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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8984-8985 OF 2017

M/S LION ENGINEERING CONSULTANTS ... APPELLANT(S)

VERSUS

STATE OF M.P. & ORS. ... RESPONDENT(S)

O R D E R

1. We have heard learned counsel for the parties.

2. The matter arising out of a dispute in execution of a works contract was referred to the Arbitrator by the High Court on 4.09.2008. The Arbitrator made his Award dated 10.07.2010 in favour of the appellant. It was challenged under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Act") before the Seventh Additional District Judge, Bhopal by the respondent-State of M.P. The respondent sought to amend its objections after three years which was rejected by the trial Court. On a petition under Article 227 of the Constitution of India, the High Court has allowed the said amendment.

3. Learned counsel for the appellant submitted that the amendment could not be allowed beyond the period of limitation which affected the vested rights of a party. It

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was also submitted that the objection having not been raised under Section 16(2) of the Act before the Arbitrator, could not be raised under Section 34 of the Act. In support of this submission reliance has been placed on MSP Infrastructure Ltd. vs. Madhya Pradesh Road Development Corporation Ltd. reported in (2015) 13 SCC 713.

4. Learned Advocate General for the State of M.P. submitted that the amendment sought is formal. Legal plea arising on undisputed facts is not precluded by Section 34(2)(b) of the Act. Even if an objection to jurisdiction is not raised under Section 16 of the Act, the same can be raised under Section 34 of the Act. It is not even necessary to consider the application for amendment as it is a legal plea, on admitted facts, which can be raised in any case. He thus submits the amendment being unnecessary is not pressed. Learned Advocate General also submitted that observations in M/s MSP Infrastructure Ltd. (supra), particularly in Paragraphs 16 and 17 do not laid down correct law.

5. We find merit in the contentions raised on behalf of the State. We proceed on the footing that the amendment being beyond limitation is not to be allowed as the amendment is not pressed.

6. We do not see any bar to plea of jurisdiction being

raised by way of an objection under Section 34 of the Act even if no such objection was raised under Section 16.

7. We may quote the observations from M/s MSP Infrastructure (supra):

> "16. It is not possible to accept this submission. In the first place, there is nothing to warrant the inference that all objections to the jurisdiction of the Tribunal cannot be raised under Section 16 and that the Tribunal does not have power to rule on its own jurisdiction. Secondly, Parliament has employed a different phraseology in Clause (b) of Section 34. That phraseology is "the subject matter of the dispute is not capable of settlement by arbitration." This phrase does not necessarily refer to an objection to 'jurisdiction' as the term is well known. In fact, it refers to a situation where the dispute referred for arbitration, by reason of its subject matter is not capable of settlement by arbitration at all. Examples of such cases have been referred to by the Supreme Court in Booz Allen and Hamilton Inc. V/s. SBI Home Finance Limited (2011) 5 SCC 532. This Court observed as follows:-
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> > "36. The well-recognised examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters (grants of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes."

The scheme of the Act is thus clear. All

objections to jurisdiction of whatever nature must be taken at the stage of the submission of the statement of defence, and must be dealt with under Section 16 of the Arbitration Act, 1996. However, if one of the parties seeks to contend that the subject matter of the dispute is such as cannot be dealt with by arbitration, it may be dealt under Section 34 by the Court.

17. It was also contended by Shri Divan, that the newly added ground that the Tribunal under the Arbitration Act, 1996 had no jurisdiction to decide the dispute in question because the jurisdiction lay with the Tribunal under the M.P. Act of 1983, was a question which can be agitated under sub-clause (ii) of clause (b) of sub-section (2) of Section 34 of the Arbitration Act, 1996. This provision enables the court to set- aside an award which is in conflict with the public policy of India. Therefore, it is contended that the amendment had been rightly allowed and it cannot be said that what was raised was only a question which pertained to jurisdiction and ought to have been raised exclusively under Section 16 of the Arbitration Act, 1996, but in fact was a question which could also have been raised under Section 34 before the Court, as has been done by the Respondent. This submission must be rejected. The contention that an award is in conflict with the public policy of India cannot be equated with the contention that Tribunal under the Central Act does not have jurisdiction and the Tribunal under the State Act, has jurisdiction to decide upon the dispute. Furthermore, it was stated that this contention might have been raised under the head that the Arbitral Award is in conflict with the public policy of India. In other words, it was submitted that it is the public policy of India that arbitrations should be held under the appropriate law. It was contended that unless the arbitration was held under the State Law i.e. the M.P. Act that it would be a violation of the public policy of India. This contention is misconceived since the intention of providing that the award should not be in conflict with the public policy of India is referable to the public policy of India as a whole i.e. the policy of the Union of India and not merely the policy

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> of an individual state. Though, it cannot be said that the upholding of a state law would not be part of the public policy of India, much depends on the context. Where the question arises out of a conflict between an action under a State Law and an action under a Central Law, the term public policy of India must necessarily be understood as being referable to the policy of the Union. It is well known, vide Article 1 of the Constitution, the name 'India' is the name of the Union of States and its territories include those of the States."

8. Both stages are independent. Observations in Paragraphs 16 and 17 in MSP Infrastructure (supra) do not, in our view, lay down correct law. We also do not agree with the observation that the Public policy of India does not refer to a State law and refers only to an All India law.

9. In our considered view, the public policy of India refers to law in force in India whether State law or Central law. Accordingly, we overrule the observations to the contrary in Paragraphs 16 and 17 of the judgment in MSP Infrastructures Ltd. (supra).

10. Since amendment application is not pressed, the appeal is rendered infructuous. The impugned order is set aside.

11. The matter may now be taken up by the trial court for consideration of objections under Section 34 of the Central Act. It will be open for the respondents to argue

that its objection that the Act stands excluded by the M.P. Madhyastham Adhikaran Adhiniyam, 1983 could be raised even without a formal pleading, being purely a legal plea. It will also be open to the appellant to argue to the contrary. We leave the question to be gone into by the concerned court.

The appeals are disposed of accordingly.

.....J.
(ADARSH KUMAR GOEL)

.....J.
(ROHINTON FALI NARIMAN)

.....J.
(UDAY UMESH LALIT)

NEW DELHI,
MARCH 22, 2018