IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.6350 of 2022

(Through Hybrid mode)

Mani Tirumala Projects Pvt. Ltd. .... ***Petitioner***

Mr. Jishnu Saha, Senior Advocate
Mr. Subir Palit, Advocate

-versus-

All Odisha State Bank Officers Housing Co-operative Society Ltd. .... ***Opposite Parties***

Mr. Manas Mohapatra, Senior Advocate
Mr. Prabodha Ch. Nayak, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
23.03.2022

Order No.

02. **1.** Mr. Saha, learned senior advocate appears on behalf of petitioner and submits, there be interference with order dated 18th February, 2022, passed by the Court below in dealing with his client's application for stay of operation of the arbitral award. He submits, inserted by amendment proviso under sub-section (3) in section 36 says, the Court shall grant unconditional stay on prima facie satisfaction that the award was obtained either by fraud or corruption. In this case, the arbitrator is guilty of corruption in having demanded gratification for passing award in favour of his client, or else. He demonstrates from impugned order, his client had contended that son of the arbitrator had travelled to Kolkata and enjoyed hospitality extended by his client. Such was done on request to his client. In the visit, the son demanded gratification for favourable award in favour of his client. The son, by his letter dated 20th April, 2019, admitted he visited and had meeting but untruly alleged it was on professional basis. As such, there was evidence before the arbitrator that he was ineligible to have been appointed, on entry 10 in the seventh schedule. His client wrote two letters dated 19th and 25th April, 2019 to the arbitrator informing that the reference stood automatically terminated. In the letters entry 10 in the seventh schedule was quoted, amongst other statements made therein.

2. On 15th March, 2022 following direction was made.

> *"2. Perused impugned order and, inter alia, letter dated 20th April, 2019 written by son of the arbitrator. Petitioner is to file additional affidavit to demonstrate relationship of the son (family member of the arbitrator) with his client as having significant financial interest or being an affiliate. The affidavit be filed by 17th March, 2022 as petitioner indicates that will be sufficient time. Advance copy must be served."*

Petitioner filed additional affidavit. It does not bear any disclosure.

3. Mr. Saha proceeds to argue that, prima facie, the award stood vitiated by corruption for there to be judicial review on impugned order dated 18th February, 2022, whereby 50% award amount was directed to be deposited as security for stay of operation of it. He draws attention to letter dated 19th April, 2019 written by his client. On query from Court he submits, it was the first written expression of his client's position regarding his contention. He demonstrates from the letter following sequence of events:-

(i) There was settlement recorded by order no.22 dated 16th November, 2018. That in effect was final award and nothing further remained for consideration of the arbitrator, except its implementation.

(ii) Son of the arbitrator thereafter contacted one Mr. Ajay Agarwal of his client, to inform the latter about his relationship with the arbitrator and that he was representing him for purpose of communicating something to the key person of his client's organization, in confidence.

(iii) The son travelled to Kolkata and was guest of his client in a five star hotel from 15th February, 2019 till 17th February, 2019, during which the son informed the controlling person of his client that the arbitrator may allow the settlement to continue only in event he receives a sum of Rs.50 lakhs in cash from the controlling person. In event the amount is not paid, the arbitrator would scuttle (the settlement) and make award to his client's prejudice. The controlling person was taken by surprise and said that discussion was necessary with Board members and stake holders, to decide on the way forward. The son suggested, the controlling person should personally travel to Bhubaneswar. On query from Court Mr. Saha submits, the controlling person was present in the arbitration sitting on 1st March, 2019.

(iv) On 1st March, 2019 an arbitration sitting was held and order passed, reproduced below.

> *"The parties sat for negotiation again today and finalized the rest of the disputes. The parties undertake to file the final deed of settlement on the next date. The memo with today's settlement signed by the parties is kept on record.*
>
> *The next date is fixed to 05.04.2019 at 4.15 p.m. for filing the final deed of settlement.*
>
> *Copy of the order be granted to the learned counsel for the parties."*

(v) Subsequent to the sitting the controlling person met the arbitrator and his son at the arbitrator's residence. The arbitrator held out that state of affairs was not moving in the right direction and such state of affairs would hold out only in event of payment by his client to the son.

(vi) On 19th April, 2019 the letter was written to the arbitrator invoking entry 10 in seventh schedule, Arbitration and Conciliation Act, 1996, to tell the arbitrator that he had become ineligible, to continue to act. Mr. Saha points out, on 5th April, 2019 there was arbitration sitting held and order no.30 made, soon after which his client wrote said letter dated 19th April, 2019.

4. On query from Court regarding explanation of his client's hesitation in bringing out in the open the demand for illegal gratification made by the arbitrator through his son during his visit to Kolkata between 15th and 17th February, 2019, the disclosure made as late as on 19th April, 2019, Mr. Saha submits, there was breach of a term of settlement by opposite party no.2 in not making payment of cash component. On further query from Court regarding definition and authority on the meaning of 'corruption', Mr. Saha submits, the word has meaning of wide amplitude. He submits further, there was evidence before the Court below by way of letter sent by electronic mail on 20th April, 2019. In the letter the son had admitted to having represented his client. Though he alleged that he visited as a lawyer and professional and, therefore, his client was obliged to pick up the bill, the allegation is to be disbelieved because not only the letter does not disclose but also otherwise there is no disclosure regarding bills raised by the son on allegedly visiting Kolkata at instance of his client, for professional work. All these are sufficient for prima facie appreciation of corruption that induced making of the award. In the circumstances, impugned order requires interference as there should have been unconditional order stay of arbitral award pending disposal of his client's challenge under section 34.

