

Sh. Vikesh Chugh vs M/S. Blb Limited on 3 February, 2007

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IN THE COURT OF SHRI K.S. MOHI:

ADDL. DISTRICT JUDGE: DELHI.

Suit NO. 67/06

Sh. Vikesh Chugh
S/o Sh. Brij Bhushan Chugh
R/o AG-283, First Floor,
Shalimar Bagh,
New Delhi-88.

.....Petitioner

VERSUS

M/s. BLB Limited
Through its Directors
4764/23-A, Ansari Road,
Darya Ganj, New Delhi-110002

And

Sh. Anil K. Chauhan, Advocate
The Sole Arbitrator No. 2,
Chamber no. K-130-A, Tis Hazari Courts,
Delhi-110054.

.....Respondents

Contd/-

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ORDER:

1. This order shall dispose of petition filed by petitioner under section 34 of Arbitration and Conciliation Act, 1996 against the Arbitral Award of the sole Arbitrator dated 17/4/06.

2. Brief facts of the case are that petitioner was the employee of Respondent no. 1 and was appointed as Junior Executive (Dealing Room) vide appointment letter dated 24/12/02. However, the petitioner was forced to resign from the service vide resignation letter dated January, 2005. The

respondent company, which was engaged in the selling and purchasing of shares and other securities for its own earnings and profits, initiated arbitration proceedings against the petitioner by appointing sole Arbitrator, Sh. Anil K. Chauhan, Advocate, Chamber no. K-130-A, Tis Hazari Courts, wherein, petitioner filed written statement alongwith counter-claim. The arbitrator passed Final Arbitral Award against the petitioner vide its notice and award dated 17/4/06.

Contd/-

3. The aforesaid award has been challenged by the petitioner in the present petition under section 34 of Arbitration and Conciliation Act on the grounds inter-alia that impugned award is false, frivolous, without locus-standi and jurisdiction and also against public policy, the arbitrator failed to appreciate the contents of written statement and counter-claim as filed by the petitioner before the arbitrator; arbitrator was guilty of gross bias and misconduct and findings of arbitral award suffer from errors on the face of the award on account of erroneous proposition of law; the arbitrator failed to appreciate that petitioner was forced to resign vide resignation letter dated January, 2005, respondent no. 1 failed to produce certificate of Incorporation before the arbitrator has not decided upon the objections of the petitioner in the arbitration proceedings regarding jurisdiction and locus-standi of the arbitrator to proceed with the arbitration proceedings also that bond Ex. CW1/C and undertakings Ex. CW1/D and Employment agreement Ex. CW1/B and Ex. RW1/1 was hit by section 10,13,14,15,27,28 Indian Contract Act. Also that Contd/-

arbitrator could not explain as to how he arrived at the conclusion that respondent no. 1 company suffered loss at the rate of Rs.2000/- per day.

4. The respondent filed reply by taking preliminary objection that the petitioner has not approached the court with clean hands and has concealed material facts also that the present petition has been filed with malafide intention and ulterior motives. On merits it has been stated that the petitioner absented himself w.e.f. 10/1/05 without any sanctioned leave or intimation also did not join duty despite repeated letters and reminders by the respondent company. It has been further stated that the award is based on the material and documents filed before the arbitrator and is a well-reasoned award. It has been further stated that objections taken in the present petition were never taken by the petitioner before the arbitral proceedings. Hence, the objections are after thought, baseless and unsound and liable to be dismissed.

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5. I have heard Ld. Counsel for the parties and perused the record carefully.

6. Counsel for the petitioner during the course of arguments formulated the objections into three main grounds relating to jurisdiction, validity of arbitration agreement and also objection relating to public policy. So far as, the jurisdiction part is concerned, Ld. Counsel for the petitioner vehemently stressed that the sole arbitrator Sh. Anil K. Chauhan, Advocate, was lacking jurisdiction to deal with the claim of the respondent. He further argued that as per arbitration agreement the Chairman of the respondent company could appoint an arbitrator who shall not be below the status of executive

director/working director of the company or any practising Advocate of Delhi High Court. Counsel for petitioner contended that Sh. Chauhan, Advocate was not a practising lawyer of Delhi High Court rather he was practising lawyer of Tis Hazari Courts, as he maintained his office Chamber no. K-130-A, at Tis Hazari Courts, Delhi. In support of his arguments he referred to 121 2005 DLT 495 Contd/-

titled Lalit Kala Akademi Versus M/s. Svapan Const. AE, in which Hon'ble High court held that :

objections raised by petitioner before Arbitral Tribunal in regard to its jurisdiction and existence and validity of arbitration agreement : Arbitral Tribunal ought to have considered and answered same in the first instance before it decided claims of respondent no. 1 on merits : Arbitrator failed to exercise said jurisdiction and discharged obligation enjoined upon him by law by not answering objections raised by petitioner : Award of sole Arbitrator set aside.

