

MOHD. USMAN MILITARY CONTRACTOR, JHANSI

A

v.

UNION OF INDIA, MINISTRY OF DEFENCE

September 26, 1968.

[S. M. SIKRI AND R. S. BACHAWAT, JJ.]

B

Indian Arbitration Act, 1940, ss. 8 and 20—Applications under—Whether subject to limitation laid down, in Art. 181—Limitation Act, 1908—Effect of—General Clauses Act, 1897, s. 8(1).

The appellant entered into a contract with the Government of India. The contract contained an arbitration clause. For certain supplies made under the contract the appellant made representations to the Government for payment and for arbitration of disputes. On or about July 10, 1958 Government refused to refer the matter for arbitration. On July 11, 1961 the appellant filed an application in the Court of the District Judge under ss. 8 and 20 of the Arbitration Act, 1940, for filing the arbitration agreement and for an order of reference of the disputes to an arbitrator appointed by the court. The respondent contended that the application was barred by Limitation. The District Judge allowed the application, holding that there was no limitation for making an application under ss. 8 and 20. The defendant's appeal was dismissed by the High Court as incompetent in so far as it challenged the order under s. 8 but was allowed in so far as it challenged the order under s. 20. The High Court held that an application under s. 20 is governed by Art. 181 of the Indian Limitation Act, 1908. In coming to this conclusion the High Court took into account the settled judicial view that the operation of Art. 181 is limited to applications under the Code of Civil Procedure, and reasoned as follows: Article 181 should be construed as if the words 'under the Code' were added in it. The Arbitration Act, 1940 repealed paragraph 17. of the second schedule to the Code and re-enacted it in s. 70 with minor modifications. That being so s. 8(1) of the General Clauses Act, 1897 applied and the implied reference in Art. 181 to paragraph 17 of the second schedule to the Code should be construed as a reference to s. 20 of the Arbitration Act, 1940. Appeal against the High Court's judgment was filed with certificate.

HELD: The appeal must be allowed.

By the Arbitration Act, 1940 the Legislature amended Arts. 158 and 178 of the Limitation Act and made them applicable to the relevant proceedings under the Arbitration Act but no similar change was made in Art. 181. It is manifest that save as provided in Arts. 158 and 178 there would not be any limitation for other applications under the Act. Further there is nothing to indicate that for the purpose of limitation s. 20 of the 1940 Act should be regarded as a re-enactment of the corresponding provision of the Code and not of the Indian Arbitration Act, 1899. [236 D-G]

In the circumstances it is not possible to construe the implied reference in Art. 181 to the Code of Civil Procedure as a reference to the Arbitration Act, 1940 or to hold that Art. 181 applies to applications under that Act. The rule of construction given in s. 8(1) of the General Clauses Act cannot be applied, as it appears that the legislature had a

- A different intention. It follows that an application under ss. 8 and 20 of the Arbitration Act, 1940 is not governed by Art. 181. The Limitation Act does not prescribe any period of limitation for such an application. [236 G-H]

The present application under ss. 8 and 20 was therefore not barred by limitation. [237 A]

- B *Bai Manekbai v. Manekji Kavasji*, [1880] I.L.R. 7 Bom. 213, 214 *Hansraj Gupta v. Official Liquidator Dehra Dun Mussourie Electric Tramway Company*, (1933) L.R. 60 I.A. 13, 20, *Shah Mulchand & Co. v. Jawahar Mills Ltd.* [1953] S.C.R. 351, 371, *Bombay Gas Co. v. Gopal Bhiva*, [1964] 3 S.C.R. 709 and *Wazirchand Mahajan & Anr. v. Union of India*, [1967] 1 S.C.R. 303, referred to.

- C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14 of 1968.

Appeal from the judgment and decree, dated December 12, 1964 of the Allahabad High Court in F.A. F.O. No. 401 of 1963.

R. M. Hazarnavis, K. L. Hathî and Atiqur Rehman, for the respondent.

- D The Judgment of the Court was delivered by

- Bachawat, J.** By a contract, dated March 8, 1945, the appellant agreed to supply meat to the Government of India. The contract contained an arbitration clause for reference of disputes arising out of the contract to the officer named in the contract. The appellant claims that a sum of Rs. 8,38,994/10/6/- is due to him in respect of the supplies of meat made by him during the period between April 1, 1945 and March 31, 1946. He made representations to the Government for payment and for arbitration of the disputes. On or about July 10, 1958 the Government refused to refer the matter to arbitration. On July 11, 1961 the appellant filed an application in the Court of the District Judge, Jhansi, under ss. 8 and 20 of the Arbitration Act, 1940 for filing the arbitration agreement and for an order of reference of the disputes to an arbitrator appointed by the Court. The respondent contended that the application was barred by limitation. The District Judge allowed the application. He held that there was no period of limitation for making an application under ss. 8 and 20. The defendant filed an appeal against the order. The High Court dismissed the appeal as incompetent in so far as it challenged the order under s. 8, and allowed it in so far as it challenged the order under s. 20. The High Court held that the application was governed by Art. 181 of the Indian Limitation Act, 1908 and was barred by limitation as it was made more than three years after the disputes had arisen. The appellant has filed this appeal after obtaining a certificate from the High Court.

The point in issue is whether an application under s. 20 of the Arbitration Act, 1940 is governed by Art. 181 of the Indian

Limitation Act. Since the decision in *Bai Manekbai v. Manekji Kavasji*⁽¹⁾ it is well settled that the operation of Art. 181 is limited to applications under the Code of Civil Procedure. In that case Westropp, C.J. after referring to the corresponding Art. 178 in the second schedule to the Limitation Act of 1877 observed :

“An examination of all the other articles in the second schedule relating to “applications”, that is to say of the Third division of that schedule, shows that the applications therein contemplated are such as are made under the Code of Civil Procedure. Hence it is natural to conclude that the applications referred to in Article 178 are applications *ejusdem generis*, i.e., applications under the Code of Civil Procedure. The preamble of the Act, moreover, purports to deal with ‘certain applications’ only, and not with all applications.”

This decision was followed in numerous cases and was approved in *Hansraj Gupta v. Official Liquidator Dehra Dun, Mussourie Electric Tramway Company*⁽²⁾. Having regard to these decisions, Das, J. said in *Shah Mulchand & Co., v. Jawahar Mills Ltd.*⁽³⁾: “This long catena of decisions may well be said to have as it were, added the word ‘under the Code’ in the first column of that Article.” The Court held that the amendment of Arts. 158 and 178 and the insertion of the words “under the Arbitration Act, 1940” in place of the words “under the Code of Civil Procedure, 1908” did not alter the settled meaning of Art. 181. To the same effect is the decision in *Bombay Gas Co. v. Gopal Bhiva*⁽⁴⁾. Following these decisions the Court held in *Wazirchand Mahajan & Anr. v. Union of India*⁽⁵⁾ that an application under s. 20 of the Arbitration Act, 1940 not being an application under the Code of Civil Procedure was not governed by Art. 181.

The High Court has come to the conclusion that an application under s. 20 of the Arbitration Act is governed by Art. 181 for the following reasons : Article 181 should be construed as if the words “under the Code” were added in it. The Arbitration Act, 1940 repealed paragraph 17 of the second schedule to the Code and re-enacted it in s. 20 with minor modifications. That being so, s. 8(1) of the General Clauses Act, 1897 applied and the implied reference in Art. 181 to paragraph 17 of the second schedule to the Code should be construed as a reference to s. 20 of the Arbitration Act, 1940. No different intention is to be found in the Arbitration Act, 1940 and there is nothing to indi-

(1) [1880] I.L.R. 7 Bom. 213, 214.

(2) [1933] L.R. 60 I.A. 13, 20.

(3) [1953] S.C.R. 351, 371.

(4) [1964] 3 S.C.R. 709.

(5) [1967] 1 S.C.R. 303.

- A cate that an application under s. 20 can be made at any time without any limitation.

B The argument that the implied reference in Art. 181 to paragraph 17 of the second schedule to the Code should be construed as a reference to s. 20 of the Arbitration Act and not raised and considered in *Wazirchand Mahajan's case*⁽¹⁾. It is, therefore, our duty to examine this contention.

C Section 8(1) of the General Clauses Act corresponds to the Interpretation Act, 1889 (52 & 53 vict. c. 63) and runs as follows: "Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed, shall, unless a different intention appears, be construed as references to the provision so re-enacted." The section embodies the rule of construction that where the provision of an Act is repealed and re-enacted with or without modification, a reference to the repealed provision in any other enactment should be regarded as a reference to the provision re-enacted in the new form unless it appears that the legislature had a different intention.

