

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 01.01.2025

Pronounced on: 03.01.2025

Arb App No.1/2022

1. Union of India
Through Chief Engineer,
Pathankot Zone C/o 56 APO
2. Garrison Engineer,
Satwari Jammu Cantt. ...Appellant(s)

Through:- Mr. Vishal Sharma, DSGI

V/s

M/s Des Raj Nagpal Engineers & Contractors
401, Shastri Nagar, Jammu (J&K)-180004 ...Respondent(s)

Through:- Ms. Zoya Bhardwaj, Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

Sanjeev Kumar J

1. Instant appeal filed by the Union of India under Section 37 of the Jammu & Kashmir Arbitration and Conciliation Act, 1997 [“the Act of 1997”] arises out of an order dated 19th April, 2022 passed by a learned Single Judge of this Court in AA No.31/2012 titled Union of India and another v. M/s Des Raj Nagpal, whereby the learned Single Judge has dismissed the application of the appellants filed under Section 34 of the Act of 1997 to challenge an award dated 21st June, 2012 published by the Sole Arbitrator, namely Baljit Singh Chief

Engineer (QS&C) in case titled M/s Des Raj Nagpal v. Union of India and others. The application of the appellants has been rejected by the learned Single Judge primarily on the ground that the Garrison Engineer, who has signed the application on behalf of Union of India was not party to the arbitration agreement and, therefore, was not an authorized person to file application under Section 34 of the Act of 1997 for and on behalf of the Union of India.

2. The impugned order and judgment of the learned Single Judge is assailed by the Union of India on multiple grounds. However, before we advert to the grounds of challenge urged by Mr. Vishal Sharma, learned DSGI appearing for the appellants, we deem it appropriate and necessary to notice few facts which are germane to the disposal of the controversy raised in this appeal.

3. Pursuant to a contract agreement executed between Union of India through Chief Engineer, Pathankot Zone, appellant No.1 herein and the respondent M/s Des Raj Nagpal, the work, subject matter of contract agreement, was handed over to the respondent for execution. As per the contract agreement, Phase-I of the work was required to be completed by 19th March, 2002 and Phase-II by 19th January, 2003. The respondent completed both the phases within the extended period i.e. 30th March, 2005. Certain disputes arose between the parties out of the said contract and for resolution of these disputes, Sh. Baljit Singh (QS&C) was appointed as sole arbitrator. The arbitrator passed an

award against the appellants, which was published on 21st June, 2012. Feeling dissatisfied and aggrieved of the award dated 21st June, 2012, the appellants filed an application under Section 34 of the Act of 1997. The application was filed on behalf of Union of India through Chief Engineer, Pathankote Zone and Garrison Engineer, Satwari Jammu Cant. and was signed by appellant No.2-Garrison Engineer.

4. Before the learned Single Judge, an objection was taken by the respondent that appellant No.2-Garrison Engineer was not party to the contract agreement and, therefore, was not competent to challenge the award by filing an application under Section 34 of the Act of 1997. Objection, as it seems from the impugned order, prevailed and the learned Single Judge vide impugned order dismissed the application filed by the appellants.

5. It is in the aforesaid backdrop and feeling aggrieved, the appellants are before us in this appeal filed under Section 37 of the Act of 1997. The impugned order is challenged primarily on the following grounds:-

- a) That the learned Single Judge has failed to appreciate that the contract in question was between Union of India and the respondent and that the Union of India was entitled to file an application under Section 34 of the Act of 1997 through any authorized officer including the Garrison Engineer.

- b) That the learned Single Judge committed an error in holding that since the arbitration agreement/contract was signed by the Chief Engineer on behalf of Union of India, as such, the application could have been filed only by the Chief Engineer ignoring the fact that party to the contract agreement/arbitration agreement was neither Chief Engineer nor Garrison Engineer but Union of India.
- c) That the learned Single Judge has also not taken note of the provisions of Article 299 of the Constitution of India, which mandates that all contracts for and on behalf of Union of India shall be made by the President through authorized signatory and that the authorized signatory, who may have power and authority to sign agreement on behalf of the President of India does not himself become party to the contract.
- d) That the learned Single Judge also did not appreciate the notification GSR No.167 dated 14th February, 1990 issued by the Government of India in the exercise of powers conferred by Rule 1 of Order XXVII of the First Schedule to the Code of Civil Procedure, whereby certain officers including Garrison Engineer are specified in the Schedule annexed thereto as officers authorized to file complaints/written statements in suits in any court of Civil jurisdiction or in writ proceedings filed by or against the Central Government.

e) That the learned Single Judge also did not appreciate that in terms of Clause 69 of the General Conditions of Contract (IAFW-2249), the Garrison Engineer or any officer for the time being entrusted with the functions, duties and powers of the Garrison Engineer is authorized to take all actions, which are required to be taken on behalf of the President of India in respect of the contract in question.

