

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3021 OF 2022

Maha Active Engineers Private
Limited, through its
Authorized Signatory -
Sagar Vidolkar, Age: 34 Yrs.,
occu. Business, having its office
at 202, Arth Complex, Adalat Rd.,
Auragnabad, Maharashtra 431001 = **PETITIONER**

VERSUS

M/s Linear Enterprise
Having its office at `Sarthi`
Plot No.17, Parimal Hsg. Society,
Gajanan Maharaj Temple,
Aurangabad, Maharashtra 431003. = **RESPONDENT**

Mr.Rahul R.Totala, Advocate for petitioners;
Mr.Amit A.Yadkikar, Advocate for Respondent.

CORAM : PRITHVIRAJ K.CHAVAN,J.

RESERVED ON : 01/03/2022

PRONOUNCED ON : 17/03/2022

PER COURT :-

1. By this petition, the petitioner has made
the following substantive prayers :-

"a) The Writ Petition may kindly be
allowed;

b) This Hon'ble Court be pleased to
issue an appropriate writ, order or

direction declaring continuation of the Arbitration Proceedings (captioned *M/s Linear Enterprises V. Maha Active Engineers Private Limited*) without deciding the petitioner's application dated 29th November, 2021, is contrary to law;

c) This Hon'ble Court be pleaded to issue an appropriate writ, order or direction quashing and setting aside the impugned orders dated 9th December, 2021 and 13th January, 2022 passed by the Arbitral Tribunal;

d) This Hon'ble Court be pleased to issue an appropriate writ, order or direction directing the Arbitral Tribunal to decide the Interim Application dated 29th November, 2021 filed by the petitioner;

e) Pending the hearing and disposal of this petition, this Hon'ble Court shall direct the Arbitral Tribunal to grant oral hearing to the petitioner on the Interim Application dated 29th November, 2021 filed by the petitioner."

2. Shorn of unnecessary details, relevant facts, germane for disposal of this petition, can be summerized thus :-

A) The present petitioner (original respondent) and the present respondent (original claimant) are parties to the arbitration proceedings initiated by the respondent, which are pending before the Arbitral Tribunal comprising of

one Presiding Officer and two Co-Arbitrators.

B) Feeling aggrieved with and dissatisfied by the impugned orders dated 9th December, 2021 and 13th January, 2022 passed by the Arbitral Tribunal on petitioner's application dated 29th January, 2021 under Section 16 of the Arbitration and Conciliation Act, 1996 (for short, the "Act"), thereby deferring the decision on the application without citing any reason and without giving hearing to the parties, the present petition has been preferred.

C) Somewhere in February 2015, the respondent, through one Mr. Veerendra Mangalge, claiming to be a proprietor of the respondent/Company, approached the petitioner by making a request to jointly bid for a tender floated by Maharashtra State Electricity Distribution Company Ltd. (for short, "MSEDCL") since the respondent was not fulfilling the tender qualifying conditions on his own and the petitioner, on the basis of its vast experience and resources for executing a turnkey project of such a

nature involved in the said tender floated by MSEDCL, could have qualified for the same.

D) A Memorandum of Understanding (MOU) dated 4th March, 2015 came to be executed between the parties for the purpose of participation in the tender process on various terms and conditions stated therein. The MOU was signed by Mr. Veerendra Mangalge on behalf of the respondent representing himself to be the proprietor of the respondent and one Mr. Sagar Vidolkar as the Director of the petitioner.

E) By a communication dated 14th May, 2015, in the form of letter of award, came to be issued to the joint venture of the petitioner and respondent by MSEDCL.

F) A dispute arose between the parties in the month of October 2020. The respondent, therefore, by its notice dated 20th December, 2020 invoked the Arbitration clause 18 of the MOU, pursuant to which, a three-member Arbitral Tribunal was constituted to adjudicate the dispute between

the parties. After conducting some meetings before the Arbitral Tribunal and after submitting the Statement of Claim by the respondent along with the document titled "Memorandum of Understanding" between *Maha Active Engineers Pvt. Ltd. And Linear Enterprises*, it was revealed to the petitioner that Mr. Veerendra Mangalge was not a proprietor of the respondent, but only a "Power of Attorney Holder." The petitioner was shocked and surprised due to this new revelation, which, according to him, is completely contrary to what was stated by the respondent earlier in the cause title as well as para 4 of the Statement of Claim.

