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Bhatia international v. Bulk trading S.A. and Anr.

Citation (2002)4 SCC 105

By : Twinkle Kumari

Introduction

This case tries to expound various questions revolving around Alternative Dispute Resolution so firstly the question that needs to have some answer for our reader, why does this autonomous party have right to undertake the law in their hand, the basic understanding should start from what was the need for it, does our judicial system does not suffice the whole composition of maintaining- law of land, as there is saying that “That the three generations could be passed but a case cannot come to an end” our judicial system is not just slow but also it is overburdened with many pending cases.

So after opening our economy for the first time after independence it was seen that there are many trade agreements that use to take place across the borders. Many active businesses whose prime motive is profit generation do not want to get into unnecessary disputes. So that the Arbitration and Conciliation Act 1996 was bought to lay down the settled procedure that needed to be their while putting a clause during the contract. Hence, the mere existence of an arbitration clause does not bar jurisdiction of civil court.

The question which we try to answer is what is the role of and power of Indian courts in international commercial arbitration with India as a seat? We will further this discussion in the latter part, and furthermore, how is the judgment affects the present business contract and arbitration.

Background

In this case, the role of Indian courts for arbitration seated outside India, there were two-party who entered into the contract on 9th May 1997, who during the time of agreement had induced a provision of Arbitration in accordance with the arbitration and Conciliation Act 1996. Whereas in further the dispute arose between them, after the first sitting award which was granted by ADG cell which was restored in accordance with the rule of ICC, Paris. As the award was granted to a foreign party, it applied to the Indian court for interim measures securing the property of the Indian party. The subjected party contended the jurisdiction of the court. Later the Indian party appealed to the Supreme Court where it upheld the judgment of MP, Indore, and said that Part 1 of the Arbitration and Conciliation Act, 1996, give the effect to the UNCITRAL Model Law and which confers the power on the court to grant an interim measure applied even to arbitration held outside India¹.

Thus, throughout the case only contention was held about part 1 of arbitration and conciliation act 1996 will not apply to arbitration which is seated outside India, however, part 1 would only apply to the arbitration which is seated in India, they might be domestic or international arbitration which is seated in India, if Part 1 is to be applicable then the Indian court has to rely on the permitted ground which highlighted in the proviso, to Section 2 of Arbitration and Conciliation Act

If the parties have made exclusive jurisdiction clause, that anything arising this arbitration would be handled by the court inside India in such a situation, Indian courts have jurisdictions, however, Indian courts do not have any interference within arbitration seated outside India

The awards which are given by the arbitration seated outside and have to be enforced in India in accordance with section 48(enforcement on New York convention) and section 57 (enforcement on Geneva convention)of arbitration and conciliation act, if the award breaches the provision then that award would not be enforceable in India,

Analysis

The judgment of this case was ambiguous and it questions the whole structure of legislature,

- A. Part I deals with domestic arbitrations where the seat of arbitration is in India;
- B. Part II with enforcement of New York and Geneva Convention awards in India;
- C. Part III with Conciliation; and
- D. Finally, Part IV deals with certain supplementary provisions.

¹Arunima Jha , Bhatia International V/S Bulk Trading, < <https://www.legalserviceindia.com/article/l445-Bhatia-International-Vs.-Bulk-Trading-S.A.html>> Accessed on 6 January 2022

The court had failed to give the edifice like the reasoning for the BALCO case i.e. Bharat Aluminium Co V/s Kaiser Aluminium Technical which overruled the Bhatia International V/S Bulk Trading, many say it is a violation of the basic legislative structure, but according to the author writing this paper, it is very evident that the only things matter is how to do you tend to perceive anything. Even though when we apply the set methodological structure its empirical understanding is based upon some evident doctrine that could have a certain outcome. The court has not only failed to deliver the certain reasoning for overruling the judgment, but also it has failed to scrutinize every aspect revolving around it. Without any interim measures of injunction, The possibility of any party failing to take any step generally reduce the efficiency of any arbitration, if thereof the uncertainty of non-interim measure either conventional or non-conventional which could lead break the code of conduct of any agreement, but it's not like the arbitration clause could bard person to go to any civil court, but the whole meaning of arbitration would be dissolved with such limited ground.

The fundamentals of having Arbitration Dispute Resolution were always about settling the dispute with the independent private body, which could have eventually led to the expansion of the economy. Securing the interest of the contracting party would open opportunities that can possibly increase the number of contracts. This would help grow the economy, with equal ground for development. Well, there is also a minimal chance for increasing GDP as a whole.

Conclusion

The reasoning which is given in Bhatia International V/S Bulk Trading was limited and confined to its own understanding but instead of evolving the understanding, the court reverse the whole notion in the BALCO case, the author tried to give an understanding while analysing the reason the need of Part I to be applied even when the Arbitration Dispute was chaired outside India, with giving the peculiar reasoning for it. However, the fallacies continued and narrowed the role of the judiciary in an arbitration proceeding. Thus, the non-provision of

Interim measures can often result in making the whole arbitration meaningless².

² Vidhu Gupta, Stretching The Limit Of Statutory Interpretation: Critical Review Of Bhatia International V Bulk Trading <https://www.google.com/url?sa=t&source=web&rct=j&url=https://nslr.in/wp-content/uploads/2019/04/NSLR-Vol-5-No-9.pdf&ved=2ahUKEwjW4_eh95z1AhXJTWwGHcF9B7MQFnoECBAQAQ&usg=AOvVaw2U9z34LuIEKQqI3uHJ7ccI> Accessed on 6 January 2022