

**HINDUSTAN PETROLEUM CORPORATION LTD. v. M3ENERGY SDN.
BHD., 2019 SCC ONLINE BOM 2915**

Bombay High Court; 2-judge bench, **Pradeep Nandrajog**, CJ and Bharati Dangre J; decided on 16 October 2019

Arbitral tribunal's jurisdiction—Standard of review applied by courts

(A) THE QUESTION

The tribunal may rule on its own jurisdiction if a party raises a plea that the arbitral tribunal lacks jurisdiction. If the plea is rejected, the party aggrieved may, after the award is made, file an application to set aside the award per Section 34 of the ACA.

What is the standard of review to decide a jurisdictional question in set aside proceedings? Can the court, like an appellate court does, again evaluate the evidence which was presented before the tribunal?

(B) OBJECTION ON TRIBUNAL'S JURISDICTION BEFORE THE TRIBUNAL, AND LATER IN SET ASIDE PROCEEDINGS BEFORE THE SINGLE-JUDGE

The arbitral tribunal's jurisdiction was challenged by the respondent in an application under Section 16 of the ACA on the ground that there was no (concluded) contract. The tribunal rejected the challenge, continued with the arbitral proceedings, and made an award.

The award was challenged and the ground that the tribunal did not have jurisdiction was raised again. The single-judge bench, SC. Gupte J concluded that it is for the court to scrutinize (independently) the objections to arbitrator's jurisdiction based on the jurisdictional facts pleaded by the parties irrespective of what the arbitrator ruled. He decided that the "yardstick applied" when deciding a challenge to the award under Section 34 of the ACA cannot be deployed to examine the question of arbitrator's jurisdiction. For instance, an erroneous finding of fact cannot be corrected in a set aside proceeding, but an erroneous finding on jurisdiction should be because the tribunal cannot confer on itself jurisdiction it does not possess. He evaluated the evidence in detail, accepted the argument that the underlying con-

tract (in which the arbitration agreement was located) had not been concluded, and set the award aside.

HPCL appealed.

(C) THE DECISION OF THE DIVISION BENCH IN FAVOUR OF APPELLANT [BASED ON *DALLAH* (CITED *INFRA*) CASE CITED BY RESPONDENT]

Two cases were cited by HPCL to argue that even on the jurisdiction of the arbitral tribunal, the same principles of law otherwise concerning a challenge to arbitral awards apply.⁵ The respondent cited a decision of the Supreme Court of the United Kingdom—*Dallah Real Estate and Tourism Holding Company v. The Ministry of Religious Affairs, Government of Pakistan* 2010 UKSC 46—to argue that the correct approach is for the court to appraise the evidence again like an appellate court.

The court first held that the two cases cited by HPCL were distinguishable. However, it found that in the *Dallah case* cited by the respondent M3energy, there was a passage that was good authority in favor of HPCL's position. Relying on that passage in *Dallah*, the court held that on an issue concerning the jurisdiction of the arbitral tribunal, the court is bound to examine, both carefully and with interest, the reasoning and conclusion of an arbitral tribunal (and therefore not make an independent analysis without regard to the decision of the tribunal). The court concluded that *Dallah* applied the same on the issue of tribunal's jurisdiction which are applied to other issues in a set-aside proceeding. It held that the position in India is the same.

⁵ *VFC Securities Pvt. Ltd. v. Ramesh N. Shah Shares & Brokers Pvt. Ltd.*, 2005 (2) Mah. L.J. 386, 2-judge bench of Bombay High Court and Supreme Court's decision in *Kvaerner Cementation India Ltd. v. Bajranglal Agarwal*, (2012) 5 SCC 214.