

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

ARBITRATION APPEAL NO. 21 OF 2017

WITH

CIVIL APPLICATION NO. 26 OF 2017

Gujarat Infotech Ltd.	]	Appellant
Vs.		
State of Maharashtra	]	Respondent

.....

Mr. Atul Damle, Sr. Advocate i/b Mr. Jagdish Reddy, for appellant.
Ms. Ashwini Takalkar, for respondent.

.....

CORAM : R.G. KETKAR, J.

DATE : 10TH JULY, 2017.

P.C.

Heard Mr. Damle, learned Senior Counsel for the appellant and Ms. Takalkar, learned A.G.P, for respondent at length.

2. By this appeal under Section 37 of the Arbitration and Conciliation Act, 1996, [for short 'Act'], the appellant has challenged the judgment and order dated 1st July, 2017 passed by the learned District Judge 01-Pune [for short 'District Judge'] in Civil Misc. Application No. 382 of 2017. By that order, learned District Judge rejected the application made by the petitioner under Section 9 of the Act, inter alia, for injunction restraining the respondent, State of Maharashtra.

- [a] from terminating the work agreement dated 6th May, 2016.
- [b] from dispossessing the applicant from Setu Centres.
- [c] from granting the contract to run the Setu Center to any third party.

3. Respondent invited tenders for running Setu Centers at various places in the State of Maharashtra which are totally dependent upon the Mahaonline Limited which is a joint venture of the State Government and TCS Company. Respondent has introduced Setu project to provide services to citizens in a convenient and efficient manner and enhance the accountability, transparency and responsiveness to the citizens' need and to ensure speed and certainty of providing services through enforcement of the service level agreement. Collector Pune invited bids for running/operating Setu Centres. Appellant along with one JMK Infosoft Solutions Ltd were declared successful bidders. As both were declared successful bidders, respondent prepared two groups i.e Group 'A' and Group 'B' and by way of lottery system, Setu Centers in Group 'A' were allotted to the appellant and Setu Centers in Group 'B' were allotted to JMK Infosoft Solutions Ltd.

4. On 5th July, 2016, the Residence District Collector, Pune issued notice to appellant setting out therein that the appellant had violated work agreement. On 29th September, 2016, Tahsildar, Mulshi had surveyed Center at Mulshi and submitted observations on 39 points. On 10th November, 2016, one Shri Mahadeo Laxman Kadam from Baramati lodged complaint with Collector

alleging corruption in Setu Centre at Baramati. On 19th May, 2017, he gave statement to the effect that there was no corruption in Setu Center at Baramati. On 10th February, 2017, respondent issued letter alleging that Setu Center is not using MahaOnline Portal. On 8th March, 2017, Tahsildar communicated the Collector, Pune that 12 deficiencies are found in Mulshi Setu Center and recommended termination of the contract. By letter dated 16th May, 2017, respondent terminated the agreement dated 6th May, 2017. The appellant, therefore, filed application under section 9 of the Act seeking temporary injunction as indicated above. Respondent resisted the application by filing say at Exhibit 13. It was contended that as per clause 21 of the agreement, respondent terminated contract after issuing show cause notice and giving reasonable opportunity of hearing. It was further contended that in order to avoid inconvenience to the students and citizens, work of Setu Center is allotted temporarily to JMK Infosoft Solutions Limited.

5. As the prayers in the main application and the application for ad-interim application [Exhibit 5 & 10] were one and the same, by consent of the parties, learned District Judge took up main application u/s 9 for final hearing. After considering material on record, by the impugned order, learned District Judge rejected the application. It is against this order, appellant has instituted present appeal u/s 37 of the Act.

6. In support of this appeal, Mr. Damle strenuously contended that all along respondent wanted to give tender to JMK

Infosoft Solutions Limited. He submitted that basically action of the respondent of bifurcating Setu Centres in two groups itself was in breach of clause 3.21 of the tender document as also in gross violations of the guidelines provided by CVC.