E The Arbitration Act, 1940 was passed with a view to consolidate and amend the law relating to arbitration. Formerly the general law relating to arbitration was to be found in the Indian Arbitration Act, 1899 and the Code of Civil Procedure, 1908. Paragraphs 1 to 16 of the second schedule to the Code applied to all arbitrations in suits. As to arbitrations otherwise than in suits, the Indian Arbitration Act, 1899 applied to cases where, if the subject-matter submitted to arbitration were the subject of a suit, the suit could be instituted in a Presidency town; in other cases, the Code of Civil Procedure, 1908 applied. F The Arbitration Act, 1940 repealed both the enactments. It extends to the whole of India except the State of Jammu and Kashmir, and save as provided in s. 47 applies to all arbitrations. As to the provisions of the new Act under which applications can be made to Court, ss. 8, 14, 16, 28 and 30, correspond to provisions which are found in both the repealed enactments, ss. 5 and 9 correspond to similar provisions in the Indian Arbitration Act, 1899, and ss. 15 and 20 correspond to similar provisions in the second schedule to the Code and some sections such as sec. 11, are entirely new. In the circumstances, a question may arise whether the provisions of the new Act can be regarded as re-enactments of the repealed provisions of the Indian Arbitration Act, 1899 or of the Code. But for the purpose of this case we shall assume that s. 20 of the new Act is a re-enactment with

(1) [1967] 1 S.C.R. 303.

modification of paragraph 17 of the second schedule to the Code. We shall also assume that Art. 181 of the Limitation Act as construed by the Courts should be regarded as containing a reference to the Code of Civil Procedure including paragraph 17 of the second schedule thereof. Even after making those two assumptions it appears to us that the implied reference in Art. 181 to the Code of Civil Procedure cannot be construed as a reference to the Arbitration Act, 1940.

Before their amendment by the Indian Arbitration Act, 1940, Art. 158 of the Limitation Act applied to applications "under the Code of Civil Procedure, 1908 to set aside an award" and Art. 178 applied to applications "under the same Code for the filing in Court of an award". The Arbitration Act, 1940 amended Arts. 158 and 178. The amended Art. 158 applies to applications "under the Arbitration Act, 1940 to set aside an award or to get an award remitted for consideration", that is to say, to application under ss. 16 and 30 of the Act. The amended Art. 178 applies to applications "under the Arbitration Act, 1940 for the filing in Court of an award", that is to say to applications under s. 14 of the Act. In amending Arts. 158 and 178 the legislature acted upon the view that the references to the Code of Civil Procedure, 1908 in the second schedule to the Limitation Act could not in the absence of the amendment be construed as references to the Arbitration Act, 1940. At the same time the legislature refrained from amending Art. 181 and providing that the article will apply to other applications under the Arbitration Act, 1940. It is manifest that the legislature intended that save as provided in articles 158 and 178 there would not be any limitation for other applications under the Act. Take the case of an application under s. 28 of the Act for enlargement of the time for making the award. A similar application under paragraph 8 of the second schedule to the Code was governed by Art. 181, but a like application under s. 12 of the Indian Arbitration Act, 1899 was not subject to any period of limitation. There is nothing to indicate that for the purpose of limitation s. 20 of the new Act should be regarded as a re-enactment of the corresponding provision of the Code and not of the Indian Arbitration Act, 1899. An application under s. 8 of the new Act corresponding to paragraph 5 of the second schedule to the Code and s. 8 of the Indian Arbitration Act, 1899 stand on the same footing. In the circumstances, it is not possible to construe the implied reference in Art. 181 to the Code of Civil Procedure as a reference to the Arbitration Act, 1940, or to hold that Art. 181 applies to applications under that Act. The rule of construction given in s. 8(1) of the General Clauses Act cannot be applied, as it appears that the legislature had a different intention. It follows that an application under ss. 8 and 20 of the Arbitration Act, 1940 is not

A governed by Art. 181. The Limitation Act does not prescribe any period of limitation for such an application. It follows that the present application under ss. 8 and 20 is not barred by limitation.

B In conclusion we must observe that the appellant's claim relates to supplies during the period between April 1, 1945 and March 31, 1946. There is a serious contention whether the claim is barred by limitation. It will be the duty of the arbitrator to consider this matter carefully and to decide whether or not the claim is so barred.

C In the result, the appeal is allowed, the order of the High Court is set aside and the order of the District Judge, Jhansi, is restored. In the circumstances of the case, there will be no order as to costs in this Court.

G.C.

Appeal allowed.