

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10212 OF 2014

STATE OF UTTAR PRADESH AND ANOTHER APPELLANTS

VERSUS

R.K. PANDEY AND ANOTHER RESPONDENTS

J U D G M E N T

SANJIV KHANNA, CJI.

Delay condoned.

2. This appeal arises from an order dated 28.02.2012 passed by a Division Bench of the High Court of Judicature at Allahabad in First Appeal from Order Defective No. 352/2012.
3. The facts, in brief, are – Respondent no. 1, R.K. Pandey, was appointed as a Lab Assistant/ Technician in the T.B. Section of Dina Nath Parbati Bangla Infectious Disease¹ Hospital located at Kanpur. The Municipal Board of Kanpur set up this hospital on the land given by the Kanpur Improvement Trust in 1944-45.

¹ Hereinafter, “DNPBID.”

4. On 17.07.1956, DNPBID Hospital was taken over by the State Government, that is, the Government of Uttar Pradesh, to establish a new medical college at Kanpur pursuant to a Resolution dated 17.07.1956 passed by the Administrator of the Municipal Board of Kanpur and six members of the Board of the hospital. On 29.03.1957, the State Government accepted the proposal dated 17.07.1956.
5. On 20.06.1961, a transfer deed was executed between the Nagar Mahapalika of the City of Kanpur and the Governor of the State of Uttar Pradesh. The said deed has been placed on the record. It states that in terms of the G.O. dated 29.03.1957, the entire municipal staff of the hospital, as per the list attached to the indenture, will stand transferred to the State Government service. The staff will not be unfavourably placed as regards emoluments or other service conditions, nor shall they suffer in the matter of emoluments, leave, age of retirement, and other benefits as compared to the terms of service of the Board.
6. After the settlement was executed, the hospital became a unit of Ganesh Shanker Vidayarthi Memorial² Medical College, Kanpur. Thereupon, it is apparent that the employees working in DNPBID Hospital opted for service under the State Government and had sent their consent which was accepted. Thereafter, their service records were sent to the State Government. It was agreed that the concessions and privileges enjoyed

² Hereinafter, "GVSM."

by the staff before the aforesaid hospital were provincialized and will continue in future and they will not be put to a disadvantage by the take-over. The Board agreed to pay Rs.50,000/- keeping in view the liability of the Municipal Board.

7. *Vide* letter dated 09.01.1997, the Chief Medical Superintendent of the hospital, now a State Government hospital, informed Respondent No. 1, R.K. Pandey that he would be superannuating on 31.03.1997. He was requested to contact the office along with pension papers and submit the same within one week so that the process can be initiated.
8. In March 1997, Respondent No. 1, R.K. Pandey, filed a writ petition before the High Court of Judicature at Allahabad claiming that he should retire at the age of 60 years instead of 58 years, relying upon the service rules as applicable to the employees of the Municipal Board of Kanpur.
9. Pursuant to the filing of the writ petition, Respondent No.1, R.K. Pandey was directed to make a representation. While a representation was indeed made, it was subsequently rejected observing that the respondent had been in service of the State Government for 42 years and was availing all pay and allowances, as per the State Government rules.
10. The State Government filed an affidavit opposing the writ petition *inter alia*, stating that Respondent No. 1, R.K. Pandey, having acquired the status of State Government service was bound and governed by the

rules and regulations of the State Government. It was also stated that the minimum age for entering the government service is 18 years, and if a government servant retires at the age of 58 years, he would have completed 40 years of service. In the present case, Respondent No. 1, R.K. Pandey had completed service of 42 years of service. In other words, he would be 60 years of age.

11. No interim order was passed in the writ petition, which remained pending till it was withdrawn by Respondent No. 1, R.K. Pandey on 22.04.2009. Consequently, the prayers made in the writ petition were not granted.
12. Notwithstanding the pendency of the writ petition, on 11.01.2008, Respondent No. 1, R.K. Pandey, filed an arbitration suit before the District Judge, Kanpur Nagar, Kanpur, relying upon an alleged arbitration agreement dated 01.04.1957 between the then Administrator of the DNBPID Hospital and the Governor of Uttar Pradesh. The prayer sought was for the dispute regarding Respondent No. 1, R.K. Pandey's age of superannuation and the rejection of his representation dated 03.04.1997 by the Principal of GVSM Medical College be referred to arbitration. However, the arbitration agreement was not mentioned either in the writ petition or in the application for its withdrawal. Subsequently, on 15.02.2008, Respondent No. 1, R.K. Pandey, withdrew the suit seeking to refer the disputes to arbitration.

