



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(111)

CM-3931-LPA-2024 in/and
LPA NO.1668 of 2024(O&M)
DATE OF DECISION: 22.08.2024

M/s Ericsson India Pvt. Ltd. and anotherAppellants

VERSUS

State of Punjab and othersRespondents

CORAM HON’BLE MR. JUSTICE G. S.SANDHAWALIA
HON’BLE MRS. JUSTICE MEENAKSHI I.MEHTA

Present Mr.B.R.Rana, Sr. Advocate,
with Mr. Sahil Khunger and
Mr. Kapil Kher, Advocates, for the appellants.

G.S.SANDHAWALIA, J (ORAL)

CM-3931-LPA-2024

Application is for condonation of 35 days delay in filing the appeal.

For the reasons mentioned in the application, delay of 35 days in filing
the appeal is condoned.

CM stands allowed.

CM-4197-LPA-2024

Application is for placing on record the objections filed under Section
34 of the Arbitration & Conciliation Act, 1996 along with Annexure P-7.

Objections filed under Section 34 of the Arbitration & Conciliation Act,
1996 along with Annexure P-7 are taken on record.

CM stands disposed of.

LPA-1668-2024(O&M)

Challenge in the present Letters Patent Appeal is to the order dated
13.05.2024, passed by learned Single Judge in CWP No.10935 of 2024, titled M/s
Ericsson India Private Ltd. and another v. State of Punjab and others, wherein the

Award dated 05.01.2024 passed by the District Micro and Small Enterprises



Facilitation Council, SAS Nagar, whereby the Claim Petition No.245 of 2022 instituted by the respondent no.3 against the appellant herein had been decided, was subject matter of challenge.

2. Learned Single Judge dismissed the petition primarily placing reliance upon the judgment of Apex Court in **M/s. Radha Krishan Industries versus state of Himanchal Pradesh and others 2021 (6) SCC 771** by holding that once the remedy is prescribed under the statutory scheme, the Writ Court jurisdiction cannot be invoked. It was also noticed that Objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996') had already been preferred before the competent Court of law and therefore, by recording a finding that two remedies cannot be resorted to at the same time and the Writ Court would not exercise its jurisdiction.

3. It was also noticed that if a person has opted to pursue his remedies under a specific statute, he cannot be permitted to switch at his convenience in a bid to fish favourable forum and therefore, this would not only have chaotic effect on judicial discipline but is also likely to give premium to a mischievous litigant.

4. We have perused the objections which has been filed under Section 34 of the Act of 1996 at the High Court of Delhi. Perusal of paragraph no.9 of the said objections dated 01.04.2024, would go on to show that it is specifically mentioned that the appellants are contemplating filing a writ petition against the said Award which has been passed without following the process of law. The Writ Petition herein before the learned Single Judge though dated 12.03.2024 was only filed and scanned on 08.05.2024 after the petition had been preferred in the Delhi High Court. The advance copy was given to the State of Punjab on 26.04.2024 as per the Diary No.7280 dated 26.04.2024. There is a mention in the Writ Petition at that point of time that petitioner had not filed any petition before any other Court against the Award in question which is the subject matter in challenge. In support thereof, the affidavit of



Mr. Vishal Garg, authorized representative, who also appended his affidavit in the petition under Section 34 of the Act of 1996.

5. Thus, the said factual aspect only confirms the findings of the learned Single Judge that the appellants are keeping their options open to seek favourable consideration in all possible forums knowing that there is statutory remedy and having preferred it and filed it prior in point of time.

6. Section 34 of the Act of 1996 is very categorical that the arbitral awards which deal with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or if it contains decisions on matters beyond the scope of the submission to arbitration can be interfered with apart from other grounds. Once the appellants have preferred a Objection Petition under Section 34 of the Act of 1996 and availed the remedy before the Delhi High Court, the question of filing a writ petition does not arise. The law regarding the aspect that once an alternate remedy is provided in the statute, the Writ Court jurisdiction cannot be invoked stands settled in **United Bank of India vs. Satyawati Tondon and others, (2010) 8 SCC 110**, whereby the legal principles have been laid down, which read thus:-

“30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always



required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further,empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law."

7. In Civil Appeal No.7491 of 2023 (Arising out of SLP(C) No.9899 of 2023) titled **M/s India Glycols Limited and Another v. Micro and Small Enterprises Facilitation Council, Medchal-Malkajgiri and others**, decided on 06.11.2023, similar issue was also involved whereby Award of the Facilitation Council was challenged by filing a petition under Sections 226/227 of the Constitution of India. The Division Bench had set aside the judgment of the learned Single Judge and held that the appellant ought to have taken recourse to the remedy under Section 34 of the Act of 1996. The matter was taken to the Apex Court and the petition was dismissed on the ground that once there was statutory remedy under Section 34 of the Act of 1996, the writ jurisdiction could not be invoked.
8. Resultantly, we do not find any plausible ground to interfere in the well reasoned order dated 13.05.2024,passed by the learned Single Judge. Present petition is accordingly dismissed.
9. Pending applications, if any, shall stand disposed of along with this judgment.

(G.S.SANDHAWALIA)
JUDGE

22.08.2024
mamta

(MEENAKSHI I.MEHTA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes