



2024 INSC 966

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 14299 OF 2024
@ SLP (CIVIL) NO. 29929 OF 2024
@ DIARY NO. 34174 OF 2023

DUSHYANT JANBANDHU

...APPELLANT(S)

VERSUS

M/S HYUNDAI AUTOEVER INDIA PVT. LTD.

...RESPONDENT(S)

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Delay condoned. Leave Granted.
2. Questioning the appointment of an arbitrator by the High Court of Madras under Section 11(6) of the Arbitration and Conciliation Act, 1996¹, by the order impugned before us², the appellant has filed this appeal on the ground that the dispute with the respondent-employer, M/S Hyundai AutoEver India Pvt. Ltd. is governed by statute under the Payment of Wages Act, 1936³ and

¹ Hereinafter referred to as the 'Act'.

² Order passed by the High Court of Judicature at Madras in Arb O.P. No. 31 of 2022 dated 20.12.2022.

³ Hereinafter referred to as the 'PW Act'.

the Industrial Disputes Act, 1947⁴. In the normal course and in recognition of judicial restraint, as incorporated in Section 5 of the Act, we would have asked the appellant to raise these objections before the Arbitral Tribunal itself. However, as the following narration of facts speaks for itself, we have found that the application under Section 11 of the Act is a clear abuse of the remedial process. We have therefore allowed the appeal and dismissed the Section 11(6) petition with cost.

3. The appellant was appointed as an Assistant Manager on 15.03.2019. Within a year, due to Covid-19 pandemic, the appellant was asked to work from home from 22.03.2020 to 06.01.2021. However, the respondent called upon the appellant to resume physical attendance of office from August 2020. As the appellant refused to comply, a show cause notice was issued on 04.09.2020, followed by an inquiry, report of which is in the following terms;

“Conclusion

- *There has been prima facie evidence against Dushyant for his purposeful absenteeism to work and its impact on Company’s business and Customer relations.*
- *Possibility of too due to his absenteeism. A detailed Charge sheet can be issued to Mr. Dushyant and refer to Disciplinary committee to take final decision.*
- *Till the final decision, he should attend office regularly as per the roster.*
- *If he is having access from remote, those days should be recorded separately by his HOS.*

⁴ Hereinafter referred to as the ‘ID Act’.

- *Based on the final decision of the disciplinary committee further action can be taken.”*

4. The inquiry led to issuance of a charge memo on 25.11.2020 for violating certain contractual clauses and these related to non-cooperation and absenteeism. It is necessary to mention here itself that there is no reference to Clause 19⁵ of the appointment conditions relating to violation of the non-disclosure obligation. Ultimately, an order of termination was passed on 21.01.2021, the relevant portion of the said order of termination is important for our consideration and it is extracted hereinbelow for ready reference.

“Please refer our Show Cause Notices dated 4th Sep 2020, Emails dated (05th Aug, 03rd Sep, 07 Sep 2020 & 07 Jan 2021) and the charge sheet dated (26 Nov 2020). You have continued to remain absent at work premises without authorisation and also you did not present yourself for our enquiry meetings called for as per our disciplinary Policy. Considering all the above, as per your agreed employment terms Clause 11, 12(V), 17, 24 & 25, your employment has been terminated with effective from the closing hours of 06 Jan 2021. [...]”

5. It is evident from the above that there is no allegation whatsoever that the appellant has violated clause 19 of the appointment order leading to the order of termination.

6. During the pendency of disciplinary action, as the appellant was not paid his salary, he issued a legal notice for payment of wages

⁵ *“You will not give out to any one, by word of mouth or otherwise, particulars of HAEI’s business or an administrative or organizational matter of a confidential nature which may be your privilege to know by virtue of you being HAEI’s employee.”*

on 29.05.2021 and filed a petition under Section 15(2) of the PW Act before the authority under the PW Act. As a counterblast, the respondent issued a notice alleging that the disputes must be settled through arbitration and proceeded to unilaterally appoint an arbitrator. We may mention here itself that even in the said reply notice dated 22.06.2021 issued by the respondent, there is no specific allegation of violation of the non-disclosure obligations by the appellant herein. The claim for arbitration naturally related to stoppage of payment of wages, which according to the appellant was within the jurisdiction of the Authority under the PW Act as per its statutory provisions.

7. Before we deal with the facts relating to the proceedings before the Authority under the PW Act, it is necessary to mention that as the unilaterally appointed arbitrator commenced the arbitral proceedings, the appellant filed an application under Section 16 of the Act calling upon the arbitrator to rule on his competence. It is interesting to note that the arbitrator himself passed an order on 01.05.2022 taking into account the decision of this Court in *Perkins Eastman Architects DPC & Anr. v. HSCC (India) Ltd.*⁶ and closing the arbitral proceedings. The relevant portion is reproduced here as follows:

⁶ (2020) 20 SCC 760.

“[...] In the present case, as detailed herein above, the appointment of the undersigned as the Arbitrator and the Constitution of the Arbitral Tribunal thereof are without the consent or the participation of the Respondent. Once the jurisdiction of this Arbitral Tribunal has been put into question on that ground, this Tribunal ceases to have the power or authority to proceed with the matter in any manner.