13. On 29.11.2008, Respondent No. 1, R.K. Pandey, filed two execution petitions before the District Judge in Kanpur, seeking to enforce two separate *ex parte* awards issued on 15.02.2008 and 25.06.2008 by Advocates Pawan Kumar Tewari and Indivar Vajpayee. These proceedings were initiated by Respondent No. 1 against the State Government and the Principal of GSVM Medical College, Kanpur.
14. The first *ex-parte* award dated 15.02.2008 decreed the claim of Respondent No. 1, R.K. Pandey for an amount of Rs.26,42,116/- with interest at the rate of 18 % per annum from 21.01.2008 against the State of Uttar Pradesh and the Principal GSVM Medical College, Kanpur. The award states that Respondent No. 1, R.K. Pandey had appointed/nominated the Arbitrator and there was non-appointment by the opposite party and, therefore, Pawan Kumar Tewari, Advocate had acted as the sole Arbitrator.
15. The second *ex parte* Award dated 25.06.2008 passed by Indivar Vajpayee awarded an amount of Rs.20,00,000/- along with interest at the rate of 9% per annum with effect from 11.02.2008 in favour of Respondent No. 1, R.K. Pandey, and against the opposite party, viz. the State of Uttar Pradesh and the Principal of GSVM Medical College, Kanpur. The Award states that Respondent No. 1 had appointed Indivar Vajpayee as an Arbitrator on 25.06.2008, *albeit* the opposite party had not appointed an Arbitrator and, hence Indivar Vajpayee acted as the sole Arbitrator.

16. The appellant on receiving notice in the execution petition filed *viz.* the Award given by Indivar Vajpayee, filed objections against the two awards under Section 34 of the Arbitration and Conciliation Act, 1996.³ One of the issues raised before the executing court concerned the existence of the arbitration agreement, purportedly dated 01.04.1957, which Respondent No. 1, R.K. Pandey, relied upon. This agreement was claimed to have been executed and signed on behalf of the Administrator of the Municipal Board and the Additional Secretary of the Government of Uttar Pradesh.
17. The authenticity of this document was denied. Notably, this document or the arbitration agreement is not reflected in the transfer deed executed on 20.06.1961. Furthermore, the purported arbitration agreement was neither mentioned in the writ petition filed by Respondent No. 1, R.K. Pandey, in March 1997, nor referenced in any correspondence or related documents until Respondent No. 1, R.K. Pandey, filed a petition under Section 11 of the A&C Act, for the appointment of an arbitrator on 11.01.2008. By this petition, Respondent No. 1, R.K. Pandey, had prayed for the appointment of an arbitrator. As recorded above, the said petition was dismissed as withdrawn on 15.02.2008, which was also the date on which the first award for Rs.20,00,000/- with interest at the rate of 18 % per annum was passed by Pawan Kumar Tewari, Advocate. The

³ Hereinafter, "A&C Act."

second Award by Indivar Vajpayee dated 25.06.2008 is also pursuant to the appointment of an arbitrator by Respondent No. 1, R.K. Pandey without recourse to court proceedings.

18. The objections filed by the appellants under Section 34 of the A&C Act were dismissed by the trial court on the ground that they were barred by limitation and had been filed beyond the condonable period. Interestingly, during the pendency of the said objections, a query had been raised as to the existence of the arbitration agreement dated 01.04.1957, which was relied upon by Respondent No. 1, R.K. Pandey. In a reply given by the Municipal Corporation/Mahanagar Palika to the Advocate appointed by District Government Counsel (Civil), Kanpur Nagar, it was stated that the photocopy furnished of the agreement was not clear and there was no such agreement available on the record. Hence, it was not possible to verify the said document. The purported agreement dated 01.04.1957 is not signed and executed by Respondent No. 1, R.K. Pandey, and a copy of the agreement is not marked to him. The authenticity of the agreement cannot be established as it is not available on the record of the Municipal Board. The State Government, as is evident, has denied the existence of any such agreement.
19. The impugned judgment passed by the Division Bench of the High Court of Judicature at Allahabad dismissed the *intra court* appeal on the grounds that the objections itself were barred by limitation and beyond the condonable period.

