Delhi Development Authority vs. Manohar Lal & Co.

Aparna Meduri
The parties to arbitration who attended the arbitration proceedings cannot subsequently question the authority of their arbitrator and make it a ground for objecting the award rendered by him.

Facts
The Delhi Development Authority (DDA) authorized Manohar Lal & Company vide Agreement No. 28/EE/ND-25/DDA/85-86 for development of land for industrial area in Mangol Puri Industrial Area. However, the agreement got rescinded on 23.01.1990 on grounds of dispute between the parties in completion of their contract. In terms of clause 25 of the agreement, the matter was referred to a sole arbitrator by the Engineer Member, DDA. There were series of sole arbitrators appointed before the Sh. Som Dutt, Sole Arbitrator, who finally made and published his award on 08.01.2002.

The parties to arbitration on being aggrieved with the aforesaid award filed objections in terms of section 34 of the Arbitration and Conciliation Act, 1996 (the Act, 1996) with the Delhi High Court for redressal.

Objections of the Parties
The Learned Counsel for the parties are conscious that the scrutiny in such objections shall be within the parameters of section 34(2) of the Act, 1996. The phrase ‘Public Policy of India’ used under Section 34 has been given a wider scope by including aspects of fundamental policy of Indian Law, the interest of India, justice or morality or the award being patently illegal, etc. Further, Section 34(2) of the Act, 1996 clearly stipulates various grounds on which an arbitration award can be set aside.

If the objections are analyzed within the aforesaid parameters, then most of the objections raised by the parties would not fall within the said parameters. However, some of the important objections raised by the Learned Counsel on behalf of the M/s. Manohar Lal & Co., Respondent, which are within the terms of Section 34 are:

- The reasons and the award issued by the Arbitrator on the basis of such reasons lack correlation. Because the Arbitrator on hearing the arguments of both the parties on each claim recorded the same in concise manner which the Respondent contends, does not suffice to exhibit the reasons as to why a particular claim has been partially accepted.

However, Mr. Manohar Lal Sethi, the sole proprietor of M/s. Manohar Lal & Co. did not want this objection to be stressed by his Learned Counsel because in case this objection is allowed then the whole award would be disregarded and the extent to which he has succeeded in this award would also be foregone.

1 Research Associate, Academic Wing (Law), ICFAI University
© 2006 The ICFAI University Press. All Rights Reserved.
• The important documents were ignored while adjudicating the dispute.

However, Mr. Manohar Lal Sethi did not also want this objection to be pressed by his Learned Counsel because he preferred the implementation of arbitration award at the earliest.

• The locus standi of the sole arbitrator in adjudicating and rendering of award is questioned. In terms of clause 25 of the Agreement, the dispute had to be referred to the sole arbitration of a person appointed by the Engineer Member, DDA. Further the designated authority shall appoint a person as arbitrator wherein the person must be named and the appointment cannot be by designation.

The Learned Counsel for M/s Manohar Lal & Co. did not raise this question before the Sole Arbitrator at the time of arbitration proceedings but has shown it as a ground of objection in the Objection Petition. He contends that this objection can even be taken at this stage because the acceptance and acquiescence of award is of no value.

Observations of the Court
The following are some of the important observations made by the Court:

• The position of law either under the earlier Act – Indian Arbitration Act, 1940 or the current Act, 1996 exhibits that the authenticity of the award shall not be looked into unless it is contrary to law, and no award shall be a matter of scrutiny in terms of absurdness or reasonableness.

In this case, the law was not questioned but the appointment of arbitrator was objected not before the sole arbitrator but as Ground in the Objection Petition.

• The identity of the arbitrator has to be determined with reference to the point of time when the reference was made. Whoever was holding that office on the date of reference was the arbitrator, although he was not named as such. [Union of India vs. Ch. Radhanath Nanda, AIR 1961 Orissa 143].

The arbitrator although named and described by his designation yet it refers to an individual since he was selected by the parties on the basis of his technical qualification. [Pratima Sarkar vs. Corporation of Calcutta, AIR 1973 Calcutta 434].

In this case, Engineer Member of DDA appointed Superintendent Engineer (Arbn) – I as Sole Arbitrator and the arbitration proceedings are carried out without any interruption from either of the parties to the case. Thus, the objector who continued to participate in the arbitration proceedings is thus to be precluded from challenging the locus standi of the arbitrator subsequently.

Court Judgment
On the basis of the above observations, the Delhi High Court held that both the objection petitions are liable to be dismissed leaving parties to bear their own costs.