



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.6670/2024

Municipal Council, Bhandara
Through its Chief Officer, Santaji Nagar,
Bhandara, (Mah) 441904

... PETITIONER

...VERSUS...

J.H. Construction Pvt. Ltd, Nagpur
Through its Director Shri Nandkumar
Harchandani, 1st Floor, B, Poonam
Chambers, Byramji Town, Chhindwara
Road, Nagpur 440013

...RESPONDENT

Shri M.P. Khajanchi, Advocate with Shri M.I. Dhattrak, Advocate for petitioner
Shri A.S. Dabadghao, Advocate for respondent

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 16/01/2025

DATE OF PRONOUNCING THE JUDGMENT: 30/01/2025

JUDGMENT

. Heard learned Counsel for petitioner and learned
Counsel for respondent.

2. The respondent filed his reply. By way of this reply,

preliminary objection is raised by the respondent that petition is not maintainable. It is contended that in view of the scheme of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Arbitration Act'), does not permit challenge to the interlocutory orders under Article 226/227 of the Constitution of India. It is submitted that the Hon'ble Apex Court has time and again emphasized that except where Section 37 specifically provides a right of appeal, the aggrieved party must await for the final award to raise challenges to interim orders. Such challenges can then be raised in proceedings under Section 34 of the Arbitration Act. The Arbitral Tribunal being a forum chosen by parties through agreement, must be allowed to function without premature judicial intervention.

3. The primary challenge of the petitioner relates to the learned Arbitrator's decision to exhibit certain documents of the answering respondent, subject to the petitioner's objections, to be decided at the time of final hearing. It is contention of the petitioner that those objections ought to have been decided then and there only. It is further contention that the objections were duly

raised by the petitioner.

4. The Arbitrator exhibited the documents and it was directed that objections will be heard at the time of final hearing. Most important fact is that even photocopy of Audit Report is marked as Exhibit- 50, as such, it demonstrates the arbitrary, unlawful and erroneous decision making process, which petitioner challenge in this petition.

5. It is contended that when specific objection is raised that Audit Report below Exhibit-50 is marked as exhibit, it was brought to the notice to the Arbitrator that the original of the Audit Report is not filed and that the Author of the document is also not examined then it was the jurisdictional obligation of the learned Arbitrator to apply mind and should have refrained from exhibiting the documents which needs interference by this Court.

6. As against this contention of the respondent is that in view of Section 19 of the Arbitration Act, expansive discretion is given to the Arbitral Tribunal in conducting the proceedings is

granted. Section 19(1) explicitly provides that the Arbitration Tribunal shall not be bound by the Code of Civil Procedure, or the Indian Evidence Act. However, Section 19(3) specifically empowers the Arbitration Tribunal to conduct the arbitration in such manner as it considers appropriate, including the power to determine the admissibility, relevance, materiality and weight of any evidence. It is submitted that the learned Arbitrator's decision to exhibit documents while reserving objections falls squarely within the statutory discretion and is aimed at ensuring efficient conduct of proceedings.

7. It is submitted by the learned Counsel for respondent that the petitioner is having opportunity to argue on the same objection as decision on objection deferred at the time of final hearing, as all grounds of challenge remain available. Moreover, the final award can be challenged under Section 34 of the Arbitration Act.

8. The learned Counsel for petitioner relied on *L. Chandra Kumar Vs. Union of India and others (1997) 3 SCC 261*, in

support of his contention that the review is a basic and essential feature of the Constitution of India. In ***L. Chandra Kumar (supra)***, the Hon'ble Supreme Court held as under:

“To express our opinion on the issue whether the power of judicial review vested in the High Courts and in the Supreme Court under Articles 226/227 and 32 is part of the basic structure of the Constitution, we must first attempt to understand what constitutes the basic structure of the Constitution. The doctrine of basic structure was evolved in Kesavananda Bharati case. In Kesavananda Bharati case a thirteen-Judge Constitution Bench, by a majority of 7:6, held that though, by virtue of Article 368, Parliament is empowered to amend the Constitution, that power cannot be exercised so as to damage the basic features of the Constitution or to destroy its basic structure. The identification of the features which constitute the basic structure of our Constitution has been the subject-matter of great debate in Indian Constitutional law. The difficulty is compounded by the fact that even the judgments for the majority are not unanimously agreed on this aspect. The aspect of judicial review does not find elaborate mention in all the majority judgments. Kesavananda Bharati case did not lay down that the specific and particular features mentioned in that judgment alone would constitute the basic structure of our Constitution.”

