

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

* THE HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON' BLE SRI JUSTICE N. BALAYOGI

+ CIVIL REVISION PETITION No.1638 OF 2018

%Date: 18.06.2018

Between:

MS9 Mega Projects, Rep. by its
Partner C.Madhusudhan Reddy,
R/o.Kurnool and another.

...Petitioners

Vs.

\$ Sri T.Sundara Ramaiah (sole Arbitrator)
R/o.Himayathnagar, Hyderabad and another.

.. Respondents

! For Petitioners

: Mr.A.Venkatesh

^ For Respondents

: Mr.M.Maheswara Rao

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? Cases Referred

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HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON' BLE SRI JUSTICE N. BALAYOGI

CIVIL REVISION PETITION No.1638 OF 2018

ORDER: (per V. Ramasubramanian, J)

Challenging the rejection of a petition under Section 14 of the Arbitration and Conciliation Act, 1996, seeking termination of the mandate of the sole Arbitrator, the petitioners have come up with the above revision petition.

2. Heard Mr.A.Venkatesh, learned counsel for the petitioners and Mr.M.Maheswar Rao, learned counsel for the 2nd respondent.

3. The disputes between the petitioners and the 2nd respondent were referred to arbitration by the 1st respondent, who was appointed as the sole Arbitrator. Immediately, upon service of notice on them by the Arbitrator, the petitioners sought certain details about the Arbitrator, for the purpose of finding out whether the Arbitrator suffered from any disqualifications prescribed in the VII Schedule to the Act.

4. Since the information sought under the memo dated 02.01.2018 filed by the petitioners was not given to them, the petitioners filed COP SR.No.142 of 2018 on the file of the Commercial Court, under Section 14 of the Act seeking the termination of the mandate of the Arbitrator. This petition was rejected even at the threshold in limine, without even being numbered, on 08.01.2018 by the Commercial Court. Challenging the said order, the petitioners are before us.

5. The main grievance of the petitioners is that after the amendment of the Arbitration and Conciliation Act, 1996 under the Central Act 3/2016, with effect from 23.10.2015, there is a positive

obligation on the part of the person appointed as Arbitrator, to disclose in writing any circumstances such as the existence, direct or indirect, of any past or present relationship with or interest in any of the parties in relation to the subject matter in dispute. The disclosure regarding the circumstances, should be made by such a person appointed as Arbitrator in the form specified in the VI schedule.

6. The contention of the petitioners is that all that they wanted to know was as to whether there were any such circumstances and as to whether the Arbitrator had made a disclosure as required by Section 12(1)(b) of the Act. Since the Arbitrator did not make such a disclosure, the petitioners were compelled to file the application under Section 14 of the Act, but the same was rejected by the Commercial Court without even an enquiry. Hence, the learned counsel contended that the impugned order deserves to be set aside. Strong reliance is placed upon the recent decision of the Supreme Court in HRD Corporation v. GAIL (India) Limited¹.

7. In response to the above contentions, it is contended by the learned counsel for the 2nd respondent that as on date, much water has been flown under the bridge. It appears that the Arbitrator passed an award on 27.02.2018 and the same was also sent by registered post by the Arbitrator to the petitioners. The 2nd petitioner seems to have received the copy of the award, through registered post, as evidenced by the postal track report. Therefore, the learned counsel for the 2nd respondent submitted that the present exercise will only be in futility.

8. Unfortunately for the petitioners, the order of the Commercial Court, rejecting the application under Section 14 of the Act, was passed on 08.01.2018. The certified copy of the said order was delivered to the

¹ 2017 (9) SCJ 1

counsel for the petitioners on 30.01.2018. The above civil revision petition was filed on 07.03.2018. In the interregnum, the Arbitrator has passed the award on 27.02.2018.

9. Since the above civil revision petition was presented to this Court only on 07.03.2018, it came up for orders as to admission on 13.03.2018 and an interim stay was granted on the said date. But, by the time, the CRP was filed and by the time the interim stay was granted, the award had already been passed on 27.02.2018. It was also communicated to the petitioners by registered post.

10. Therefore, it is not possible now to undertake an enquiry as contemplated under Section 14 of the Act. Even in cases where the jurisdiction of the Arbitrators to deal with the dispute is questioned and an Arbitration Award is eventually passed, the appropriate course open to the persons aggrieved, is to raise all those contentions in the application challenging the award. Though the learned counsel for the petitioners contended that this is a case where the entitlement of the Arbitrator to adjudicate the dispute went to the root of the matter and hence, the Arbitration Award should be treated as null and void, we do not think so. As the timeline of events disclose, events have overtaken the grievance of the petitioners. Therefore, the appropriate course of action open to the petitioners is only to raise all the grounds even with regard to competence of the Arbitrator in a proper application under Section 34 of the Act while challenging the Award of the Arbitrator. Fortunately, the petitioners have not lost the period of limitation prescribed by the Act.

11. Therefore, leaving it open to the petitioners to move the appropriate Court under Section 34 of the Act, the Civil Revision Petition is dismissed. It is made clear that we have not gone into the merits of

the claim of the petitioners under Section 14 of the Act, as the petitioners are entitled to raise the same before the appropriate Court. It is also made clear that if there is any delay in the petitioners filing a petition under Section 34 of the Act, the same may be condoned, as this Court had granted interim stay from 13.03.2018 and the same stands vacated only today.

12. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. No order as to costs.

V. RAMASUBRAMANIAN, J

June 18, 2018
KTL

Note:
Furnish CCs today.

N. BALAYOGI, J

