

Shri Vishal Gupta vs M/S Blb Limited on 28 January, 2010

Civil Suit No.: 403/09

IN THE COURT OF JITENDRA KUMAR MISHRA
ADDITIONAL DISTRICT JUDGE (CENTRAL) 12, TIS HAZARI
COURTS, DELHI.

Civil suit No. 403/09

Shri Vishal Gupta,
S/o Shri Trilok Chand Gupta,
R/o C-50, Rohit Kunj,
Pitampura,
Delhi-110034.

Versus

.....Pet

- 1 M/s BLB LIMITED.
4764/23-A, ANSARI ROAD,
DARYA GANJ,
NEW DELHI-110002.
- 2 SHRI ANIL K. CHAUHAN
ADVOCATE
SOLE ARBITRATOR,
K-130-A, TIS HAZARI COURTS,
DELHI-110054.

.....Responden

Date of institution of the petition : 21.09.2007
Reserved for judgment on : 16.01.2010
Date of pronouncement of judgment : 28.01.2010

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PETITION UNDER SECTION 34 OF THE ARBITRATION
AND CONCILIATION ACT, 1996.

JUDGMENT

1 It is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 regarding the objections th raised against the Award dated 4 July, 2007 passed by respondent no.2, Sh. Anil K. Chauhan, Advocate whereby the petitioner has challenged this Award on various objections as mentioned in the petition. Brief facts necessary for the disposal of this petition as mentioned in statement of claim filed by claimant (respondent no.1 in the present petition) during the arbitration

proceedings before the Arbitrator are:

(a) Claimant/respondent no.1 is a Limited Company registered with the Registrar of Companies, NCT of Delhi under the provisions of Civil Suit No.: 403/09 Companies Act, 1956 having its registered office at 4764/23A, Ansari Road, Darya Ganj, New Delhi-110002. Sh. H. Lal is authorized representative of claimant/respondent no.1 who is fully conversant with the facts of the case and is duly authorized, empowered and competent to sign, verify and file the statement of claim before the Sole Arbitrator ;

(b) Claimant/respondent no.1 is one of the leading corporate member of all premier stock exchanges situated at Delhi, Mumbai, Kolkata, National Stock Exchange and Uttar Pradesh Stock Exchange for the past many years and after the intense research and after spending huge amount, achieved a high level skill and expertise in the technique of buying and selling the shares and Civil Suit No.: 403/09 securities in two different Stock Exchanges, a particular scrip at a particular time so as to earn the price difference. The scrip is purchased at lower price and sold at higher price simultaneously. The said art of buying and selling the share & securities is known as "Arbitrage" which is performed through online trading in Stock Market ;

(c) Respondent/petitioner was declared selected on 6.3.2003 for the post of Junior Executive (Dealing Room) in claimant/respondent no.1 company and executed an employment agreement on 11.3.2003 and agreed & accepted the terms & conditions, rules & regulations of the claimant/respondent no.1 company ;

(d) After joining on 1.4.2003, the

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respondent/petitioner executed a bond dated 1.4.2003. Further on 1.4.2003 itself, the respondent/petitioner also executed an undertaking ;

(e) Petitioner absented himself w.e.f. 24.12.2003 without any sanctioned leave or prior intimation. The petitioner sent alleged resignation letter dated 9.1.2004 which was not accepted.

Claimant/respondent no.1 sent letter dated 28.1.2004 to the petitioner to resume his duties immediately on receipt of letter but of no avail. The petitioner hatched a criminal conspiracy with one Sh. Vinay Gupta and Sh. Sanjay Singh and started acting against the interest of claimant/respondent no.1 company and in these circumstances, the Civil Suit No.: 403/09 claimant/respondent no.1 company sent a letter dated 30.3.2004 thereby advising the petitioner to stop the unlawful acts otherwise the proceedings will be initiated against him. The petitioner sent a false and frivolous letter on 16.4.2004 ;

(f) Claimant/respondent no.1 company sent another letter dated 19.4.2004 to the petitioner to join duties immediately on receipt of letter otherwise claimant/respondent no.1 company will be constrained to initiate legal action including recovery of losses, direct and indirect expenses, claims and damages etc ;

