

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No. 6661 of 2014 (O&M)

Date of decision: 05.04.2016

M/s Hotel Royal Park and others

... Petitioner

versus

Didar Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Anuj Raura, Advocate for the petitioners.

Mr. P.S. Rana, Advocate, for the respondent.

K.Kannan, J. (ORAL)

The alleged award by a Contractor's Union was allowed to prevail inspite of the objection brought by the petitioners that there existed no arbitral agreement and the assumed jurisdiction by the Private Construction Labour Contractors Union cannot be stated to an award passed under the provisions of Arbitration and Conciliation Act of 1996.

Before much of the arguments got under way, on the admitted position that there was no agreement between the parties prescribing for an arbitration agreement, I asked the counsel for the respondent to support the manifest illegal order. The counsel argues with passion that the case is well-founded. I will have to only enumerate the arguments to reject them as untenable.

The counsel for the respondent states that labour rates for any kind of work had been settled by the Labour Contractors Union and since the respondent was the member of the Union, any person who engages the respondent will be governed by the conditions of

labour rates that include the reference to arbitration as well. Apart from the entrustment of work by the petitioners to the respondent there is nothing brought on record to show that there is any arbitration agreement which has been entered into between the petitioners and respondent. The Arbitration agreement is defined under Section 2(b) read with Section 7. Section 7 requires the agreement to submit to arbitration must have arisen out of a contract and such an arbitration agreement may be in the form of the Arbitration Clause in a contract or in the form of separate agreement. Clause 7(3) states that arbitration agreement shall be in writing and Clause 7(4) requires that the agreement shall be signed by the parties. There is nothing on record or even the faintest contention that the petitioners had signed in any arbitral agreement that provided for arbitration. If there was no arbitral agreement in so many words providing for a reference to arbitration there can be no assumption of jurisdiction by self proclaimed arbitrator.

The counsel refers me to the contention in the labour rates issued by the Contractor's Union that state inter alia

“Rate for the non agreement items will be decided by the contractor and the owner. If any dispute arises between the parties, the same will be settled by the Union or any interpetition or rate shall be as per decision of Executive committee its decision will be binding on both the parties.”

This hardly can be conceived as a reference to arbitrator. It is merely a mechanism provided to help parties settle rates of contract and can not be construed as an arbitral agreement. It will be a dangerous assumption of power to act as an arbitrator and may amount to seizing an authority to a person who has no right of function as an arbitrator. The rule of law will take a dent if such Unions assume that their own busy bodies can issue order and make it as enforceable as if it were a decree. I can give no legitimacy to an order passed by the Union

as an order passed an arbitrator.

Learned counsel for the respondent also brings an argument that several notices had been issued by the Union in its assumed position as an arbitrator and the petitioners did not state their objections. I will find no fault for the same, for, the construction union cannot have such a power to compel its legitimacy to be recognized. For the same reason a petition filed before the Civil Court under Section 34 which was withdrawn cannot constitute as estoppel. Several decisions which the counsel refers to are stated only for the sake of meeting the contentions made, but, the arguments suffer from a fundamental vice in likening the so called award passed by the Labour Union to be a legitimate award which would require an intervention by resort to any of the provision of the Arbitration and Conciliation Act. If we note that the award itself was passed by the Union which was incompetent and whose award was on the face of it illegal, there could be no compulsion for any person to seek for setting aside the award. If such a procedure was at same point of time adopted advisedly wrongly, there was no prohibition about the person withdrawing from such an application and taking an objection at the time when the so-called award was put in execution before the Civil Court. The counsel refers me to the following decisions. In Gaffur Khan Vs. Magma Shrichi Finance Limited, Kolkata, AIR 2012 (Jharkhand) 53, the Jharkhand High Court was considering an objection at the stage of execution of award under Section 47 CPC. The issue before the court was never that the award passed was by a person who was incompetent. It is one thing to say that the award is not enforceable or it contains some fallabilities but quiet another to say that the award is not an award in the eye of law. Mallikarjun Vs. Gulbarga University, 2004 Arb.WLJ (20) SC dealt with the situation of an objection taken that a particular clause in an agreement did not constitute an arbitration agreement. It was a case

where there was a contract between the parties that contract referred to an agreement and the issue was whether an objection could be taken at the time of enforcement of the award. If an award exists under the Arbitration and Conciliation Act, then an objection can be made only under Section 34 and it cannot be bypassed by resort to Section 47. Such a situation does not arise. As I have already observed, there is no award at all in the first place. The decision by Delhi High Court in Anil Mehra Vs. East India Weaving Limited, 2002 Arb. WLJ was also a situation of an award under the Arbitration and Conciliation Act where objection filed under Section 34 has been dismissed as withdrawn and sought to canvass the correctness in separate proceedings which was not tenable. None of these situations arises here.

The award is not an award in the eye of law for the reasons stated already and it is not capable of being executed. If it was put in execution as if it were award it was perfectly competent for the petitioners who had not submitted themselves to any such arbitration agreement to raise an objection under Section 47 CPC which in this case has been referred to an objection under 021R97 to to 99. The order rejecting the objection is erroneous and it is set aside. The pretended award shall not be put in execution and they are ordered be removed out of the files. The revision petition is allowed with cost of Rs. 3,500/- against the respondent.

(K.KANNAN)
JUDGE

05.04.2016

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