

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION NOS.37537 AND 37540 OF 2017

COMMON ORDER: (per Justice Sanjay Kumar)

These writ petitions were filed assailing the orders dated 30.06.2017 passed by the Arbitrator, the second respondent in each of these cases, in the applications filed by the writ petitioner under Section 16 of the Arbitration and Conciliation Act, 1996 (for brevity, 'the Act of 1996') with regard to the jurisdiction of the Arbitrator to proceed with the arbitration.

By the orders under challenge, the second respondent observed as under:

'Please note that your Application U/s.16 of the Arbitration and Conciliation Act, 1996 pleading that the Arbitration proceedings are not maintainable is rejected after considering all relevant arguments put forth by either parties and you are advised to file your counter to the Claims made by the Claimant within 6 weeks to enable further process of Arbitration.'

Sri Sharad Sanghi, learned counsel for the petitioner, would contend that an order passed by the Arbitrator in relation to the objections raised under Section 16 of the Act of 1996 should be a reasoned one and once the Arbitrator failed to pass a reasoned order, it would not constitute an order at all in the eye of law, whereby the embargo placed by the Supreme Court on exercise of writ jurisdiction against an order passed by the Arbitral Tribunal would come into play.

In this regard, it would be relevant to note what the Supreme Court had to say on the issue in *SBP & CO. V/ s. PATEL ENGINEERING LTD.*¹:

'45. It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by the High Courts is not permissible.

46. The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.'

¹ (2005) 8 SCC 618

Sri Sharad Sanghi, learned counsel, would however rely upon the definition of 'Order' in the Code of Civil Procedure, 1908, under Section 2(14), which defines it as a formal expression of any decision of a Civil Court which is not a decree, and contend that the cryptic communication dated 30.06.2017 in the cases on hand would not fulfil the requirements of an 'order'. He would also place reliance on the decision of the Supreme Court in U.MANJUNATH RAO V/ s. U.CHANDRASHEKAR², wherein the Supreme Court observed that it is well settled in law that reason is the life of law being the filament that injects soul to the judgment. It was further observed that absence of analysis not only evinces non-application of mind but mummifies the core spirit of the judgment.

Be it noted that the aforestated observations were made in the context of a judgment. In the scheme of the Act of 1996, the Arbitrator is empowered to rule on his own jurisdiction under Section 16(1) thereof. When a plea is raised that the Arbitrator does not have jurisdiction under Section 16(2) or (3) of the Act of 1996, the Arbitrator is required to decide on such a plea under Section 16(5) and where the Arbitrator rejects the plea, he is required to continue with the arbitral proceedings and make an arbitral award. Section 16(6) of the Act of 1996 stipulates that a party aggrieved by an arbitral award passed in such circumstances may make an application for setting it aside in accordance with Section 34 of the Act of 1996.

Significantly, in the event the Arbitrator accepts the plea of the party objecting to his continuing with the arbitral proceedings on the ground that he has no jurisdiction, such an order would be appealable under Section 37 of the Act of 1996. As noted in SBP & CO., if no such

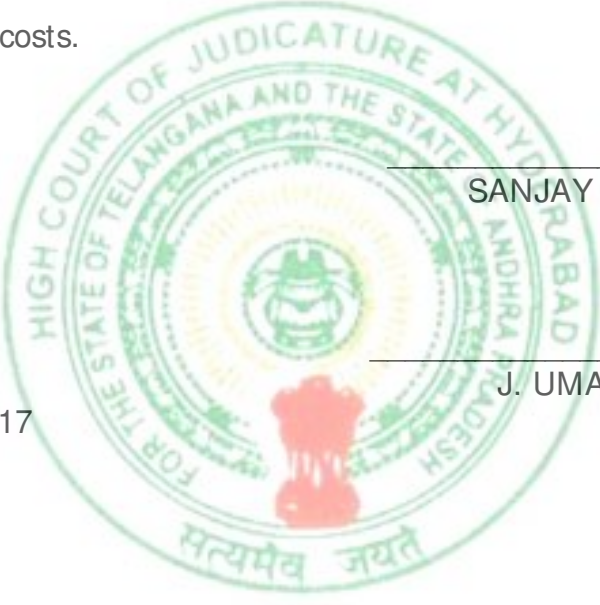
² 2017 SCC OnLine SC 865

appellate remedy is provided under Section 37 of the Act of 1996, the scheme of the Act of 1996 does not contemplate intervention by this Court, be it under Article 226 or 227 of the Constitution.

Given the aforesaid statutory scheme and the interpretation thereof by the authoritative edict of the Supreme Court in SBP & CO., we are of the opinion that these writ petitions are not maintainable and they are accordingly dismissed. This order shall however not preclude the petitioner from raising the issue at the appropriate stage in terms of the scheme of the Act of 1996.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.



The seal of the High Court of Judicature at Hyderabad is a circular emblem. It features a central green emblem with a white star and crescent, surrounded by a green border. The text 'HIGH COURT OF JUDICATURE AT HYDRABAD' is written in a circle around the emblem. Below the emblem, the text 'FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH' is written. At the bottom, the motto 'सत्यमेव जयते' is written in Devanagari script.

SANJAY KUMAR, J

J. UMA DEVI, J

Date: 14.11.2017
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