(g) Claimant/respondent no.1 company provided Training Development Program (TDP) to all its trading employees including the petitioner at its own Civil Suit No.: 403/09 cost and thus, incurred huge expenditure. It is further stated that the petitioner is not willing to join the duties and causing recurring loss to claimant/respondent no.1 company. The details of the expenditure and the loss suffered by claimant/respondent no.1 company on account of not performing the duties by the petitioner is as under: □No. On Account of Amount a. Selection & Appointment 29,867/ □b. Loss of Profit upto 31.5.2005 5,54,132/ □c. Cost of Infrastructure 11,000/ □d. Compensation equivalent to one 90,936/ □year salary i.e. $7578 \times 12 = 90,936$ / □e. Arbitration proceedings 22,000/ □f. Cost of Basic Working Training 20,000/ □Total or say 7,27,935/ □7,27,900/ □Civil Suit No.: 403/09

(h) It is further stated that the employment Agreement also provided that the dispute between the parties will be referred to the Arbitrator appointed by the Chairman of respondent no.1. 2 Written statement to the statement of claim was filed by the petitioner before the Id. Arbitrator. It is objected therein that signing of Bond was illegal and almost amounts to Bond of Slavery; there was no termination clause in the appointment letter; the terms and conditions of the employment was governed by Shops and Establishments Act keeping in view the working of the management and appointment was issued in violation of Section 3 and Section 34 of Shops and Establishments Act, 1954; the jurisdiction to decide the matter of employment, non □employment and terms of employment was governed by Section 10A of Industrial Disputes Act; the Civil Suit No.: 403/09 Management has no right or authority to create jurisdiction of arbitrator by incorporating clause of arbitration in the appointment letter and debar the jurisdiction of Labour Courts; loss of profit was neither the terms and conditions of the appointment letter or the alleged Bond and therefore, they are beyond the jurisdiction of Arbitrator as the same are not covered under the terms and conditions of the Appointment Letter; the execution of Bond is illegal; one sided appointment of Arbitrator is bad as per Arbitration and Conciliation Act, 1996. Attorney of Sh. H. Lal is also challenged. It is stated that all the documents were got signed by claimant/respondent no.1 from the petitioner before joining of the services. It is further denied that the petitioner undertook to serve claimant/respondent no.1 for five and half years. Authority of Arbitrator to adjudicate the dispute is also challenged.

Civil Suit No.: 403/09 3 Record of the Arbitrator is perused. Letter dated 11.3.2003 issued by respondent no.1 to the petitioner regarding the appointment is perused. It contains clause 11 which pertains to arbitration:

"(11. Arbitration

(iv) That any and all disputes and differences whatsoever arising between the Company and you either during the course of your employment with the Company or thereafter, in relation to the respective rights and liabilities including the effect and

interpretation of the terms and conditions of the letter of appointment, service bond or any other documents executed by you including but not limited to any agreement(s) shall be referred to the sole arbitrator appointed by the Chairman of the Company. The arbitrator so appointed shall however, not be below the status of Executive Director/Working Director/Vice President of the Company or any practising advocate of Delhi High Court".

Civil Suit No.: 403/09 In terms of this arbitration agreement, the Arbitrator could be appointed by the Chairman of respondent no.1. The said Arbitrator should not below the status of Executive Director/Working Director/Vice President of the Company or any practising advocate of Delhi High Court. It is challenged by the petitioner before this court that Sh. Anil K. Chauhan, Advocate who is Sole Arbitrator is not practising advocate of Delhi High Court.

4 During the course of arguments, counsel for the petitioner relied upon photocopy of judgment FAO No. 131/2007 titled as Vikesh Chugh versus B.L.B. Ltd. and Anr. decided on 24.9.2008 by Hon'ble High Court of Delhi regarding the present Arbitrator wherein it was observed that the Arbitrator who is having its Chamber at Tis Hazari Court is no ground that he was not the practising Advocate of Delhi High Civil Suit No.: 403/09 Court.

5 Another contention raised by the petitioner that Arbitrator Sh. Anil Kumar Chauhan was not appointed by the Chairman of respondent no.1.