20. We have narrated the facts in detail as they are peculiar, and intervention by this Court is necessary to prevent any attempt to enforce the so-called awards, which are null and void ab initio for several reasons. This Court in its decision in ***Bilkis Yakub Rasool v. Union of India and Others***,⁴ observes that fraud and justice never dwell together, and a litigant should not be able to benefit from a fraud practiced with an intention to secure him an illegal benefit. In the present case, the so-called arbitration agreement is nowhere available on the records of either the Municipal Corporation or the State of Uttar Pradesh. Respondent No. 1, R.K. Pandey, did not file the original agreement since he was not in possession of the same, nor is he a signatory and party to the arbitration agreement. An arbitration agreement is *sine qua non* for arbitration proceedings, as arbitration fundamentally relies on the principle of party autonomy; - the right of parties to choose arbitration as an alternative to court adjudication. In this sense, 'existence' of the arbitration agreement is a prerequisite for an award to be enforceable in the eyes of law. No doubt, Section 7 of the A&C Act, which defines the 'arbitration agreement', is expansive and includes an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other party, albeit the existence of the arbitration agreement is not accepted by either the Municipal Corporation or the Appellant, the State of Uttar Pradesh. The Arbitration Agreement

⁴ (2024) 5 SCC 481.

is not referred to in the indenture of the transfer executed later on 20.06.1961. There is no evidence to show the existence of the arbitration agreement, except a piece of paper, which is not even a certified copy or an authenticated copy of the official records. How and from where RK Pandey, Respondent No. 1, got a copy of the agreement, and that too nearly 10 years after his retirement and filing of a writ petition remains unknown.

21. The arbitration agreement, as propounded, is between the Municipal Corporation and Development Board, Kanpur, and the appellant, the Governor of the State of Uttar Pradesh. For the sake of reference, the arbitration agreement is reproduced:

“This Arbitration Agreement made on the First April, One Thousand Nine Hundred Fifty Seven between the Municipal and Development Board Kanpur (hereinafter called the Board) of the one part and the Governor of Uttar Pradesh (hereinafter, called the Government) of the other part.

It is mutually agreed by the and between the parties as follows:

All disputes or difference whatsoever which shall if any time arise between the parties including the employees of Provincialized DN Bangla I.D. Hospital, Kanpur, hereto touching or concerning the resolution passed by the Managing Committee of the said Hospital at the meeting held on 17.07.1956, which was accepted by the Government, shall be referred to the Arbitrators nominated by the Principal GSVM Medical College, Kanpur and the administrator of the Board or employees of the said provincialized Hospital for arbitration under the Arbitration Act. Any statutory modification of re-enactment thereof and the rules made thereunder for the time being enforced shall apply to the Arbitration proceedings. If one party nominates the arbitrator and refers the dispute to the nominated

arbitrator for adjudication in writing notice to the other party and the other party fails to nominate the arbitrator within 10 days then the arbitrator nominated by the First Party shall be final and act as a sole arbitrator. The award of the arbitrators/sole arbitrator shall be final and binding on the parties.

This agreement signed by the administrator on behalf of the Board and the Additional Secretary of the Government of UP on behalf of the Government.

M.A. Quraishi, I.C.C.
Administrator
Municipal & Development Board
Kanpur

G.P. Pandey, Addl. Secretary to the Govt. of UP”

The agreement postulates that each party, that is, the Municipal and Development Board, Kanpur, and the Governor of Uttar Pradesh, may nominate an arbitrator for adjudication by giving written notice to the other party. In the event the other party fails to nominate an arbitrator within ten days, the arbitrator nominated by the first party shall act as the sole arbitrator. It was not the case of Respondent No. 1, R.K. Pandey that the Municipal and Development Board, Kanpur, or the Governor of Uttar Pradesh has invoked the arbitration clause. The unilateral appointment of the arbitrator by Respondent No. 1, R.K. Pandey is, therefore, contrary to the arbitration clause as propounded by him.

