

VERSUS

K.K.SARIN & ORS.

Respondents

O R D E R

We have heard learned Solicitor General for NHAI, the petitioner herein, and Dr. A.M. Singhvi, learned senior counsel for respondent No.4.

2. Certain disputes between fourth respondent and appellant were referred to the Arbitral Tribunal of which respondents 1,2 and 3 are the members.

3. The petitioner filed an application under Section 14 of the Arbitration & Conciliation Act, 1996 ('Act' for short) before the Delhi High Court seeking termination of the mandate of the Arbitral Tribunal. The learned Single Judge of the High Court, by the impugned order dated 9.4.2009, dismissed the said petition.

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4. The learned single Judge has expressed the view that the petitioner ought to have approached the Arbitral Tribunal under Section 13 of the Act before filing an application under Section 14 of the Act. The learned Single Judge also held that complicated question requiring appreciation of evidence in regard to the plea of bias cannot be decided in proceedings under Section 14 of the Act and will have to be left open, to be decided under Section 34 of the Act. He has therefore dismissed the petition without expressing any opinion on the plea of bias, but burdened the petitioner with costs of Rs.five lakhs.

5. The petitioner had raised two grounds before learned single Judge. The first related to the issue of fees to be paid to the members of the Arbitral Tribunal; and the second related to certain interim orders made by the Tribunal.

6. As far as the question of Arbitrator's fees is concerned, learned solicitor General submitted that issue has been sorted out and no longer survives for consideration.

7. The apprehension of the petitioner, that the Arbitral Tribunal may be biased in favour of the respondent, is based on certain interim orders of the

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Arbitral Tribunal and the manner in which they were made. We do not propose to consider the truth or otherwise of such apprehension, as the High Court has also not gone into it. All that we propose to notice is that if there is any procedural irregularity or error in the interim orders, it may be on account of wrong understanding of the procedure and law and are not necessarily proof of bias. The errors can be set right in appropriate proceedings. Errors of judgment or adoption of wrong procedure relating to hearing or making of interim orders, may not by themselves be sufficient to terminate the mandate of the Arbitrators on the ground of bias. Be that as it may.

8. In view of the above, we agree with the final decision of the High Court that the mandate of the arbitral tribunal need not be terminated. We do not propose to examine the correctness of the legal position enunciated by the High Court with reference to Section 13 vis-à-vis Section 14 and 34 of the Act or

the assumption made by the High Court that matters falling under Section 14 will also fall under Section 13 of the Act. We do not also propose to express any opinion on the question whether the ground of bias would be a ground for a party to approach the court under Section 14 of the Act. These questions are left open for decision in an appropriate case.

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9. The High Court has levied costs of Rs. Five lakhs. The procedure adopted by the Tribunal in passing some interim order/s, might have justifiably given room for some anxiety and apprehension in the minds of the officers of the petitioner. The High Court has not recorded any finding that the apprehensions of bias were baseless or that they were motivated. In the circumstances, the levy of such costs was not warranted.

10. The Special Leave Petition is therefore disposed of by deleting the direction for payment of costs. In the background of what has transpired, we do hope that the arbitral tribunal will proceed with the matter without giving room for any apprehension or anxiety to either party in regard to the impartiality and independence of the Arbitral Tribunal.

.....J.
[R.V.RAVEENDRAN]

NEW DELHI
DATED JULY 16, 2010

.....J.
[H.L. GOKHALE]