6 During the course of arguments, a specific query was raised to the counsel for the respondents regarding any specific letter for appointment of Arbitrator Sh. Anil Kumar Chauhan and after referring the entire record of the Arbitrator, counsel for the respondents could not show any document by which the appointment of Arbitrator Sh. Anil Kumar Chauhan was made by the Chairman of respondent no.1. Arbitration Award also states that the Sole Arbitrator was appointed by virtue of arbitration clause in employment agreement to adjudicate upon the dispute. However, no such appointment letter of Id. Arbitrator is available on the record. Thus, in Civil Suit No.: 403/09 absence of any such letter, there is no valid invocation of the arbitration clause. A letter dated 30.9.2005 was issued to the petitioner by respondent no.1 by which it was informed to him that the Chairman of respondent no.1 appointed Sh. Anil K. Chauhan, Advocate, Delhi High Court as a Sole Arbitrator but no date of the said appointment has been mentioned. This letter was issued by the Authorized Signatory of respondent no.1. However, the signature of the Authorized Signatory when perused with the signature of the Authorized Signatory with other documents as available on the record then those signatures are not corresponding to each other. It is not mentioned who had issued this letter to the petitioner on behalf of respondent no.1. Nothing as such has been mentioned. Moreover, no such letter is available in the record of arbitrator and also has not been mentioned by the arbitrator in his award.

Civil Suit No.: 403/09 7 During the course of arguments, counsel for the respondents relied upon judgment 2008X AD (DELHI) 201, OMP 241/2008 titled as BLB Institute Of Financial Markets Ltd. (M/S.) Vs. Mr. Ramakar Jha decided on 22.9.2008 and submitted that in view of this judgment, the covenants as contained in the Bond between the parties that the petitioner could not leave the job

during the subsisting of the Agreement, is a valid Agreement.

8 I do not agree with the submissions made by ld. counsel for the respondents. The judgment relied upon by ld. counsel for the respondents passed during the proceedings under Section 9 of Arbitration and Conciliation Act, 1996 and in that case interim relief was granted only during the pendency of the arbitration proceedings. But this is not the case of respondent no.1 here. Moreover, it is not the case of Civil Suit No.: 403/09 respondent no.1 that the petitioner was bound to make good loss of profit for respondent no.1 in the event of leaving of his job. No such covenant has been contained in the arbitration clause. Counsel for the respondents also unable to disclose or specify the losses suffered because of the reason of leaving job of respondent no.1 by the petitioner. No such specific averment made either in the petition or else. Even it is not mentioned that what was the basis of damages claimed by respondent no.1 from the petitioner. In the statement of account, only ground is raised about loss of profit. It is also not mentioned what specific expenditure was incurred by respondent no.1 upon the petitioner for the purpose of training. Moreover, the proceedings of ld. Arbitrator have also been perused. By order dated 11.9.2006, it was held by ld. Arbitrator that there was no need of cross examination. Thus, it Civil Suit No.: 403/09 comes out that despite specific request, ld. Arbitrator did not allow the petitioner to cross examine the witness of respondent no.1.

9 In view of the observations made herein[□]above that there was no appointment of the Arbitrator by the Chairman of respondent no.1 as no such letter is available on the record, in view of the fact that ld. Arbitrator did not allow the petitioner to cross examine the witness of respondent no.1 and in view of the fact that the Award passed by ld. Arbitrator is against the public policy.

10 In a case 2008 X AD (S.C.) 393 titled as Delhi Development Authority Vs. R.S. Sharma & Co., New Delhi decided on 26.8.2008, it has been observed by the Hon'ble High Court of Delhi in para[□]12:

"12. From the above decisions, the following Civil Suit No.: 403/09 principles emerge:

(a) An Award, which is

(i) contrary to substantive provisions of law ; or

(ii)the provisions of the Arbitration and Conciliation Act, 1996 ; or

(iii)against the terms of the respective contract ; or

(iv)patently illegal, or

(iv)Prejudicial to the rights of the parties, is open to interference by the Court under Section 34(2) of the Act.

(b) Award could be set aside if it is contrary to :

(a) fundamental policy of Indian Law;

or

(b) the interest of India ; or

(c) justice or morality;

(c) The Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court.

(d) It is open to the Court to consider whether the Award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India."

11 Thus, in view of the case law discussed herein¹above, the present petition under Section 34 of the Arbitration Civil Suit No.: 403/09 and Conciliation Act, 1996 is allowed and Award passed by the th Arbitrator dated 4 July, 2007 is not sustainable on the ground that very appointment of arbitrator is not in accordance with the provisions of Arbitration & Conciliation Act, 1996 as observed herein and the same is set aside. Arbitration record be sent back to the Arbitrator. File be consigned to record room. Announced in open court today on 28.01.2010 Jitendra Kumar Mishra ADJ (Central)², Delhi