

Himachal Pradesh High Court

Union Of India (Uoi) vs Wazir Chand And Anr. on 27 May, 1961

Equivalent citations: AIR 1962 HP 24

Bench: C C C.

JUDGMENT C.B. Capoor, J.C.

1. This appeal by the Union of India is directed against an order of Shri Sant Ram, the then Senior Subordinate Judge of Chamba whereby an agreement for reference to arbitration was ordered to be filed.

2. An agreement dated 1-11-1950 was entered into between Trilok Chand Mahajan, respondent No. 2, and the Chief Commissioner Himachal Pradesh whereby the former agreed to Purchase and the latter agreed to sell the right to extract, collect and export certain medicinal herbs out of the forests of Chamba district except for certain regions thereof. The agreement was to be operative for one year with effect from 1-9-1950. One of the terms of agreement was that if differences will arise with regard to the construction or any matter or thing touching the agreement the said dispute shall be referred to the sole arbitration of the Deputy Commissioner Mandi district. Differences arose between Trilok Chand and the officers of the Forest Department. The grievance of the aforesaid Trilok Chand was that he was not allowed to exploit some of the ranges for about three weeks in September 1950 and the others till about the middle of October 1950 as a result of which he suffered a loss of Rs. 1,37,412/11/-. The herbs extracted by Trilok Chand worth about Rs. 18,165/5/- were seized by the Forest Department on the ground that the same had been extracted without any right prior to the coming into operation of the agreement.

Later on, the Chief Conservator of Forests wrote to Trilok Chand that the seized herbs could be returned upon payment of a sum of Rs. 1,577/8/-. The aforesaid sum was accordingly paid on 30-4-1955 but the herbs were not returned. He served a notice dated 30-5-1952 on the Chief Conservator of Forests Himachal Pradesh requiring the submission of the matters in difference to the arbitration of the Deputy Commissioner Mandi. The Chief Conservator of Forests replied on 23-6-1952 that the matters which were desired to be referred to arbitration were outside the purview of the agreement for reference. In the meantime Trilok Chand had transferred his right under the agreement to Wazir Chand Mahajan, respondent No. 1. On 23-6-1955 an application was filed by the aforesaid respondents under Section 20 of the Arbitration Act for the filing of the agreement for reference.

The application was inter alia opposed by the appellant on the ground that it was barred by the law of limitation. The contention was that differences had arisen between the parties in September and October 1950 and the application under Section 20 should have been filed within three years of October 1950. The aforesaid objection did not find favour with the learned Senior Subordinate Judge and hence has been filed the present appeal.

3. The only point that has been contended on behalf of the appellant is that the application under Section 20 of the Arbitration Act was filed more than three years after the arising of differences between the parties and as such was barred under Article 181 of the Limitation Act. It was conceded

on behalf of the respondents that the aforesaid article was applicable and what was contended was that the cause of action for the filing of the aforesaid application arose on 23-6-1952 when the appellant refused to agree to refer the matter in difference to arbitration and as such the application was within time. Even though it was conceded by the learned counsel for the respondents that Article 181 of the Limitation Act governed the application under consideration the question as to whether the aforesaid article applies or not needs some consideration in view of the following observations made by their Lordships of the Supreme Court in the case reported in AIR 1953 SC 98 at p. 104, *Sha Mulchand and Co. Ltd. v. Jawahar Mills Ltd., Salem* :

"It does not appear to us quite convincing, without further argument, that the mere amendment of Articles 158 and 178 can ipso facto alter the meaning which, as a result of a long series of judicial decisions of the different High Courts in India, came to be attached to the language used in Article 181. This long catena of decisions may well be said to have, as it were, added the word's 'under the Code' in the first column of that Article. If those words had actually been used in that column then a subsequent amendment of Articles 158 and 178 certainly would not have affected the meaning of that article. If, however, as a result of judicial construction, those words have come to be read into the first column as if those words actually occurred therein, we are not of opinion, as at present advised, that the subsequent amendment of Articles 158 and 178 must necessarily and automatically have the effect of altering the long acquired meaning of Article 181 on the sole and simple ground that after the amendment the reason on which the old construction was founded is no longer available."

4. In the case of *Amarnath v. the Union of India* reported in AIR 1957 All 206 it was held that Article 181 which is a residuary article must be held to apply to applications not only under the Code of Civil Procedure but also under the Arbitration Act for which no provision is made elsewhere in the third division.