3. It is the contention of the petitioner that the MOU signed by Mr. Veerendra Mangalge on 4th March, 2015 (containing an arbitration clause) on behalf of the respondent was without any authority either by virtue of being "Proprietor" or by virtue of "Power of Attorney holder" as the purported Power of Attorney dated 6th September, 2017 produced by the respondent himself was non-existent on the date of signing of the MOU on 4th March, 2015.

4. Thus, in short, it is the contention of the petitioner that the MOU purportedly containing the arbitration clause filed by the respondent along with SOC is a fabricated document with an additional signature fraudulently forged on a MOU originally signed on 4th March, 2015 by Mr. Veerendra Mangalge on behalf of the respondent. According to the petitioner, the Power of Attorney dated 6th September, 2017 purportedly issued by one Mrs. Manisha Guruling Panchakshari in faovur of her husband viz. Mr. Veerendra Mangalge, is nothing but a fraud committed by the respondent.

5. As such, the petitioner contends that the Atbitral proceedings cannot continue for want of jurisdiction to the Arbitral Tribunal, which was constituted on the basis of invalid Arbitration agreement.

6. The petitioner, therefore, moved an application before the Tribunal on 29th November, 2021, seeking termination of the Arbitral proceedings under Section 16 of the said Act. The petitioner made a request to the Tribunal for

hearing on the said application in covering e-mail dated 29th November, 2021 as well as prayer clause (e). The petitioner raised mainly following three grounds, :-

I) Signing of documents by Mr. Veerendra Mangalge on behalf of the claimant (Respondent herein) without valid authority;

II) Filing of fraudulently fabricated document by the Claimant (Respondent herein) at Annexure-C-1 along with Statement of Claims on 31.7.2021; and

III) Lack of jurisdiction to Hon'ble Tribunal to adjudicate in present proceedings.

The petitioner vehemently contends that this aspect goes to the root of the matter and thereby completely vitiates the whole proceedings. He, therefore, requested for terminating the proceedings as the Arbitral Tribunal does not have jurisdiction.

7. On 9th December, 2021, by the impugned order, the Tribunal observed thus, -

"Read the application dated 29.11.2021 and the reply received through email from Advocate Shri Amit Yadkikar dated 1.12.2021. the Arbitrators have considered the matter and consulted each other by telephonic communication. Considering the nature of the application

the tribunal thinks it fit to decide the application along with the main proceeding. In the meantime, time for filing rejoinder / sur-rejoinder has expired. It therefore needs to be extended. The respondent is given further time of 8 days from today to file rejoinder / sur-rejoinder. The respondent to file rejoinder / sur-rejoinder by 18th December, 2021."

8. The petitioner contends that the Tribunal has committed a grave error in not citing any reasons while passing the impugned order and has, therefore, failed to comply with the mandate under Section 16 of the Act.

9. The petitioner thereafter moved a Review Application dated 14th December, 2021, seeking review of order dated 9th December, 2021 on the following grounds, -

"a) Although, Hon'ble Tribunal has stated to have considered both the Respondent's application and reply of the Claimant, no reason has been cited to arrive at a decision that "the tribunal thinks it fit to decide the Application along with the main proceedings"

b) No hearing is conducted by the Hon'ble Arbitral Tribunal on the said Application despite Respondent (Present Petitioner) making a specific request as required under proviso to Section 24(1) of the Arbitration and Conciliation Act, 1996.

c) As per Section 16(5) of the Act, the Tribunal is required to DECIDE the objection before continuing with the proceedings.

d) Hearing would help the Tribunal for arriving at judicious decision."