22. Another intriguing aspect is the delay in relying on the arbitration agreement and initiating arbitration proceedings. Respondent No. 1, R.K. Pandey, himself filed the writ petition in 1997 concerning the same dispute. The writ petition had remained pending till 22.04.2009, when it

was withdrawn. It is during the pendency of the petition, that the steps for initiation of arbitration were taken on 11.01.2008 by Respondent No.1, R.K. Pandey, by filing a suit for reference in terms of Section 11 of the A&C Act. However, the petition was later withdrawn without any decision on merits with the two sole arbitrators appointed by Respondent No. 1, R.K. Pandey, *suo moto* taking up the arbitration proceedings and pronouncing the two awards, the first dated 15.02.2008 for an amount of Rs.26,42,116/- with interest at the rate of 18% per annum, and the second dated 25.06.2008 for an amount of Rs.20,00,000/- along with interest at the rate of nine percent per annum with effect from 11.02.2008, against the Appellants, the State of Uttar Pradesh and the Principal of GSVM Medical College, Kanpur. Notwithstanding that the claims made by Respondent No. 1, R.K. Pandey, were *ex-facie* and clearly barred by limitation as per Section 3 of the Limitation Act 1963 read with Section 43 of the A&C Act, they have been allowed.

23. A 5-Judge Constitution Bench of this Court in ***Central Organisation of Railway Electrification v. ECI PIC SMO MCPL (JV), a Joint Venture Company***⁵ has observed that equity applies at the stage of appointment of arbitrators, though the A&C Act recognizes the autonomy of parties to decide on all aspects of arbitration. The enactment lays down a procedural framework to regulate the composition of the arbitral tribunal and conduct of arbitration proceedings. It is only then that the arbitral

⁵ 2024 INSC 857.

tribunals, which have the backing of courts, can act objectively and exercise their discretion in a judicial manner, without caprice and in accordance with the principles of law and rules of natural justice. This is the core of the alternate dispute redressal mechanism, which is also the core of Section 18 of the A&C Act and is a non-derogable and mandatory provision. It is only then the arbitrators are vested with the power to resolve the dispute under the law. This judgment also observed that the unilateral appointment of arbitrators has a direct effect on the conduct of arbitral proceedings. Arbitration, which is *quasi-judicial*, requires a standard of behaviour of arbitrators, which is impartial and independent, no less stringent than that demanded of judges. In fact, arbitrators are expected to uphold a higher standard, as court decisions are subject to the collective scrutiny of an appeal, while an arbitration award typically enjoys greater acceptability, recognition, and enforceability.

24. We have made our observations in the context of Section 47 of the Code of Civil Procedure, 1908, which even at the stage of execution, permits a party to object to the decree, both on the grounds of fraud, as well as lack of subject matter jurisdiction. It is apparent that the arbitration proceedings were a mere sham and a fraud played by Respondent No.1, R.K. Pandey, by self-appointing/nominating arbitrators, who have passed *ex-parte* and invalid awards. To reiterate, Respondent No. 1, R.K. Pandey, is not a signatory to the purported arbitration agreement. Moreover, the parties thereto, DNPBID Hospital and the Governor of

Uttar Pradesh, do not endorse any such agreement. From the cumulative facts and reasons elucidated above, this is a clear case of lack of subject matter jurisdiction.

25. Accordingly, we allow the present appeal and set aside the two *ex parte* Awards dated 15.02.2008 and 25.06.2008. Both the Awards shall be treated as null and void and non-enforceable in law. Resultantly, the judgment passed, and the subject matter of the appeal shall be treated as set aside. The execution proceedings shall stand dismissed. The appellants will be entitled to costs of the entire proceedings as per the law.

.....CJI.
(SANJIV KHANNA)

.....J.
(SANJAY KUMAR)

.....J.
(R. MAHADEVAN)

**NEW DELHI;
JANUARY 09, 2025.**