5. Mr. Mohapatra, learned senior advocate appears on behalf of opposite party and draws attention to the passage in impugned order, reproduced below.

> *"xx xx xx Though the petitioner has alleged that demand was made by the son of Ld. Arbitrator during his visit to Kolkata from dt.15.02.2019 till 17.02.2019 and subsequently, on dt.01.3.2019 the demand of money was affirmed by the Ld. Arbitrator in his Chamber, no explanation*

has been adduced as to why no step was taken immediately or thereafter within the prescribed period provided in section 13(2) of the Act after the petitioner becoming aware of the circumstances that gave rise to doubt as to the independence or impartiality of the Ld. Arbitrator, though the Arbitration proceeding was continuing. It is further seen that the petitioner attended the proceeding on dt.01.03.2019, dt.05.04.2019, dt.11.04.2019 and also on dt.15.04.2019. But no application on any of the dates was filed by the petitioner challenging the Arbitrator. Rather, the letters dt.19.04.2019 and 24.04.2019 were sent stating that the Arbitration proceeding has suffered automatic termination. No material has also been placed to show that on the alleged dates, the son of Ld. Arbitrator visited Kolkata for the purpose alleged by the petitioner. Since the petitioner has alleged a very serious allegation of corruption, it was incumbent on his part to produce required materials to prima facie justify his plea. By mere placing reliance on the letters which had been addressed to the ld. Arbitrator after long delay of the petitioner becoming aware of the circumstances giving to doubt as to the independence or impartiality of the Ld. Arbitrator, is not sufficient to prima facie justify such a serious and rare allegation. xx xx xx xx xx xx xx xx xx xx
In view of the materials placed on record at this stage, it can be held that the petitioner has not made out a case to prima facie satisfy that the Arbitral award has been induced or effected by fraud or corruption. As such, it is not entitled for unconditional stay. The facts and circumstances of the cases of the cited decisions are different and distinguished from the other and are not squarely applicable to the present case.”

He submits further, members of his client’s association are retired employees of the bank and they have been kept waiting for long to have possession of the flats. He adds, the writ petition is not maintainable as there should be no interference by judicial review, in matters of arbitration. Mr. Saha points out that opposite party itself had moved the writ Court earlier. Parties thereafter did not seek adjudication on the point of maintainability.

6. For purpose of appreciation of prima facie case, the Court has before it letter dated 19th April, 2019, which is the first writing by petitioner regarding allegation of corruption. Contents of the letter include reference to entry no.10 in the seventh schedule and that petitioner had been advised. Therefore, the letter must have been written upon careful deliberation. More so, because it leveled serious allegation against the arbitrator.

7. The letter says that order no.22 dated 16th November, 2018 was itself final award. Petitioner's position, according to it, was clear that there had been settlement and the only way forward was implementation of the settlement. Being in that position it entertained call from son of the arbitrator. It appears from the letter, the son was not earlier engaged by petitioner on professional basis. Nevertheless, he was welcomed by petitioner in one of its properties, a five star hotel, between 15th and 17th February, 2019. Controlling person of petitioner met the son. Subsequently, on 1st March, 2019 the controlling person attended the arbitration sitting and thereafter went to the arbitrator's residence. At the residence he was informed that unless the cash is handed over to the son, the settlement would not hold out. After 1st March, 2019 petitioner waited till 19th April, 2019 to allege on corruption, based on contents in said letter. Further submissions have been made regarding the son having written on 20th April, 2019. Court is also in possession of submission on behalf of petitioner that on 5th April, 2019 an arbitration sitting was held. Further submission was also made that respondent had committed breach on the term of settlement regarding payment of money. It appears, petitioner thereafter was represented in the arbitration sitting held on 11th April, 2019. On 15th April, 2019 petitioner had moved an application in the reference, under sections 30 and 32 seeking termination/stay of further proceeding. Mr. Saha submits, in the meantime his client had filed for execution of the terms of settlement.

8. Petitioner's stated position of having, in effect, final award by settlement and having had launched execution of it, militates against its contention regarding continuance of state of affairs of settlement, by the arbitrator, on illegal gratification. Court cannot presume that opposite party was in the loop and would or would not abide by the settlement, as maneuvered by the arbitrator, in interest of petitioner. Court also has possession of submissions from both sides regarding allegations of breach of settlement. Aforesaid orders show that on perception by the arbitrator that the settlement had failed and prescribed time for the reference running out, issues were framed and there was ultimately award, concluding the reference.

9. Whether or not there was settlement, terms of which became enforceable between the parties, thereby obviating necessity for adjudication for award being made, may be a ground on challenge to it. Here, the only question is prima facie satisfaction on whether corruption induced or effected making of the award. From the discussion above Court is unable to draw prima facie satisfaction that a party, who was aware of its position on settlement, thereafter made negotiation with son of the arbitrator, even if at instance of the son, for continuance of the settlement when there were allegations, against and by it, of breach of the settlement. So far as entry 10 in the seventh schedule is concerned, as aforesaid, the additional affidavit filed does not contain any disclosure to show financial involvement of the son with petitioner or that he is an affiliate of it.

10. The writ petition is found to be without any merit. It is dismissed.

(Arindam Sinha)
Judge

RKS