I therefore have no hesitation in holding that the constitution of this Arbitral Tribunal is not in accordance with or in consonance with the provisions of Section 11 of the Arbitration and Conciliation Act as amended, particularly in the light of the ratio set out by the Hon'ble Supreme Court in Perkins Eastman Architects DPC & another V/s HSCC (India) Ltd.

In the light of the same, the arbitral proceedings between the parties above-named before this Tribunal is closed forthwith with liberty being granted to both the parties to work out their respective remedies in accordance with law.”

8. Returning to the proceedings commenced before the Authority, we note that the respondent moved an application under Section 8 of the Act seeking reference of the dispute involved in the petition under Section 15(2) of the PW Act to arbitration. The Authority under PW Act dismissed the said application on 03.03.2022 holding that; *“In view of Section 23 of the Payment of Wages Act, arbitration agreement cannot stand in the way of the claimant in respect of illegally deducted wages under Payment of Wages Act.”*
9. There is yet another development. Questioning the order of termination dated 21.01.2021, the appellant approached the Industrial Tribunal by filing a petition under Section 2(A) of the ID Act and the same is pending adjudication and determination by the Industrial Tribunal.

10. It is in the above referred background that the respondent approached the High Court by filing a petition under Section 11(6) of the Act in August 2022 seeking appointment of an arbitrator. The disputes between the appellant and the respondent, as indicated in the arbitration petition relate to non-payment of wages and also the legality and validity of termination order dated 21.01.2021. Over and above these disputes, for the first time the respondent sought to give a new angle to the dispute by stating that the appellant has also violated the non-disclosure obligations under clause 19 of the appointment order.
11. In the order impugned before us, the High Court has proceeded to note an arbitration agreement and therefore, appointed an advocate as the arbitrator.
12. The issue relating to violation of the non-disclosure obligation under clause 19 is only an afterthought. This was evidently not the ground when the respondent issued the show cause notice on 04.09.2020, nor was it a part of the inquiry report, the relevant portion of which we have extracted in the para 3 above. This is also not a part of the charge memo dated 25.11.2020.
13. Crucially, the termination was not based on any such allegation as is evident from the termination order dated 21.01.2021 that we have extracted earlier. Under these circumstances, we can

conclude that there is no dispute about violation of non-disclosure obligations and Section 11(6) petition, to this extent is non-existent.

14. Insofar as other disputes are concerned, they relate to non-payment of wages and the legality and validity of the order of termination dated 21.01.2021. The appellant approached the Authority under the PW Act much before the order of termination and the said authority would exercise jurisdiction under Section 15(2) of the PW Act to the exclusion of civil courts and these disputes are non-arbitrable. Section 22 of the PW Act reads as under:

“22. Bar of Suits.—No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed—

(a) forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17; or

(b) has formed the subject of a direction under section 15 in favour of the plaintiff; or

(c) has been adjudged, in any proceeding under section 15, not to be owed to the plaintiff; or

(d) could have been recovered by an application under section 15.”

15. Equally, legality of the order of termination dated 21.01.2021 is within the jurisdiction of Industrial Tribunal under Section 2(A) of the ID Act and it is important to mention that the jurisdiction of the Industrial Court is also to the exclusion of the civil courts and is not arbitrable. It is also important to note that remedies

under these statutes were invoked much prior to the filing of petition under Section 11(6) by the respondent. In *Vidya Drolia v. Durga Trading Corporation*⁷, the principle of subject-matter arbitrability is enunciated as follows:

“76. In view of the above discussion, we would like to propound a fourfold test for determining when the subject-matter of a dispute in an arbitration agreement is not arbitrable:

76.1 (1) When cause of action and subject-matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.

76.2 (2) When cause of action and subject-matter of the dispute affects third-party rights; have erga omnes effect; require centralised adjudication, and mutual adjudication would not be appropriate and enforceable.

76.3 (3) When cause of action and subject-matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable.

76.4 (4) When the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).”

(emphasis supplied)

16. Having considered the factual background in which the Section 11(6) petition has been filed, we are of the opinion that it is an abuse of process. It was clearly intended to threaten the appellant for having approached the statutory authorities under the PW Act and the ID Act. There is no basis for invoking clause 19 of the agreement and demanding compensation of Rs. 14,02,822/- when that fact situation did not arise.

⁷ (2021) 2 SCC 1

17. The Section 11(6) petition has two facets. The first relates to disputes that were anyway pending before the statutory authorities, and they related to non-payment of wages and legality and propriety of termination which are non-arbitrable. The second facet relates to the alleged violation of clause 19 relating to non-disclosure obligation, which was not raised in the show cause notice, inquiry report, chargesheet and termination order and as such is non-existent.
18. In view of the above, we allow the Civil Appeal and set-aside the judgment and the order passed by the High Court and dismiss the petition under Section 11(6) filed by the respondent under the Arbitration and Conciliation Act.
19. The appellant will also be entitled to cost quantified at Rs. 5 lakhs payable within a period of 3 months from today.

.....**J.**
[PAMIDIGHANTAM SRI NARASIMHA]

.....**J.**
[SANDEEP MEHTA]

NEW DELHI;
DECEMBER 11, 2024.