5. The ruling of the Supreme Court *supra* does not appear to have been brought to the notice of their Lordships. In the case reported in AIR 1959 All 493 *Sarwat Yar Khan v. State of Uttar Pradesh*, the attention of their Lordships was invited to the AIR 1957 All 206 referred to above as well as to the observations made by the Supreme Court quoted above and they observed that file AIR 1957 All 206 case required reconsideration both in view of the observations of the Supreme Court and the past history of the misapplication of the Limitation Act to such applications which are now covered by Section 20 of the Arbitration Act.

6. Articles 158 and 178 were amended by the Arbitration Act of 1940 and the words 'under the Arbitration Act 1940' were substituted for the words 'under the Code of Civil Procedure of 1908' and 'under the same Code' i. e. Code of Civil Procedure respectively. All the articles in the third division of Schedule I preceding Article 181 governed applications under the Code of Civil Procedure. It was an consequence held that Article 181 governed those applications only which were filed under the Civil Procedure Code and not those filed under the Provisions of some other Act. It is a question requiring consideration as to whether in view of the amendment of Articles 158 and 178 of the Limitation Act the previous decisions on the interpretation of Article 181 of the Limitation Act continue to have binding force.

In AIR 1953 SC 98 (supra) their Lordships did not express any definite opinion on the aforesaid point and the observations made by them were in the nature of obiter dicta. Even as obiter dicta they are entitled to the highest respect at the hands of subordinate Courts. It is with great respect Submitted that the effect of the amendment 158 and 178 is that the residuary Article 181 governs not only the applications under the Code of Civil Procedure but also the applications under the provisions of other Acts for which no specific period

of limitation, is prescribed by the Schedule to the Limitation Act. If the intention of the Legislature had been otherwise Article 181 would also have been amended and the words 'Code of Civil Procedure 1908' would have found place after the word 'application' and prior to the words 'for which no period of limitation was provided' in Article 181.

7. The question as to whether even after the amendment of Articles 158 and 178 Article 181 governed applications under the Code of Civil Procedure only or applications under provisions of other Acts also came up for decision before the Punjab High Court in the case 'Union of India v. Firm Kiroo Mal Nawal Kishore' reported in AIR 1952 Punj 423 and it was held that the aforesaid article governed applications not only under the Code of Civil Procedure but also under the provisions of the Arbitration Act. That case was followed in the AIR 1957 All 206 referred to above. I am in respectful agreement with the views expressed in those cases. It was thus rightly conceded by the learned counsel for the respondent that Article 181 governed the application under consideration.

8. That article runs as below :

Application for which no period of limitation is provided elsewhere section 48 of the Code of Civil Procedures, 1908	Three years	When the right to apply accrues.
--	-------------	----------------------------------

9. The cardinal question, therefore, that arises for decision is as to when the right to apply for an order that the agreement for reference be filed accrued. The contention on behalf of the respondents is that such right accrued when the Chief Conservator of Forests refused to submit the matters in difference to the arbitration of the Deputy Commissioner Mandi by his letter dated 23-6-1952 whereas it has been contended on behalf of the appellant that such right accrued when differences arose between the parties in September and October 1950 or in any case on 1-9-1953, when the agreement ceased to be operative.

10. The relevant provision of law is contained in Sub-section (1) of Section 20 of the Arbitration Act which reads as below:

"Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court."

11. On analysing the aforesaid provision of law three features stand in bold relief. (1) That it is at the option of a party to the agreement either to proceed under Chapter II (which chapter deals with arbitration without the intervention of Court) or to apply under Section 20 of the Arbitration Act. (2) That the right to apply under Section 20 is not dependent on the refusal of the other party to refer the matter in difference to the arbitrator specified in the agreement. (3) That the right to apply under Section 20 accrues when the differences arise between the parties as to the subject matter of the agreement.

12. It has been held in the case of C. Rai v. Union of India, reported in AIR 1957 J and K 27 that Section 20, referred to above, gives an option to a party to apply under that section instead of under Chapter II. If the exercise of an option is not conditional, it is clear to me that a party is free to exercise it without being required to issue a notice to the other party.

