No Special Relaxation For Government And Its Enterprises In Furnishing Security To Challenge Arbitral Awards: Calcutta High Court

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Introduction

The Calcutta High Court in a recent ruling in ***The Director General, National Library, Ministry of Culture, Government of India v. Expression 360 Services India Pvt. Ltd.*** [AP-COM/860/2024], addressed the government's obligation to furnish security when seeking a stay of an arbitral award. The High Court determined that Order 27 Rule 8-A of the Code of Civil Procedure ("**CPC**"), which exempts the government from furnishing security in certain cases, does not override Section 36 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). The High Court's ruling clarifies that government entities are not entitled to automatic exemptions and must provide security like any other litigant when seeking a stay under Section 36(3) of the Arbitration Act. The decision is particularly crucial for enforcement proceedings in arbitration matters, as it prevents government agencies from avoiding the obligation to furnish security while challenging awards, thereby aligning with the Indian judiciary's pro-arbitration approach. In this article, we navigate through the facts of the case and the findings rendered by the High Court.

Brief Facts

The dispute arose from a contract between Expression 360 Services India Pvt. Ltd. and The Director General, National Library, Ministry of Culture, government of India, regarding curating an exhibition at the National Library, Kolkata. Following disagreements over payments, the matter was referred to arbitration, culminating in an arbitral award dated February 20, 2024, in favour of Expression 360 Services India Pvt. Ltd. The government, dissatisfied with the award, filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996, seeking to set it aside. Alongside this challenge, the government also applied for an unconditional stay of the award, arguing that, as a Central Government entity, it should be exempt from furnishing security under Order 27 Rule 8-A CPC.

Additionally, the government alleged fraudulent conduct by the award-holder, rendering the award unenforceable, and asserted that the arbitrator had exceeded his jurisdiction by awarding a sum greater than what was claimed in the Statement of Claim.

The government contended that Order 27 Rule 8-A CPC exempts government entities from security requirements in litigation and that the award-holder had engaged in fraudulent conduct by failing to perform contractual obligations while still claiming payment. It also argued that the arbitrator had overstepped his jurisdiction by granting a sum larger than the originally claimed amount, justifying an unconditional stay of the award.

However, the award-holder countered that Order 27 Rule 8-A CPC does not override Section 36 of the Arbitration Act, citing the Supreme Court's decision in ***Pam Developments Pvt. Ltd. v. State of West Bengal*** [(2019) 8 SCC 112], which held that government entities are not automatically exempt from providing security in arbitration matters. Furthermore, the award-holder emphasised that the government had never raised fraud-related allegations during arbitration, suggesting that these claims were a belated attempt to delay enforcement. Additionally, it argued that the award rightfully included both principal and interest, as established in ***Hyder Consulting (UK) Ltd. v. Governor, State of Orissa*** [(2015) 2 SCC 189], and that security should cover the full awarded amount.

Decision of the High Court

The Calcutta High Court rejected the government's argument that it should be exempt from furnishing security under Order 27 Rule 8-A CPC. Relying on the ***Pam Developments*** judgment, the court noted that Order 27 Rule 8-A CPC was introduced during colonial era to protect the Crown, and in a democratic setup, such privileges were no longer justified, especially in commercial disputes.

The High Court reiterated that arbitration is intended for swift dispute resolution and that allowing automatic stays for government entities would defeat the purpose of the Arbitration Act. Section 36(3) of the Arbitration Act, the High Court held, applies equally to the government and private entities, and any party seeking a stay must provide security unless the award was obtained through fraud or corruption.

In the present case, the High Court found no *prima facie* evidence of fraud, emphasising that the government had failed to substantiate its claims and that fraud allegations were not part of its Statement of Defense during arbitration. The arbitrator had meticulously examined both claims and counterclaims before delivering a reasoned award, and mere allegations of non-performance did not constitute fraud.

Consequently, the High Court directed the government to secure ₹2.7 crore for the stay of the arbitral award, requiring 50% of this amount to be deposited in cash and the remaining 50% to be secured through a bank guarantee.

The stay was conditional on compliance with this directive within four weeks, failing which the stay would automatically lapse, permitting the award-holder to proceed with execution. Ultimately, the High Court denied the government's request for an unconditional stay, mandating the required security and dismissing the fraud allegations as baseless.

Comment

The ruling of the High Court reinforces the principle that government entities cannot exploit procedural privileges to delay arbitration enforcement. It aligns with the Indian legislature and judiciary's push for arbitration-friendly policies, ensuring that private parties contracting with the government receive fair treatment.

Moreover, the judgment discourages the misuse of post-award fraud-related allegations as a tactic to delay enforcement. By requiring *prima facie* evidence of fraud, the High Court prevents frivolous claims from obstructing execution.

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