9. Learned Counsel for petitioner also relied on Full

Bench decision of this Court in ***Hemendra Rasiklal Ghia Vs. Subodh Mody 2008(6) Mh.L.J.***, in support of his contention that objection raised to the exhibition of the documents itself ought to be decided then and there only, wherein Full Bench of this Court held as under:

“75. If the objection to the proof of document is not decided and the document is taken on record giving tentative exhibit, then the right of the cross-examiner is seriously prejudiced. Once the document is used in cross-examination, then the document gets proved and can be read in evidence as held by the Supreme Court in the case of *Ram Janki Devi vs. Ms Juggilal Kamlapat*, 1971 (1) SCC 477. If the cross-examiner decides not to cross-examine based on unexhibited document and, ultimately, at the fag end of the trial, the document is held to be admissible and proved, then, the cross-examiner as a rule of fair play would be entitled to further opportunity to cross-examine based on that document resulting in delayed trial defeating the very object and purpose of the amendment to the Civil Procedure Code.”

10. Learned Counsel for petitioner also relied on ***Shri Guru Gobind Singhji Institute of Engineering and Technology Vs. M/s. Kay Vee Enterprises, through its Proprietor Chandrashekhar Reddy in Writ Petition No.9868/2024***, at Aurangabad Bench, wherein this

Court relied on the judgment of *L. Chandra Kumar (supra)* held as under:

“27. Considering the legal position as discussed above by following the judgment in L. Chandra Kumar (supra), we are of the considered view that our jurisdiction under Article 227 is not excluded from examining the validity of the interlocutory orders for which prayers are made in paragraph 37 (a) to paragraph 37(g).”

11. In the reply, the learned Counsel for respondent relied on *Hindustan Alloys Pvt. Ltd. Vs. Maa Sheetla Ventures Limited in Writ Petition (C) No.10561/2024* of Delhi High Court, wherein reliance is placed on the citation of *Bhaven Construction Vs. Executive Engineer Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75*, wherein it is held that:

“It clearly indicates that while exercising writ jurisdiction, the Court must consider the nature of challenge and also of the nature of the impugned order. Moreover, in the opinion of the Court, this already circumspect scope of interference under Article 226 becomes even narrower when it is an order of the Arbitral Tribunal in relation to the conduct of arbitration proceedings that is called into question”.

12. Learned Counsel for respondent also relied on judgment of this Court in ***Inox Leisure Limited Vs. Indo Pacific Project Ltd., in Writ Petition No.798/2020***, wherein reliance is placed on the judgment of the Hon'ble Apex Court in ***SBP & Co. Vs. Patel Engineering Ltd. & Anr. (2005) 8 SCC 618***, wherein legal position is settled as under:

“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 his 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, the 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 minimizing 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.”

13. Learned Counsel for respondent also relied on ***SBP & Co. (supra)***, wherein in paragraph No.142, the conclusions are recorded. The said judgment is mainly on the point of power of Chief Justice under Section 11(6) of the Act. In the said judgment, observation in paragraph No.142 is as under:

“142. (i)...

(viii) While exercising extraordinary jurisdiction under Article 226 of the Constitution, however, the High Court will be conscious and mindful of the relevant provisions of the Act, including Sections 5, 16, 34 to 37 as also the object of the

legislation and exercise its power with utmost care, caution and circumspection.”

14. In view of the legal position, in my considered opinion, considering the facts that the document is merely exhibited and parties are free to argue on its admissibility in evidence at the time of final hearing kept challenge open. As such, impugned orders passed by the Arbitral Tribunal is an interlocutory order, which cannot be challenged in writ petition under Article 227 of the Constitution of India. In view of this matter, the writ petition is not maintainable and the same is dismissed as such.

15. However, it would be earnest request to the Arbitrator that to consider paragraph No. 75 of Full Bench Decision in *Hemendra Rasiklal Ghia (supra)*, which expects the objection to be decided then and there only. Though it is a discretion of Arbitrator to adopt this procedure and C.P.C. or evidence may not be applicable, however, it would be appropriate to avoid serious prejudice being caused to either of the party.

16. At this juncture, learned Counsel for petitioner requests to continue the interim arrangement as per order dated 14.11.2024. The same shall be extended for another 8 weeks.

(Smt. M.S. Jawalkar, J.)

R.S. Sahare