



ARB-111-2017(O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

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ARB-111-2017 (O&M)

Date of decision :29.05.2024

M/s Druckgrafen India Ltd.

... Petitioner

Vs.

State of Nagaland and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr.Sajal Koser, Advocate
for the petitioner.

Mr. Dheeraj Jain, Advocate with
Mr. Sahil Garg, Advocate
for the respondents.

SUVIR SEHGAL J.

1. This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') read with Scheme for Appointment of Arbitrators by the Chief Justice of Punjab and Haryana High Court, 2003.

2. Factual matrix leading to the filing of the petition is that an agreement dated 01.01.1997 Annexure P-2 was executed between the petitioner and the Governor of Nagaland through



respondent No.2 at New Delhi for printing of lottery tickets and clause 23 thereof, provides for appointment of an Arbitrator in case of any dispute or difference between the parties. Between 27.02.1997 to 31.03.1997, petitioner executed print orders to the extent of Rs.47,88,395/- and raised bills but respondents paid an amount of Rs.6 lacs and the balance amount of Rs.41,88,395/- remained pending, which was not paid despite repeated requests. Petitioner filed a writ petition (CWP-18704-1997) for directing the respondents to finalize the claim of the petitioner, but after contest the writ petition was dismissed by a Division Bench of this Court vide order dated 10.08.1999, Annexure P-4, holding that as the dispute has arisen out of the contractual obligations, it can more appropriately be settled in a civil court. Petitioner filed a suit for recovery before the District courts at Chandigarh, which was resisted by the respondents by filing an application under Order 7 Rule 11, CPC for rejection of the plaint. After considering the reply to the application filed by petitioner, trial Court by order dated 03.09.2011. Annexure P-8 treated the application as one under Order 7 Rule 10, CPC and returned the plaint to the petitioner for presentation to the court of appropriate territorial jurisdiction at Kohima. During the pendency of the suit, an application dated 27.07.2011, Annexure P-9, under Section 8 of the Act, was filed by the respondents for referring of the dispute to an Arbitrator but it remained undecided. An appeal preferred by the petitioner was



dismissed by the learned Additional District Judge, Chandigarh vide order dated 25.11.2014, Annexure P-10. Petitioner served a notice dated 25.11.2014, Annexure P-11, invoking the arbitration clause which was followed by another notice dated 14.01.2015, Annexure P-12. Respondents sent a reply dated 06.05.2015, Annexure P-13, stating that the civil Court at Kohima alone has the territorial jurisdiction and that M/s M.S.Associates are an integral part of an agreement and in their absence, there can be no reference of any dispute to an Arbitrator. A chain of letters were addressed by the petitioner before approaching this Court by filing the present petition.

3. Upon notice by this Court, respondents have filed a reply contesting the petition, wherein numerous objections have been taken. Respondents have submitted that the agreement was executed at New Delhi and the Court at Kohima has the exclusive jurisdiction to try the dispute between the parties. Besides objecting that M/s M.S.Associates has not been made a party, it has also been submitted that the person signing the petition, is not the authorized representative of the petitioner. Another objection has been taken that the petitioner had approached International Centre for Alternate Dispute Resolution by letter dated 12.01.2016 for appointment of an Arbitrator but the request was turned down. On merits, the respondents admitted the execution of the contract but they have denied the claim for payment.



4. Counsel for the petitioner has argued that the lottery tickets were printed at Dera Bassi, District SAS Nagar Mohali, and the invoices had been issued from Chandigarh. He submits that the entire chain of communication with the respondents had taken place from Chandigarh, therefore, this court has the territorial jurisdiction to decide the petition. He has placed reliance upon ***Cobra Cipl versus Chief Project Manager, 2019 SCC Online MP 3186*** to contend that where an agreement between the parties mentions about the venue, but not the seat, venue would determine the jurisdiction of the Court. Reference has also been made by him to ***Aarka Sports Management Pvt. Ltd. versus Kalsi Buildcon Pvt. Ltd., 2020 SCC Online Delhi 2077.***

5. Per contra, counsel for the respondents has relied upon ***Hakam Singh Versus M/s Gammon (India) Ltd. (1971)1 SCC 286;*** and ***B.E.Simoese Von Staraburg Niedenthal and another Vs. Chhatisgarh Investment Limited (2015)12 SCC 225*** and ***Brahmani River Pelletes Limited Versus Kamachi Industries Ltd. (2020) 5 SCC 462,*** to assert that in view of the ouster clause, the jurisdiction vests in the Courts at Kohima and this Court does not have the territorial jurisdiction to entertain the present petition.

6. I have heard counsel for the parties and considered their respective submissions besides examining the documents placed on the record with the pleadings.

