limitation. To consider the objection raised on behalf of the respondents as to the maintainability, it is seen that under Article 227 of the Constitution of India, the High Court has been conferred with powers of superintendence over all the Courts and Tribunals. Therefore, the question which necessarily needs to be gone into is as to whether the sole arbitrator can be termed as Tribunal as contemplated thereunder. The learned Counsel for the petitioners sought to place reliance on the definition clause under Section 2(1)(d) of the Arbitration and Conciliation Act, 1996, which reads as under:

"2(1)(d) 'Arbitral Tribunal' means a sole arbitrator or a panel of arbitrators."

According to the petitioners, every sole arbitrator or panel of arbitrators is statutorily recognized as 'Arbitrary Tribunal' and thus they fall within the mischief of Article 227 of the Constitution of India. Reliance is sought to be placed on the decision of the Division Bench of this Court in M. Chandrasekhar Rao v. Fortis Financial Services Limited, 2001 (4) ALD 342 (DB), wherein the provisions of Section 11(6) of the Act came up for consideration and also a question as to whether the persons who are not parties to an agreement can be asked to appear before an Arbitrator and also as to whether the Arbitral Tribunal has any jurisdiction to determine the question as regard the existence or validity of the arbitration agreement or interpret the applicability thereof. However, the question as to whether the sole arbitrator or panel of arbitrators or the Arbitral Tribunal as defined thereunder constitute a Tribunal as contemplated under Article 227 of the Constitution of India has not come up for consideration and hence the said decision has no application to the facts of the present case. The said question has come up for consideration in detail in Anglo-American Direct Tea Trading Company Ltd. v. Their Workmen, , wherein it was held as under:

"The question whether an act is a judicial or a quasi-judicial one or a purely executive act depends on the terms of the particular rules and the nature, scope and effect of the particular powers in exercise of which the act may be done and would, therefore depend on the facts and circumstances of each case. Courts of law established by the State decide cases brought before them judicially and the decisions thus recorded by them fall obviously under the category of judicial decisions. Administrative or executive bodies, on the other hand, are often called upon to reach decisions in several matters in a purely administrative or executive manner and these decisions fall clearly under the category of administrative or executive orders. Even Judges have, in certain matters, to act administratively, while administrative or executive authorities may have to act quasi-judicially in dealing with some matters entrusted to their jurisdiction. Where an authority is required to act judicially either by an express provision of the statute under which it acts or by necessary implication of the said statute, the decisions of such an authority generally amount to quasi-judicial decisions. Where, however, the executive or administrative bodies are not required to act judicially and are competent to deal with issues referred to them administratively, their conclusions cannot be treated as quasi-judicial conclusions. No doubt, even while acting administratively, the authorities must act bona fide, but that is different from saying that they must act judicially.

It was further held as under:

"Even if some of the trappings of a Court are present in his case, he lacks the basic, the essential and the fundamental requisite in that behalf because he is not invested with the State's inherent judicial power. He is appointed by the parties and the power to decide the dispute between the parties who appoint him is derived by him from the agreement of the parties and from no other source. The fact that his appointment once made by the parties is recognised by Section 10-A and after his appointment he is clothed with certain powers and has thus, no doubt, some of the trappings of a Court, does not mean that the power of adjudication which he is exercising is derived from the State and to the main test in determining the question about the character of an adjudicating body is not satisfied. Hence, from the decision of an arbitrator under Section 10-A special leave to appeal to Supreme Court under Article 136(1) cannot be granted."

3. From the above extract, it follows that it is only a Tribunal, which is constituted under a statute or under the State's power can come under superintendence of the High Courts under Article 227 of the Constitution of India. Admittedly, in this case, the sole arbitrator is appointed in pursuance of an agreement between the two private parties and therefore it cannot be called as any statutory Tribunal or conferred with any statutory powers. Thus, the definition clause treating the sole arbitrator or panel of arbitrators as Arbitrary Tribunal does not help the petitioner nor can it be equated as such Tribunal created under statute or vested with statutory powers. Thus, it has to be held that the revision as has been under Article 227 of the Constitution of India is not maintainable and the same is accordingly dismissed. No order as to costs.