

* THE HONOURABLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA

AND

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

+ Writ Petition No.80 of 2015

% 22-1-2015

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Hyderabad Cricket Association,
Rajiv Gandhi International Cricket Stadium,
Uppal, R.R.District.
Rep. by its Managing Secretary

... Petitioner

Vs.

\$ The State of Talangana,
Law and Legislative Department,
Secretariat Buildings, Hyderabad
and
others
... Respondents

! COUNSEL FOR PETITIONER : Sri V.Ramachander Goud

***^COUNSEL FOR RESPONDENT No.1 : G.P. for Law and Legislative
Affairs***

^COUNSEL FOR RESPONDENT No.2 : G.P. for Sports and Culture

^COUNSEL FOR RESPONDENT No.3 : Sri M.Papa Reddy

<GIST:

>HEAD NOTE:

? CITATIONS:

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

PRESENT

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.80 OF 2015

DATED: 22.01.2015

Between:

Hyderabad Cricket Association

... Petitioner

And

The State of Telangana and others

... Respondents

**THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR**

WRIT PETITION No.80 of 2015

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ORDER: (per the Hon'ble The Chief Justice Sri Kalyan Jyoti Sengupta)

This Writ Petition has been filed by Hyderabad Cricket Association for issuance of writ of Prohibition against the Arbitral Tribunal consisting of respondents 4 to 6 arising out of Arbitration Application No.26 of 2011 from proceeding further, declaring as without jurisdiction.

We have asked the learned lawyer for the petitioner as to how the writ of Prohibition can be issued against the Arbitral Tribunal constituted under the provisions of the Arbitration and Conciliation Act, 1996 (for short 'the Act'). We think, without deciding the preliminary issue, we cannot proceed further. The learned counsel for the petitioner argues that the Arbitral Tribunal is not a private forum as it has been formed under the provisions of the Act. It is the settled law that writ of Prohibition can be issued not only against the subordinate Courts and quasi judicial authority, but also against Tribunal. We have noted his argument.

In this case, we have to decide whether we can entertain the Writ Petition for issuance of writ of Prohibition treating the instant Arbitral Tribunal as having a statutory character. We think that this Court has no jurisdiction to issue a writ of Prohibition for

the reasons as stated hereunder and the same are backed by the materials supplied by the petitioner itself. There has been a written agreement, dated 16.10.2014 between the petitioner and the third respondent. This agreement in substance was in relation to the construction of stadium, was containing various terms and conditions. One of its clauses, which is relevant for our purpose, is required to be noted, hence reproduced hereunder.

“15. Miscellaneous:

- i) This Agreement is made and governed by and shall be constructed in accordance with the Laws of India. Subject to sub-clause (iii) herein below regarding resolution of disputes by Arbitration, the parties submit to the exclusive jurisdiction of the Courts in the twin cities of Hyderabad – Secunderabad, hereby waiving all right to any other jurisdiction or venue to which they might otherwise be entitled.
- ii) In the event any part of this Agreement shall be deemed to be in contravention of law or otherwise invalid or unenforceable the said part shall be construed to the extent, if any, as the law shall permit to accomplish its intent and the legality, validity or enforceability of the remaining provisions shall not be affected.
- iii) All disputes arising out of this Agreement shall be settled through Arbitration, to be conducted at Hyderabad by three Arbitrators in accordance with the Arbitration and Conciliation Act 1996 or any statutory modification thereof. The parties shall bear the costs of arbitration equally in the first instance subject to the final award as to costs that may be passed by the Arbitrators.”

Thus, it will appear therefrom that the parties thereto have entered into arbitration agreement for resolution of the dispute mentioned aforesaid. Thereafter, the third respondent in and about 2011 made an application before the learned Single Judge of this Court for appointment of Arbitrator under Section 11(6) of the Act. His Lordship by order, dated 02.08.2011 allowed the application granting relief as prayed for therein. His

Lordship appointed Dr. Justice Motilal B.Naik, a retired Judge of this Court, to resolve the disputes relatable to agreement, dated 16.10.2014. While passing the said order of appointment, His Lordship concluded as follows:

“Since the agreement contains an arbitration clause and as the disputes between the parties are relatable to the said agreement, I find that the applicant has made a valid ground for appointment of an arbitrator.”

Thus, His Lordship has been satisfied that the disputes arose between the parties are covered by the arbitration agreement and made such appointment. This order was not challenged before the Hon’ble Supreme Court. So, the order containing the findings of His Lordship with regard to the formation of Arbitral Tribunal reached finality.

Learned counsel for the petitioner has raised an interesting question that even if the aforesaid order is assumed to be correct and not challenged, the Tribunal formed pursuant to the aforesaid order read with the Act can be treated to be a statutory Tribunal and amenable to writ jurisdiction.

We are unable to accept the contention of the learned counsel for the petitioner that this Arbitral Tribunal is of statutory one. We are of the view that this Tribunal is of private character, however legitimized by the Act. Formation of Arbitral Tribunal is really made by the contractual agreement between the private parties thereto. It is the settled position of law that the writ will be maintainable against any Government authority or its body or the instrumentality of the State. It is also settled law that any private individual can be treated to be an authority within the meaning of Article 226 of the Constitution of India if it discharges the public duty.

Here, the Tribunal is meant for two private individuals and not for the public at large to term it as the Tribunal of public character. The provisions of the Act enable the private individuals to resolve their disputes outside the Court and it is a measure of encouragement of the litigant public to have their civil disputes resolved outside forum established by the Government for public at large.

The Act in our view serves as enabling and regulatory machinery for creation and functioning of Tribunal of private individuals. In other words, the Tribunal formed under the Act does not deliver justice to the public at large. Unless an institution is obliged to discharge public duty or public function, it cannot be made answerable in writ jurisdiction under Article 226 of the Constitution. We accordingly overrule the contention of the learned lawyer for the petitioner that petition seeking writ of Prohibition is maintainable.

Learned counsel would argue that since the learned Single Judge of this Court has passed an order under the Act for formation of the Tribunal, it has the character of the Tribunal. We are unable to accept this contention for simple reason that order passed by the Chief Justice or his designate Judge or authority under the Act, is based on the arbitration agreement. Unless there is an arbitration agreement followed by inaction of either party to the agreement, the order of appointment cannot be passed under Section 11 of the Act. The Chief Justice or his designate Judge in exercise of power under Section 11 of the Act merely activate the recalcitrant party to go to domestic forum for the parties to the agreement only, not for member of the public at large.

We find from the Writ Petition, the question of inherent lack of jurisdiction is raised. We think that the issue for the time being is not allowed to be agitated before us, as Section 16 of the Act provides measures enabling parties to question jurisdiction of the Tribunal itself. Therefore, this point very well be agitated before the learned Arbitrator. It can also be challenged before appropriate Court under Section 34 of the Act. The object of the Act is to avoid the Courts as far as possible and to get the disputes resolved as early as possible finally on merit. In these circumstances, we feel that this application is not maintainable and accordingly, dismissed *in limine* without passing any order on merit. All questions have to be agitated before the Arbitral Tribunal. No order as to costs.

Consequently, miscellaneous petitions, if any pending, shall stand closed.

K.J. SENGUPTA, CJ

22nd JANUARY, 2015.

SANJAY KUMAR, J

Note: L.R. copy to be marked.

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