Contd/-

7. Counsel for respondent on the other hand argued that authority cited by petitioner is not applicable because he never raised such objections before the Arbitrator. He further submitted that according to section 13 (2) of Arbitration Act, the objections as to jurisdiction of Arbitration had to be filed within 15 days after the petition becoming aware of the fact of lack of jurisdiction. However, no such written objection was filed by petitioner within 15 days. Therefore, the objections as to jurisdiction error is misconceived and unfounded. The plea taken by the petitioner does not hold good because no such objection was ever raised as to the jurisdiction of the arbitrator in the arbitral proceedings. Even otherwise the mere fact that the arbitrator was having his lawyer chamber at Tis Hazari Court, does not by any stretch of imagination establish that he was not a practising lawyer of High court.

8. The second objection argued by the counsel for petitioner was that petitioner challenged the validity of employment agreement i.e Ex. CW1/B and RW1/1 which indicated terms and conditions and arbitration clause Contd/-

incorporated therein because the arbitration agreement was hit by section 10,13,14,15,27,28 of Indian Contract Act. This objection is again not tenable because the agreement of employment and terms and conditions of the employment were very much relied upon and accepted by the petitioner himself at the time of recruitment with the respondent. Not only this the petitioner himself claimed certain service rights/claims on the basis of the aforesaid documents. Now it does not lie in the mouth of the petitioner to challenge the said agreement being hit by section 10,13,14,15, 27,28 of the Indian Contract Act. The objection to the execution of employment agreement and the terms and conditions should have been raised by the petitioner at the threshold, which has not been done by the petitioner. Accordingly, the objection taken by the petitioner with regard to the agreement of employment and terms and conditions thereof is overruled.

9. Now I take up third objection raised by the petitioner in the present petition on the ground of public policy. It is true that under order 34 of Arbitration Act, the court may set-aside Contd/-

the arbitral award if the same is found to be against or in conflict with public policy of India. Ld. Counsel for the petitioner while arguing on the aforesaid issue referred to judgment reported in III (2003) SLT 324, ONGC Ltd Versus Saw Pipes Ltd. in which the Hon'ble Supreme Court of India held that :

i) Arbitration Law : "Arbitral Procedure" : Ingredients of section 34 (2) (a) (v) :

Exception for setting aside award - Arbitration and Conciliation Act, 1996 -

Section 34 (2) (a) (v).

ii) Phrase "Public Policy of India" : Interpretation of Clause (ii) of section 34 (2)

(b) of Act : It is required to be wider meaning given to term 'public policy' in Renuagar's case : Award Contd/-

could be set aside if it is contrary to fundamental policy of Indian law or interest of India or justice or morality or if it is patently illegal - Arbitration and Conciliation Act, 1996 -

Section 34 (2) (b) (ii).

10. The Ld. Counsel for the petitioner could not point out as to how the award passed against him was opposed to or against fundamental policy of Indian law. Whereas, the petitioner with all his wisdom entered into an contract of service with the respondent with the condition that he would not work with any competitor of the respondent during the particular period. Such a service agreement are not and cannot be said to be opposed to public policy or hit by any of the provisions of Indian Contract Act. Accordingly, the award passed by Ld. Arbitrator cannot be held to be against public policy of India.

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11. Before parting with the order, I think it appropriate to say that this court cannot be equated as appellate court and cannot sit as appellate court over the Arbitral award. The decision of the arbitrator cannot be upset until and unless the award suffers from perversity or illegality. I have gone through the award passed by the Ld. Arbitrator which was passed on the basis of material and documents submitted by parties. I do not see any perversity or illegality or infirmity in the award passed by Ld. Arbitrator.

12. Keeping in view of the discussion stated above, I do not see any merit in the objections raised by the petitioner and accordingly the same are dismissed. No order as to costs. File be consigned to RR.

ANNOUNCED & DICTATED IN THE OPEN COURT :

On 3rd Day of February, 2007 [K.S. MOHI] ADDL. DISTRICT JUDGE DELHI
Contd/-

3/2/07 Present : Proxy for parties. Vide separate order the objections raised by the petitioner are dismissed. No order as to costs. File be consigned to RR.

ADJ/DELHI 3/2/07 Contd/-