13. The main question therefore, that arises for decision is as to when the differences arose between the parties. Differences would be deemed to have arisen between the parties when they first arose and not when the request of one of the parties to the agreement to refer the matters in difference to arbitration is refused by the other. In the instant case, it cannot be gainsaid that the differences arose between the parties in September and October 1950 and in any case on 1-9-1953.

14. In support of their contention the respondents relied upon Sub-section (3) of Section 37 of the Arbitration Act. The relevant portion of Section 37 reads as below :

"(1) All the provisions of the Indian Limitation Act, 1908, shall apply to arbitrations as they apply to proceedings in Court.

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, a cause of action shall for the purpose of limitation, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(3) For the purposes of this section and of the Indian Limitation Act, 1908, an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other parties thereto a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring

that the difference be submitted to the person so named or designated."

Sub-section (1) merely applies the provisions of the Indian Limitation Act to arbitrations. Sub-section (2) provides that if there is any term in an agreement for reference to arbitration that no cause of action shall accrue in respect of any matter required by the agreement to be referred a cause of action shall for the purpose of limitation be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement. According to Sub-section (3) an arbitration is to be deemed to be commenced when one party to the agreement serves on the other parties thereto a notice requiring the appointment of an arbitrator or where the arbitration agreement provides that the reference shall be to a person named in the agreement requiring that the difference be submitted to the person so named or designated. Sub-section (3) therefore comes into play in certain contingencies only and it has nothing to do with the accrual of cause of action for the filing of an application under Section 20 of the Arbitration Act.

15. On behalf of the respondents reliance was also placed upon the following three rulings:

(1) AIR 1933 Lah 18, Secretary of State v. Balwant Singh. (2) AIR 1949 Mad 559, Rathakrishnamurthy v. Balasubramania and Co. (3) An unreported decision of this Court in Civil Appeal No. 4 of 1956, D/- 16-6-1958 (H. P.), Union of India v. Sansar Chand.

16. In the aforesaid Lahore case one of the questions arising was as to whether part of the cause of action had arisen within the jurisdiction of the Lahore Court and it was in that context that the following observations were made by Dalip Singh, J. :

"Be that as it may, however and without deciding whether Section 21 applies or does not apply it seems to me that part of the cause of action in this case namely, the refusal to refer to arbitration, did arise in Lahore. In my view of the matter this is the fundamental cause of action and the more fact as to whether the personnel, should be Mr. Lawton or the Chief Engineer or some one else has little to do with the case as at present and therefore I consider that the Lahore Courts had jurisdiction."

The aforesaid observations were not intended to and cannot be held to lay down the proposition that an application, for the filing of an agreement for reference cannot be made unless the other party to the agreement has refused to submit the matter in difference to the arbitrator named in the agreement.

17. In AIR 1949 Mad 559, referred to above, the facts were as below:-- The appellant and respondent No. 1 were both yarn merchants and members of the Madras Yarn Merchants' Association. They had subjected themselves as members to a set of arbitration bye-laws which laid down an elaborate procedure for the reference of disputes arising between the members out of forward, and other contracts to arbitration. In accordance with the aforesaid bye-laws the appellant filed a plaint in the office of the Secretary of the Association on 29-3-1945 claiming a certain sum as damages from respondent No. 1 and nominated respondent No. 2 as his arbitrator. On 31-3-1945 a notice was issued by the Secretary to respondent No. 1 who at first refused to nominate an arbitrator but later

on nominated respondent No. 3 as his arbitrator. The arbitrators passed a unanimous award, and over-ruled the objection made on behalf of respondent No. 1 that the claim was statute barred. One of the questions that arose before the High Court was as to whether the claim put forward by the appellant was within time or not. The contention of respondent No. 1 was that the criterion date for limitation was the date on which respondent No. 1 was served with the notice through the Secretary whereas the contention put forward on behalf of the appellant was that the criterion date was the one on which the plaint was filed in the office of the Secretary. On behalf of respondent No. 1 reliance was placed upon Sub-section (3) of Section 37. Mack, J., who delivered the leading judgment assumed that the aforesaid subsection applied to the case and held that the arbitration must be deemed to have commenced on the date that the plaint was filed in the office of the Secretary of the Association.