6. *Per contra*, learned counsel appearing for the respondent Ms. Zoya Bhardwaj would submit that an application under Section 34 of the Act of 1997 for setting aside an arbitral award can be made by a party to the contract and the term ‘party’ used in Section 34 of the Act of 1997 as defined in Section 2(g) would mean a party to an arbitration agreement. She would, therefore, argue that it was Chief Engineer and not the Garrison Engineer, who was party to the arbitration agreement and, therefore, alone competent to file application under Section 34 of the Act of 1997. She would further submit that there was no privity of contract between the Garrison Engineer, who signed the application under Section 34 of the Act of 1997 and the respondent-contractor. She, therefore, supports the finding of the learned Single Judge that the Garrison Engineer not being a party to the arbitration agreement was not authorized to sign the application under Section 34 of the Act of 1997 for and on behalf of the Union of India. She places reliance upon the judgments of Hon’ble Supreme Court in Benarsi Krishna Committee and others v. Karamyogi Shelters Pvt. Ltd, **AIR Online**

2012 SC 727 and S.N. Prasad v. Monnet Finance Ltd. and others, (2011) 1 SCC 320. Besides aforesaid judgments of the Supreme Court, learned counsel would also place reliance upon a judgment of the Bombay High Court in **Mukesh Nanji Gala and others v. M/s Heritage Enterprises (Arbitration Petition No.515/2013 decided on 8th December, 2014)**, two judgments of High Court of Delhi in the cases of *Union of India v. M/s Microwave Communication ltd. (FAO(OS) No.503/2007 decided on 01.12.2010)* and **Mukesh Udeshi v. Jindal Steel Power Ltd. (2024: DHC 4886).**

7. Having heard learned counsel for the parties and perused the material on record, we find that the parties are not at variance in respect of facts of the case. Admittedly, the contract agreement which contains arbitration clause was executed between Union of India through Chief Engineer, Pathankote Zone and M/s Des Raj Nagpal, the respondent herein. There would be, therefore, no dispute that one of the parties to the contract agreement is Union of India. As mandated by Article 299 of the Constitution of India, all contracts made in the exercise of executive powers of the Union shall be expressed to be made by the President and executed on behalf of the President by such person(s) and in such manner, as he may direct or authorize.

8. Indisputably, the contract in question was made in the exercise of executive powers of the Union and, therefore, was rightly expressed to be made by the President. The Chief Engineer executed the contract

on behalf of the President being a person duly authorized to do so.

Article 299 of the Constitution reads thus:-

“299. Contracts

(1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

(2) Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.”

9. Order XXVII of the Code of Civil Procedure deals with suits by or against the Government. Rule 1 provides clearly that in any suit by or against the Government, the plaint or written statement shall be signed by such person as the Government may by general or special order appoint in this behalf. The Government of India has, in the exercise of powers conferred by Rule 1 of Order XXVII aforesaid, issued notification No.GSR 167 dated 14th February, 1990 authorizing different officers to sign the pleadings on behalf of Government of India in any suit by or against the Government. The Garrison Engineer is one of such officers. That being the clear position emerging from reading of the provisions of Article 299 of the Constitution of India and GSR No.167 of 1990, it cannot be said that the Garrison Engineer

was not an officer authorized to sign pleadings on behalf of the Government of India.

10. It is not disputed by the respondent that the Garrison Engineer, who signed the application under Section 34 of the Act of 1997 on behalf of Union of India/Government of India was not the person authorized by the Government of India to represent it in civil proceedings by or against the Government. The learned Single Judge has totally misconstrued the nature of contract i.e. made by the President on behalf of Union of India and has erroneously treated the Chief Engineer, who had executed the arbitration agreement/contract agreement on behalf of the President, as party to the arbitration agreement.

11. In the contract, which contains an arbitration clause, there are only two parties, one Union of India and the other the respondent-contractor. The contracts on behalf of Union of India in terms of Article 299 of the Constitution of India are expressed to be made by the President and the same are executed by such person or persons and in such manner as the President may direct or otherwise. The authority of the Chief Engineer to execute the contract containing arbitration clause on behalf of the President is not in dispute. We would, therefore, hold that notwithstanding a contract by the Union of India is made by the President and executed through its authorized officer, neither the president nor its authorized officer becomes party to the contract. The party to the contract shall only be the Union of India.

12. The judgments cited by the learned counsel for the respondents are in the different context and are not applicable to the case on hand. In the case of **Benarsi Krishna Committee (supra)**, the Supreme Court was dealing with service of notice under Section 31(5) of the Arbitration and Conciliation Act, 1996 and held that the service of arbitral award on the counsel, who was appearing for a party before the arbitration, would not be sufficient service. To the similar effect are the other judgments cited by the learned counsel for the respondent. In none of the judgments, either Hon'ble Supreme Court or the High Court of Bombay or High Court of Delhi have held that an authorized officer of the Government is not competent to file application under Section 34 of the Act of 1997 or that an application under Section 34 of the Act of 1997 can only be filed by the officer, who has signed the arbitration agreement on behalf of the President.

13. Otherwise also, from a perusal of the application filed by the appellants before the learned Single Judge, it clearly transpires that the Union of India through Chief Engineer is also a party, though the application was signed by the Garrison Engineer. In that view of the matter, failure of the Chief Engineer to sign the pleadings, which were signed by the Garrison Engineer would only be an irregularity and a curable defect and would not entail dismissal of the application without providing opportunity to the appellants to correct the irregularity. The defect, if at all it has there, was curable and was not fatal to the maintainability of the application itself.

14. For all these reasons, we find merit in this appeal and the same is, accordingly, allowed. The impugned order passed by the learned Single Judge is set aside and the matter is sent back to the learned Single Judge for disposal on merits and in accordance with law.

(Puneet Gupta)
Judge

(Sanjeev Kumar)
Judge

JAMMU
03.01.2025
Vinod,PS

Whether the order is speaking : Yes
Whether the order is reportable: Yes