7. Mr. Damle submitted that at the time of hearing, learned District Judge orally directed the respondent not to dispossess the appellant from Setu Centres and orally restrained respondent from granting contract to another third party in respect of Setu Centres which were allotted to the appellant.

8. He further submitted the work agreement dated 6th May, 2016 is subsisting and not terminated. Actions of the respondent are also in gross violation of clause 32 of the work agreement. Action of the respondent is also mala fide.

9. On the other hand, Ms. Takalkar supported the impugned order and submitted that the learned District Judge has found substance in the case made out by the respondent and, therefore, no case is made out for interfering with the impugned order.

10. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused material on record. Before the learned District Judge, the appellant contended that termination letter dated 16th May, 2017 was not served on the appellant. Reliance was placed on clause 32 of the agreement. After quoting clause 32, learned District Judge

observed that appellant admitted that they received notice on e-mail I.D and, therefore, there is substantial compliance of clause 32 of the work agreement. Merely because notice was not served on the address but served through e-mail, it cannot be said that notice is illegal. In view thereof, as also having regard to the fact that the appellant admitted receipt of notice on e-mail I.D, I do not find any merit in the submission based on clause 32 of the work agreement. In paragraph 9, learned District Judge referred to the show cause notice dated 10th February, 2017 issued by the respondent alleging that the appellant is not using MahaOnline Portal; charging excessive to the citizens than prescribed by the Government Resolution i.e Rs. 20 and other irregularities. Talhsildar, Mulshi took surprise inspection of Setu Centres run by the appellant. By his report dated 9th May, 2017, he informed Collector that Setu Centre is not giving certificates by using MahaOnline Portal and automatic token dispenser has not been started. In paragraph 10, the learned District Judge noted that in the reply to the notice dated 9th May, 2017, the appellant admitted that they have issued certificates without using MahaOnline Portal. The appellant has given explanation that due to internet problem, they used the off line software for issuing certificates to citizens. In paragraph 11, learned District Judge after perusing the receipts seized by Tahsildar during inspection observed that applicant was charging more than the prescribed limit mentioned in Government Resolutions from the citizens. In paragraph 12, learned District Judge noted that by letter dated 16th May, 2017, the appellant's agreement was already terminated and declined to issue injunction restraining the respondent from terminating the contract. Further

prayer restraining the respondent from dispossessing the appellant from Setu Centre also cannot be granted. In paragraph 13, learned District Judge also noted that if the agreement is terminated then certainly alternate arrangement has to be made by the respondent for providing services to the citizens so that there should not be inconvenience to the citizens for getting the certificate in the month of July, 2017, which is pick month for obtaining the certificates for admissions in Schools and Colleges.

11. For the reasons recorded by the learned District Judge in paragraphs 8 to 13, I do not find that the learned District Judge has committed any error while rejecting the application. It is also not possible to accept the contention advanced by the appellant that during hearing, the learned District Judge orally directed the respondent not to dispossess the appellant from Setu Centres and further restrained the respondents from granting contract to third party in view of specific finding recorded in paragraph 12 of the impugned order.

12. In the case of **Wander Limited and another Vs. Antox India Private Limited, 1990 (Supp.) SCC 727**, the Apex Court in paragraph 14 has observed as under:

“....., the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on

principle. The Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

13. Applying tests laid down by the Apex Court in the case of **Wander Limited** [supra], to the present case, it cannot be said that learned District Judge has exercised discretion arbitrarily or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. This Court will not re-assess the material and seek to reach a conclusion different from the one reached by the learned District Judge if one reached by that court was reasonably possible on the material. This Court would not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner, the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

14. In the light of the aforesaid discussion, no case is made out for interfering with the impugned order. Appeal fails and the

same is dismissed. In view of dismissal of Appeal, Civil Application No. 26 of 2017 for injunction does not survive and the same is disposed of reserving liberty to the appellant to consider filing application under Section 11 of the Act and after appointment of arbitrator filing application u/s 17 of the Act. If such application is made, the same shall be decided on its own merits un-influenced by the observations made herein. Order accordingly.

[R.G. KETKAR, J.]