Rajamannar, C. J., was however, of the opinion that the aforesaid sub-section did not apply to the facts of the case. In his opinion Sub-section (1) of the aforesaid section and the principle underlying the explanation to Section 3 of the Limitation Act were applicable and by virtue of those provisions the arbitration commenced on the date on which the plaint was filed in the office of the Secretary and as such the claim was within time. The aforesaid decision is, therefore, not an authority for the proposition that Sub-section (3) of Section 37 governs the determination of the date of accrual of cause of action for the making of an application under Section 20 of the Arbitration Act.

18. The unreported decision of this Court, (C. A. No. 4 of 1956) referred to above, no doubt supports the contention advanced on behalf of the respondents. With respect to Shri T. Ramabhadran, my learned predecessor-in-office, who decided the aforesaid case, I find it difficult to agree with him. He had in the main relied upon the rulings reported in AIR 1933 Lah 18 and AIR 1949 Mad 559, but in those rulings, it has already been seen, the precise question arising for decision in the instant case did not arise and was not considered.

19. In the case of AIR 1952 Punj 423, referred to above, the following were the facts:-- A firm of contractors made a tender for the supply of potatoes to the Lordist Regiment On 14-11-1945. The supply was to be made during the period from 1-1-1946 to 31-3-1946. The tender was accepted. Some time before the supply was to be made the shop and the godown of the contractors were burnt down and on 19-1-1946 the contractors wrote to the Lordist Regiment expressing their inability to make the supply and prayed to be relieved from the contract. On 27-5-1946 a notice was sent by the Military Authorities to the contractors calling upon them to pay a sum of Rs. 35,289/8/7 as damages on account of the non-supply of the goods. Some correspondence passed between the Military Authorities and the contractors and it was on 3-12-1949 that the Military Authorities made an application under Section 20 of the Arbitration Act praying for the filing of the arbitration agreement. An objection was raised on behalf of the contractors that the application was barred under Article 181 of the Indian Limitation Act. The objection prevailed with the trial Court and the order was maintained by the High Court on appeal.

20. In AIR 1957 All 206, (supra) it was specifically held that it was not the law that an application could not be made under Section 20 of the Arbitration Act unless the other party had refused to refer the dispute to arbitration as provided in Chapter II. It was further held that the right to apply

under Section 20 accrued on the date (SIC) one party to the agreement informed the other party that it had rescinded the contract and not on the date on which either a notice was served by the former on the other requiring it to submit the matter in difference to the arbitrator named in the agreement or on the date when the other party refused to submit the matter in difference to arbitration.

21. No period of limitation has been prescribed for the serving of a notice by one party to an agreement for reference to arbitration upon the other requiring it to submit the matters in difference to the arbitration of the person specified in the agreement and if the contention advanced on behalf of the respondents were to be accepted the result will be that an application under Section 20 of the Arbitration Act may be filed even long after the arising of differences between the parties. The contention put forward on behalf of the respondents that a notice requiring the other party to agree to submit the matters in difference to an arbitrator named in the agreement could be filed within three years of the arising of differences and that the application under Section 20 could be filed within three years of the refusal of the other party to submit the matters in difference to the named arbitrator has no warrant in law.

The conjoint effect of Section 20 of the Arbitration Act and Article 181 of the Limitation Act is that an application under Section 20 has to be filed within three years of the arising of differences 'between the parties to the suit relating to the subject matter of the agreement for reference to arbitration. In the instant case such differences had arisen in September and October 1950 and in any case on 1-9-1953 when the agreement ceased to be operative and prima facie the application under Section 20 was barred by the law of limitation.

22. It was lastly urged on behalf of the respondents that in any view of the case the herbs were agreed to be returned on payment of Rs. 1,577/8/-, that the said payment was made on 30-4-1955 and as such the application under Section 20 was within time with respect to the seizure

of herbs. Even with regard to the herbs extracted and subsequently seized by the officers of the Forest Department difference had arisen between the parties in September or October 1952 and in any case on 1-9-1953 when the agreement for exploitation exhausted itself. Moreover, the promise of the Chief Conservator of Forests to return the herbs on payment of a sum of Rs. 1,577/8/- could not be said to be a matter of dispute arising under the agreement dated 1-11-1950. I am, therefore, unable to accept the contention advanced on behalf of the respondents. If the respondents have a right to recover back the herbs seized by the department or their value and if the period of limitation is still alive a suit can be filed to recover the same.

23. In conclusion, the appeal is accepted with costs and the order of the learned Senior Subordinate Judge holding the application under Section 20 of the Arbitration Act to be within time is vacated.