10. The Arbitral Tribunal, by an order dated 20th December, 2021, informed the parties that oral hearing is fixed on 7th January, 2022 on the review application filed by the petitioner by keeping the issue of maintainability of review open. On 7th January, 2022, oral hearing was conducted by the Arbitral Tribunal only in respect of review application filed by the petitioner, resulting into passing of the impugned order dated 13th January, 2022.

11. I have heard Mr. Totala, learned Counsel for the petitioner and Mr. Yadkikar, learned Counsel for the respondent at great length.

12. At the outset, Mr.Totala vehemently urged that the Tribunal ought to have heard the application dated 29.11.2021. The order dated 9.12.2021 was passed without giving any opportunity

of hearing to the parties. It is a specific case of fraud and forgery and, therefore, prejudice has been caused to the petitioner by not granting him an opportunity of being heard while passing the order dated 9.12.2021. In support, Mr. Totala has placed reliance on four authorities, which shall be dealt with at the appropriate stage.

13. Mr.Yadakikar on the other hand, while strongly objecting the prayer of the petitioner submitted that why plea of forgery had not been raised by the petitioner at the very first opportunity. According to Mr.Yadakikar, it is a ploy to delay the arbitration proceedings. It was not necessary for the Arbitral Tribunal to assign reasons while passing an order on 9.12.2021. The Tribunal has simply decided to take up an issue of maintainability of the arbitration proceedings and the application dated 29.11.2021 along with the main matter. As such, no prejudice has been caused in respect of rights of any of the parties before the Arbitral Tribunal. He invited my attention to the fact that there was no prayer for early hearing in the application dated 29.11.2021, as no reasons

are required to be given at that stage. The Tribunal has not rejected the application of the petitioner. The Counsel has, therefore, cited two judgments.

14. Before advertng to the impugned orders, it would be advantageous to consider the observations of the Hon'ble Supreme Court in case of Punjab State Power Ltd. Vs. Emta Coal Ltd. (arising out of SLP (C) No.8482/2020) as regards the powers of Constitutional Courts to interfere in the orders passed by an Arbitral Tribunal. Relevant portion is extracted below, -

"We are of the view that a foray to the writ Court from a section 16 application being dismissed by the Arbitrator can only be if the order passed is so perverse that the only possible conclusion is that there is a patent lack of inherent jurisdiction. A patent lack of inherent jurisdiction requires no argument whatsoever – it must be the perversity of the order that must stare one in the face. Unfortunately, parties are using this expression which is in our judgment in Deep Industries Ltd., to go to the 227 court in matters which do not suffer from a patent lack of inherent jurisdiction. This is one of them. Instead of dismissing the writ petition on the ground stated, the High Court would have done well to have referred to our judgment in Deep Industries Ltd. and dismiss the 227 petition on the ground that there is no such perversity in the

order which leads to a patent lack of inherent jurisdiction. The High Court ought to have discouraged similar litigation by imposing heavy costs. The High Court did not choose to do either of these two things. In any case, now that Shri Vishwanathan has argued this matter and it is clear that this is not a case which falls under the extremely exceptional category, we dismiss this special leave petition with costs of Rs.50,000/- to be paid to the Supreme Court Legal Services Committee within two weeks."

15. It is manifest that the impugned orders passed by the Arbitral Tribunal do not suffer from a patent lack of inherent jurisdiction. Rather, the issue is yet to be decided. However, it is explicit that this Court cannot invoke its jurisdiction under Article 227 of the Constitution of India. The ratio laid down in **Punjab State Power Ltd. Vs. Emta Coal Ltd.(supra)** is quite clear in that regard.