7. The vexed question that has arisen from the rival



arguments of the counsel for the parties is as to whether this Court has the territorial jurisdiction to decide the instant petition filed under Section 11(6) of the Act?

8. At this stage, it would be pertinent to notice the relevant clauses in the agreement Annexure P-2, which are reproduced hereunder:-

"20. *This agreement has been finalized and executed at Nagaland and for the settlement of any dispute thereunder or relating thereunder, the Civil Court at Kohima only shall have the jurisdiction.*

21. *xxx xxx xxx*

22. *That any dispute or difference between the parties touching the agreement at the same time shall be referred for Arbitration as per the provisions of the Arbitration Act, 1940."*

9. As is evident from the above reproduction, the territorial jurisdiction has been vested in the Court at Kohima "only". The arbitration clause does not mention any place or seat or venue of Arbitration. In this situation, Court at Kohima, to the exclusion of all other Courts will have the jurisdiction to entertain this petition.

10. The impact of ouster clause in the agreement came up for adjudication before the Supreme Court in ***A.B.C. Laminart Pvt. Ltd. and another Vs. A.P. Agencies*** (1989) 2 SCC 163. Apex court held that when the court has to decide the question of jurisdiction



pursuant to an ouster clause it is necessary to construe the ousting expression or clause properly. In para 21, Supreme Court held as under:--

“21. From the foregoing decisions it can be reasonably deduced that where such an ouster clause occurs, it is pertinent to see whether there is ouster of jurisdiction of other Courts. When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other Courts should avoid exercising jurisdiction. As regards construction of the ouster clause when words like 'alone', 'only ', 'exclusive' and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim 'expressio unius est exclusio alterius'-- expression of one is the exclusion of another may be applied. What is an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all others from its operation may in such cases be inferred. It has therefore to be properly construed.”

11. In ***Shree Subhlaxmi Fabrics (P) Ltd. Vs. Chand Mal Baradia and others***, (2005)10 SCC 704, while interpreting the clause "Court of Bombay and no other Court", Supreme Court held



that the place from where the goods were dispatched would not have the jurisdiction in view of the specific intent of the parties which provided that only the Bombay courts, to the exclusion of all other courts, would have the territorial jurisdiction. The court was of the view that the plea of jurisdiction goes to the root of the matter.

12. In *Hakam Singh's* case (supra) and *Brahmani River's* case (supra), Supreme Court came to the conclusion that where two or more courts have jurisdiction under the Code of Civil Procedure to try a suit or proceeding, an agreement between the parties that the dispute between them shall be tried in one such Court, is not contrary to public policy and such an agreement does not contravene Section 28 of the Contract Act, 1872. The Court was of the view that in such a case inference may be drawn that the parties intended to exclude all other courts and such a clause is neither forbidden by law nor is it against the public policy.

13. Adverting to the facts of the present case, as is clear from the perusal of the agreement, the contract for printing of lottery tickets had been executed by the State of Nagaland and Kohima is its capital. The agreement is executed at New Delhi. Therefore, both Kohima and New Delhi have the territorial jurisdiction to try any suit or dispute between the parties. By virtue of a specific clause incorporated in the agreement, which has been extracted above, parties have decided to confer jurisdiction to the courts at Kohima alone. The use of the words 'only' in the clause makes the intention



of the parties clear that they intend to confer the jurisdiction to the Court at Kohima to the exclusion of all other courts. Although much stress has been laid on the fact that the lottery tickets were printed within the territorial jurisdiction of this Court, but the petitioner has not been able to substantiate this argument. No material could be referred to show that the printing had actually taken place in District SAS Nagar, Mohali. Stipulation in the contract specifically shows that the printed tickets were to be delivered at Delhi to M/s M.S. Associates. In their reply to application under Order 7 Rule 11 CPC, (at 75 of the paper book) petitioner has taken a stand that the invoices were issued from the registered office of the petitioner at New Delhi and the letters demanding the payment were sent from the registered office at Chandigarh. In view of the ouster clause in the agreement, this Court is of the view mere issuance of letters from Chandigarh would not confer the territorial jurisdiction upon this Court to try the present petition. Both the judgments relied upon by counsel for the petitioner are of no help to him as they do not deal with the question in issue. The matter stands settled in view of the clear enunciation of law by the judgments of Supreme Court referred to in the preceding paras.

14. For the foregoing reasons, I am of the firm view that this Court does not have the territorial jurisdiction to decide the instant petition seeking appointment of an Arbitrator and the petition must



fail on account of lack of territorial jurisdiction of this Court.

15. Petition is dismissed. However, this order will not debar the petitioner from approaching the Court of competent jurisdiction, in accordance with law.

29.05.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No