

DEEP INDUSTRIES LIMITED V. OIL AND NATURAL GAS CORPORATION AND ANOTHER 2019 SCC ONLINE SC 1602

Supreme Court of India; 3-judge bench, **R. F. Nariman**, Aniruddha Bose and V. Ramasubramanian, JJ; decided on 28 November 2019

High Courts can exercise jurisdiction under Article 227 in certain arbitral matters, but with extreme circumspection, considering the statutory policy of the ACA, so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction

The arbitral tribunal had made an interim order under Section 17 of the ACA (which provides for interim measures by the tribunal) in favor of Deep Industries⁶. An appeal was filed before the City Civil Court, Ahmedabad⁷, but rejected. Now a petition under Article 227 of the Constitution was filed challenging the City Court's order.

The court held that though High Courts can exercise jurisdiction under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the ACA, this must be with extreme circumspection, considering the statutory policy of the ACA so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.

The court's reasoning was as follows: –

- (i) *Policy of the ACA—speedy disposal and minimal intervention of courts*: the court reproduced the text of Sections 5⁸ and 37⁹ of the ACA. It then said it is also important to note that: –

⁶ ONGC had blacklisted Deep Industries. The arbitrator stayed the backlisting order on the condition that it will operate only if Deep Industries ultimately loses in the arbitration proceedings.

⁷ Under Section 2 (1) (e) (i) of the ACA, in cases of an arbitration other than an international commercial arbitration, the principal Civil Court of original jurisdiction in a district also has jurisdiction.

⁸ Section 5. Extent of judicial intervention. -Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

- a. Under Section 29A of the ACA (which was inserted by the Amendment Act, 2016¹⁰, a time limit of 12 months from the date of reference was set within which arbitral awards must be made.
 - b. Under Section 34 (6) of the ACA (added by the same amendment), the set-aside applications are to be disposed of expeditiously, and in any event, within one year from the date of service of notice.
- (ii) The court then noted that "given the aforesaid statutory provision" and "given the fact that the 1996 Act repealed three previous enactments," speedy disposal is the statutory policy of the ACA.
 - (iii) *Union of India v. Varindera Const. Ltd.*, disposing of SLP (C) No. 23155/2013 (R.K. Agrawal and Ashok Bhushan, J.J.) was then noted where the Supreme Court "imposed the self-same limitation on first appeals under Section 37 so that there be a timely resolution of all matters which are covered by arbitration awards".
 - (iv) Then the court referred to the *non-obstante* clause in Section 5 of the ACA as the "most significant of all."¹¹ It then noted that "Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides

⁹ Section 37. Appealable orders. – (1) An appeal shall lie from the following orders (and from no others) to the Court authorized by law to hear appeals from original decrees of the Court passing the order, namely: —

- (a) refusing to refer the parties to arbitration under section 8;
 - (b) granting or refusing to grant any measure under section 9;
 - (c) setting aside or refusing to set aside an arbitral award under section 34.
- (2) An appeal shall also lie to a Court from an order granting of the arbitral tribunal. –
- (a) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or
 - (b) granting or refusing to grant an interim measure under section 17.
- (3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

¹⁰ Which came into effect from 23 October 2015.

¹¹ Which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part.

for one bite at the cherry, and interdicts a second appeal being filed (See Section 37(2) of the Act)".

- (v) This being the case, the court concluded, "there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years".
- (vi) *Balancing High Court's extraordinary constitutional power*: – But at the same time, the court continued, Article 227 is a constitutional provision that remains untouched by the non-obstante clause of Section 5 of the Act.
- (vii) The court then referred to a 2-judge bench decision in *Nivedita Sharma v. Cellular Operators Association of India*, (2011) 14 SCC 337 (G. S. Singhvi and S.J. Mukhopadhaya, JJ) where the Supreme Court referred to several authorities for the proposition that it is one thing that the court has jurisdiction under Article 226 (by analogy Article 227 too—both basic features of the Constitution), it is quite another to exercise it without regard to the policy of the relevant statute.
- (viii) The court then referred to *SBP & Co. v. Patel Engineering Ltd.*, (2005) 8 SCC 618 where the 7-judge bench "referred to the object of the Act is that of minimizing judicial intervention and that this important object should always be kept in the forefront when a 227 petition is being disposed of against proceedings that are decided under the Act".
- (ix) *ACA is a special enactment and a self-contained code*: – The court referred to *Fuerst Day Lamson Limited v. Jindal Exports Limited*, (2011) 8 SCC 333 noting it was specifically held that where the special act sets out a self-contained code the applicability of the general law procedure would be impliedly excluded—thus, a letters patent appeal under the general law would not lie where no appeal is provided under the ACA.
- (x) If the High Court itself had disposed of the first appeal, no Article 227 petition could lie. Perhaps only a letter patent appeal before a di-

vision bench of the same High Court would lie, but *Fuerst Day Lawson* has specifically interdicted that. Merely because the first appeal was disposed of by a Court subordinate to the High Court, an Article 227 petition ought not to have been entertained.

- (xi) *Effectively deciding an appeal against Section 16¹² order*: -The arbitrator also dismissed a Section 16 application on the same contention which the High Court took up¹³. This was inverting the statutory scheme.
- (xii) *Decisions on merit does not behoove a court exercising jurisdiction under Article 227, which is only for correction of jurisdictional errors*: – The High Court's decision that the ban order was passed under a General Contract Manual and not under the agreement would be incorrect. Also, to say that "serious disputes" as to jurisdiction seem to have cropped up is not the same thing as saying that the tribunal lacked inherent jurisdiction. It had jurisdiction.
- (xiii) *Legislative policy qua the general revisional jurisdiction*: – The legislative policy is that no revision lies if an alternative remedy of appeal is available. Even when a revision does lie, it lies only against a final disposal of the entire matter and not against interlocutory orders. Even otherwise, revisional jurisdiction is to be exercised to correct jurisdictional errors only.

¹² Competence of arbitral tribunal to rule on its own jurisdiction.

¹³ The question was whether the blacklisting was an issue covered by the notice of arbitration. An application under Section 16 had been filed challenging arbitrator's jurisdiction suggesting it was not covered. The arbitrator rejected that contention. The recourse against such an order is to take the point up in the set-aside proceedings. The High Court, which was concerned with an order of the arbitrator granting interim measure, went into the question notice/blacklisting too, and decided that blacklisting was not part of the notice—a finding directly contrary to the arbitrator's ruling in the Section 16 application.