16. In case of **McDermott International Inc. Ltd. Vs. Burn Standard Co.Ltd. - (2006) 11 SCC 181,** one of the issues before the Hon'ble Supreme Court was, whether Arbitral Tribunal in the light of Section 16(5) of the Act, postponed the decision in the plea ? It was observed thus,

"51. After the 1996 Act came into force, under Section 16 of the Act the party questioning the jurisdiction of the arbitrator has an obligation to raise the said question before the arbitrator. Such a question of jurisdiction could be raised if it is beyond the scope of his authority. It was required to be raised during arbitration proceedings or soon after initiation thereof. The jurisdictional question is required to be determined as a preliminary ground. A decision taken thereupon by the arbitrator would be the subject matter of challenge under Section 34 of the Act. In the event the arbitrator opined that he had no jurisdiction in relation thereto an appeal there against was provided for under Section 37 of the Act.

52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

17. Mr. Totala has placed reliance upon following four judgments, -

a) SREI Infrastructure Vs. Tuff Drilling Private Ltd. - (2018) 11 SCC 470;

b) Sant Lal Gupta & Ors. Vs. Modern Cooperative Group Housing Limited and Ors. - (2010) 13 SCC 336;

c) Rakesh Kumar Vs. State of H.P. and Ors. - MANU/HP/0055/2004;

D) Surendra Kumar Singhal and Ors. Vs. Arun Kumar Bhalotia and Ors. - 2021 SCC Online Del 3708.

18. In case of ***Srei Infrastructure (supra)***, the claimant had failed to submit the claim within a stipulated period. The Arbitral Tribunal, therefore, terminated the proceedings. The question before the Court was about the applicability of Sections 23 and 25 of the Act. It was, inter alia, observed that, the Arbitral Tribunal had jurisdiction to re-call its earlier order. It is also observed that power of review has to be expressly conferred by a statute. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, such an inherent power is there in every Court or Tribunal. The ratio laid down, in my humble opinion, would not be of any assistance to the question raised before this Court. In the case

at hand, I do not find any prejudice being caused to the petitioner as the point is kept open by the Tribunal. What has been done is that only the hearing on an application has been deferred. Moreover, the act does not provide express powers of review.

19. In case of Sant Lal Gupta (supra) it has been stated that under three circumstances, the reasons are required to be given, viz. i) while deciding an issue, ii) while coming to any conclusion and iii) while disposing of the case.

. In the impugned order dated 9.12.2021, none of the three elements exist and the Tribunal has not decided on any of the aforesaid points. The application has neither been rejected nor allowed and, therefore, I do not feel any reasons were required to be assigned by the Tribunal.

20. In case of Rakesh Kumar (supra), it has been observed that the Tribunal is obliged to grant oral hearing at an appropriate stage of the proceedings. If a request is made by either of the parties, oral hearing shall be given. Here, in

this case, on an application dated 29.11.2021, no prayer for oral hearing was made. Since no prayer to that effect has been made in the substantive application, there was no question of giving oral hearing, that too, when the hearing was only deferred. This ratio will also be not helpful to the petitioner.

21. Lastly, in case of Surendra Kumar Singhal (supra), it has been observed that the Tribunal has to decide the issue of jurisdiction at the earliest. However, it has further been clarified that there is no hard and fast rule as to when it should be decided, which should depend upon the facts and circumstances of each case. The Tribunal has full power and liberty to decide the jurisdictional issue under Section 16 of the Act as early as possible as a preliminary ground. The issue of jurisdiction can be decided on the basis of admitted documents on record. The Tribunal could consider framing a preliminary issue and deciding the same as soon as possible. The Tribunal, if required, may ask for adducing evidence before it by the parties.

22. In the case at hand, it appears that the stage of admission or denial of the document is yet to reach. The points of determination have not yet been submitted by the parties after completion of their pleadings. It also appears from the record that it has already been decided not to lead any oral evidence except the documents on record and lastly no prejudice would be caused if the issue involved is decided at later stage.

23. The learned Tribunal has, therefore, rightly observed that only two or three stages are remained to be approached and, therefore, the ratio laid down in this case also would not be any assistance to the petitioner.

24. As such, I do not find any reason to interfere with the impugned orders passed by the Arbitral Tribunal by invoking supervisory jurisdiction of this Court. Consequently, the petition being devoid of merits, stands dismissed.

(PRITHVIRAJ K.CHAVAN)
JUDGE

BDV