
CASE COMMENT: MANISH ANAND AND OTHERS V. FITJEE LTD.

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Citation: 2018 SCC Online Del 7587

Date: 21 February, 2018

Court: High Court Of Delhi

Coram: HON'BLE MR. JUSTICE NAVIN CHAWLA

INTRODUCTION:

The mandate of the Sole Arbitrator was challenged in this case under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "*the Act*") on two grounds.

1. The unilateral appointment of the Arbitrator by the respondent.
2. The Arbitrator had not given proper disclosure as required under Section 12(1) of the Act.

BACKGROUND:

An arbitration agreement was come in into by the parties according to which the Respondent unilaterally allotted the sole Arbitrator to arbitrate upon the disputes that took place between them. The Arbitrator made a disclosure to observe with independence and impartiality under Section 12(1) of the Act, even if not in the form stipulated in the Sixth Schedule. The petitioner contended that the arbitration agreement, so far as it vested the influence in the respondent to unilaterally hire the sole Arbitrator, was null. The 5 petitioner further contended that the authorization of the Arbitrator should be concluded as the disclosure made by him was not in the approved format. Therefore, this petition was filed under section 11 of the Act to cease the authorization of the Arbitrator.

FACTS:

1. The appellant and the respondent entered into an arbitration agreement wherein the respondent unilaterally appointed a sole arbitrator to settle disputes that arose between them.
2. The arbitrator made a disclosure of independence and impartiality under s. 12(1) of the act.
3. However, this disclosure was not in the prescribed manner as in the Sixth schedule.
4. The Petitioner under s. 11 of the Arbitration and Conciliation has contended that in the absence of a proper disclosure the petition should be maintainable.
5. The Petitioner has contended that Arbitration Agreement entrusts power only in the respondent to unilaterally appoint a sole arbitrator is invalid and unenforceable.

ARBITRATION:

1. The Arbitration Agreement between the parties is contained in Clause 21(a) of the "Supplementary Rules for the Employees of FIITJEE", which is reproduced herein under:-

"21(a) All disputes and differences of any nature with regard to FIITJEE service manual and the interpretation & adjudication of clauses and claims respectively shall be referred to the Sole Arbitrator appointed by the company i.e. FIITJEE. The arbitration proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act 1996 and statutory modifications thereof and rules made thereunder. The award of Arbitrator shall be final and binding on both the parties. The award of the Arbitrator shall be final and binding on every matter arising hereunder. It is further agreed that in spite of the fact that the Sole Arbitrator may be known to any of the Directors or shareholders and that he may have been dealing with the company or had occasion to deal with any matter of this agreement shall not disqualify him. Even if the Arbitrator may have expressed opinion in similar matter earlier shall also not render him disqualified. The venue of the arbitration shall be Delhi / New Delhi only."

2. It is the contention of the petitioner that the Arbitration Agreement, so far as it vests power in the respondent to unilaterally appoint a Sole Arbitrator for adjudicating the disputes between the parties is unenforceable and in valid. I have already rejected the said contention in judgment pronounced today in OMP (T) (COMM) 101/2017 Bhayana Builders Pvt. Ltd. vs. Oriental

Structural Engineers Pvt. Ltd. and for the reasons recorded therein I am unable to agree with the submissions made by the petitioner.

3. It is further contended by the counsel for the petitioner that the Arbitrator so appointed by the respondent has not given his disclosure in ARB.P. Nos.654-659/2017 & 814/2017 Page 2 terms of Section 12(1) of the Act and therefore, he is de jure ineligible to proceed with the arbitration.

ISSUES:

1. Whether the appointment of a sole arbitrator unilaterally made by a party invalid and unenforceable in law?
2. Whether the sole arbitrator needs to be terminated if he has not made a disclosure in the prescribed manner?
3. Whether the court has jurisdiction to exercise its power in this case?

JUDGEMENT:

The court relied on *Bhayana Builders Pvt. Ltd. vs. Oriental Structural Engineers Pvt. Ltd.* to rule that the appointment of an arbitrator is not invalid unenforceable in law on the ground that he was unilaterally appointed by the respondent as the appointment was made with the agreement of both parties.

The court relied on the 246th Law Commission Report and states that under the provisions of the commission report it cannot be inferred that non-disclosure of the arbitrator would lead to a natural termination. The court held that in the present case the improper disclosure by the sole arbitrator would not lead to automatic termination. The court also gave reliance on the decision in the case of *HRD Corporation v. Gail (India) Ltd* where it was held that incomplete disclosure would not determine the appointment of the arbitrator invalid.

The court gave reliance on the judgment of *Indian Oil Corporation Ltd. V. Raja Transport Pvt. Ltd* and ruled that in the present scenario the Arbitrator has been appointed in agreement with the procedure accepted by both the parties in the arbitration agreement. Thus, the court does not have the jurisdiction to exercise its power in the present case.

The court aside that the petitioner's reliance on *Dream Valley Farms Private Ltd. & Another. v Religare Finevest Ltd. & Others* was mislaid. In the said judgment, the Arbitrator's disclosure was ex-facie deceptive as divergent to the present case where the disclosure was not in the approved format.

Thus, the court held that however, the disclosure given by the arbitrator was not in the approved format, it unveiled the fundamental aspect of independence and neutrality.

ANALYSIS:

The authority of the arbitrator was challenged in the present case on the grounds that the sole arbitrator was unilaterally appointed by respondents and he has not made a proper disclosure as prescribed in the sixth schedule. However, the judgement explained that a sole arbitrator cannot be terminated merely on the ground that he was unilaterally appointed by one party. It also ruled that improper disclosure by the arbitrator does not make a ground for his termination.

AFTERMATH OF JUDGMENT:

The judgment elucidates that an inappropriate disclosure would not provide the arbitrator disqualified or de jure incompetent of proceeding with the arbitration. Hence, the authorization of the Arbitrator could not be ended merely on the ground that the disclosure requirements under Section 12(1) of the Act were not in the format prescribed under the Sixth Schedule.

1. Appointment of a sole arbitrator unilaterally made by a party is not invalid and unenforceable in law.
2. the sole arbitrator does not need to be terminated if he has not made a disclosure in the prescribed manner.
3. the court did not have jurisdiction to exercise its power in this case.