

Hindustan Construction Company Ltd. Vs. NHPC Ltd. & Anr.

Transfer Petition (C) No. 3053 of 2019
2020-01-01 | R.F. Nariman, J.
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Full judgment text

Hindustan Construction Company Ltd. Vs. NHPC Ltd. & Anr.

[Transfer Petition (C) No. 3053 of 2019]

[Civil Appeal No. 1987/2020 arising out of Special Leave Petition (C) No. 402/2020)]

[Transfer Petition (C) No. 7/2020]

[Transfer Petition (C) No. 10/2020]

R.F. Nariman, J.

[Special Leave Petition (C) No. 402/2020:]

1) Leave granted.

2) We have heard learned counsel appearing for the parties.

3) By an order dated 14.11.2019 passed by the learned Additional District Judge-cum-Presiding Judge, Special Commercial Court at Gurugram in Arbitration Case No. 252 of 2018, the learned Judge on construing the arbitration clause in the agreement between the parties arrived at the finding that the seat of arbitration was at New Delhi.

Yet, by virtue of Bharat Aluminium Company and Ors. vs. Kaiser Aluminium Technical Services, Inc. and Ors. (2012) 9 SCC 552 since both Delhi as well as the Faridabad Courts would have jurisdiction as the contract was executed between the parties at Faridabad, and part of the cause of action arose there, and since the Faridabad Court was invoked first on the facts of this case, Section 42 of the Arbitration Act would kick in as a result of which the Faridabad Court would have jurisdiction to decide all other applications.

4) This Court in Civil Appeal No. 9307 of 2019 entitled BGS SGS Soma JV vs. NHPC Ltd. delivered a judgment on 10.12.2019 i.e. after the impugned judgment was delivered, in which reference was made to Section 42 of the Act and a finding recorded thus:

"61. Equally incorrect is the finding in Antrix Corporation Ltd. (supra) that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of Courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one Court exclusively.

This is why the section begins with a non-obstante clause, and then goes on to state "...where with respect to an arbitration agreement any application under this Part has been made in a Court..." It is obvious that the application made under this part to a Court must be a Court which has jurisdiction to decide such application.

The subsequent holdings of this Court, that where a seat is designated in an agreement, the Courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the Court where the seat is located, and that Court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no "seat" is designated by agreement, or the so-called "seat" is only a convenient "venue", then there may be several Courts where a part of the cause of action arises that may have jurisdiction.

Again, an application under Section 9 of the Arbitration Act, 1996 may be preferred before a court in which part of the cause of action arises in a case where parties have not agreed on the "seat" of arbitration, and before such "seat" may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest application having

been made to a Court in which a part of the cause of action arises would then be the exclusive Court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts in this regard is incorrect and is overruled.

"5) This was made in the backdrop of explaining para 96 of the Balco (supra), which judgment read as a whole declares that once the seat of arbitration is designated, such clause then becomes an exclusive jurisdiction clause as a result of which only the courts where the seat is located would then have jurisdiction to the exclusion of all other courts.

6) Given the finding in this case that New Delhi was the chosen seat of the parties, even if an application was first made to the Faridabad Court, that application would be made to a court without jurisdiction. This being the case, the impugned judgment is set aside following BGS SGS Soma JV (supra), as a result of which it is the courts at New Delhi alone which would have jurisdiction for the purposes of challenge to the Award.

7) As a result of this judgment, the Section 34 application that has been filed at Faridabad Court will stand transferred to the High Court of Delhi at New Delhi. Any objections taken on the ground that such objection filed under Section 34 is out of time hence cannot be countenanced. The appeal is disposed of accordingly.

[Transfer Petition (C) Nos. 3053/2019, 7/2020 & 10/2020:]

8) On the facts of each of these cases, the finding of the courts is that the seat has been designated as New Delhi. This being the case and in consonance with our judgment in BGS SGS Soma JV (supra), we transfer these Section 34 petitions to the High Court of Delhi at New Delhi.

9) The transfer petitions are allowed in the afore-stated terms.

[IA No. 34078/2020 in T.P. (C) No. 3053/2019 and IA No. 34079/2020 in T.P. (C) No. 10/2020:]

10) Status quo as of today will operate for a period of eight weeks from today. In the meanwhile, once the transferred cases are properly instituted in the Delhi High Court, it will be open for the respondents to move petitions under Section 36 of the Arbitration Act, which will then be disposed of on their own merits.

11) IAs stand disposed of accordingly.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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