



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Ex.F.A.No. 38/2012 & CM No. 15021/2014

% **15th October, 2014**

BIJENDRA KUMARAppellant
Through: Mr. Satya Narain, Adv.

VERSUS

PRADEEP KUMAR & ORS. Respondents
Through: Mr. Ramesh Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This execution first appeal is filed by the decree holder impugning the judgment of the executing court dated 22.9.2012 by which the executing court has dismissed the execution petition filed by the petitioner/decreed holder seeking execution of an *ex parte* Award dated 9.5.2005. The Award was for a sum of Rs. 7,33,500/- alongwith interest at 15% per annum w.e.f May 2005 till payment.

2. In the present case, I note that the impugned judgment dated 22.9.2012 dismissing the execution petition is a very well written judgment



and which therefore considerably reduces the discussion to be given by

Court as a First Appellate Court inasmuch as this Court proposes to adopt the thorough and exhaustive reasoning contained in the impugned judgment of the executing court dated 22.9.2012.

3. The issue which was raised before the executing court was whether the Award dated 9.5.2005 was an Award/decreed which was illegal, *non est* and void in law and therefore could not be executed inasmuch as effectively the Award was passed for enforcement of protection money amounts.

4. The facts of the case are that an Agreement dated 6.10.2004 was entered into in favour of the petitioner/decreed holder and the respondent whereby the petitioner with respect to all private buses which were to operate on route no. 212 in the city of Delhi was to be paid a sum of Rs.100/- per day. There are further stipulations which are mentioned in the agreement dated 6.10.2004 for paying of fines of Rs.250/- to the petitioner and who was to allegedly to pay a part of the same to other bus owners, and which fines were to be imposed on those bus owners who do not act as per 'discipline' by overtaking or by taking short cuts etc etc.

5. The executing court by reference to Sections 23 and 24 of the Indian Contract Act, 1872 has held the agreement to be illegal/*non est*/void by



holding that really the agreement pertains to basically protection rr being payable by the bus owners to the petitioner. The executing court has also observed that issues which are raised in the agreement effectively make the petitioner a super traffic police man under the Motor Vehicles Act, 1988 and which position is inconceivable in law. Executing court has also referred to the judgment of the Supreme Court in the case of *Jaipur Development Authority Vs. Radhey Shyam and others (1994) 4 SCC 370* for holding that an illegal Award cannot be executed. Since as stated above, the impugned judgment in a very thorough manner with persuasive reasoning dismisses the execution petition, I am reproducing below the relevant portions of the judgment:-

“XXXXXXXXXXXX

During arguments, learned counsel for JD submits that no decree or award can be passed upon a contract which is per se illegal. It is submitted by the learned counsel for JD that the award which passed by the learned Arbitrator is not an award in accordance with law and the same is void ab initio in terms of Section 23 and 24 of Indian Contract Act, 1972.

Here this court refers Section 24 of the Indian Contract Act, 1872 along with its illustration as under:-

“24. Agreements void, if considerations and objects unlawful in part.-

If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Illustration: *A promises to superintendent, on behalf of B, a legal manufacturer of indigo, and an illegal traffic in other articles. B promises*



to pay to a salary of 10,000/- rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being a part lawful."

The court further refers Section 23 of the Indian Contract Act, 1872 along with its illustrations (e) and (f) as under:-

"23. What consideration and objects are lawful, and what not.-
The consideration or object of an agreement is lawful, unless-

It is forbidden by law; or

Is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or

Involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations: *...(e) A,B and C enter into an agreement for the division among them of gains acquired or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.*

(f) A promise to obtain for B an employment in the public service and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful..."

In light of the above provisions of law, now the court refers to Arbitration Agreement entered into between the parties. This agreement which was executed on 06-10-04 among the parties is in Hindi written Devnagri script. The crux of the agreement is that first party is permitted to operate buses upon route No. 212 and the second party has to pay Rs.100/- per day for every bus and this agreement further stipulates that in case of overtake Rs.250/- has to be paid by bus owners to the first party as fine. Here, second party comprises of bus owners and the first party is an individual. This agreement further stipulates that in case if there is any violation then the first party has a right to exercise force as per the agreement. This agreement further stipulates that the bus owners have to pay to first party money consideration as well as fine etc. so that they could ply their buses on the route.

Learned counsel for respondent objects that this agreement is itself void ab initio as against the public policy. He further submits that the amount as mentioned in the agreement is just like a protection money payable by bus owners to the petitioner. It is further submitted that the



petitioner by this agreement wants to exercise power which is to be exercised by the State and he has tried to encroach upon the jurisdiction of the State.

Regulating the traffic is the sole domain of the traffic police which is to be governed as per the Motor Vehicles Act. Regulating the law and order and the peace at the roads is the sole domain of the police which operates as per Delhi Police Act in Delhi. However, this court is surprised and rather anguished to see that by the agreement the petitioner has tried to encroach upon the functions of the State. He did not stop here, but he also raised claim upon the respondents for non-payment of dues in accordance with the agreement. He also did not stop here. He has further preferred claim before the Arbitrator and learned Arbitrator without application of the mind and to refer to the provisions of law, passed the Arbitration Award against the respondents. Admittedly, there was no association of the bus owners in this case nor any sanction has been obtained through any concerned office or department of the State to impose such restrictions and to collect fine or to use force without obtaining any sanction from any concerned department of the State. Learned counsel for the respondent further submits that the petitioner has mentioned in the arbitration agreement that he would manage 21 buses without having a single penny and earlier he was declared as pauper. He further submits that the petitioner actually was doing the nuisance with bus owners and the bus owners to avoid any illegal harm to their buses and safety to the passengers, were forced to sign upon such an agreement.

Learned counsel for the respondent has further relied upon ***Jaipur Development Authority Vs. RadheyShyam and others (1994) 4 Supreme Court Cases 370*** wherein para 8 it was observed:-

“8. The question then is, whether it is open to the appellant to raise the objections on the execution side as to allotment of acquired land under the award. We have already said that what is executable is only an award under Section 26(2), namely, the amount awarded or the claims of the interests determined of the respective persons in the acquired lands. Therefore, the decree cannot incorporate any matter other than the matters determined under Section 11 or those referred to an determined under Section 18 to the extent of any recognition of the directions in the award for the allotment of the land given under Section 11 is a nullity. It is open to the appellant to raise the invalidity, nullity of the decree in execution in that behalf. Accordingly we hold that the execution proceedings directing delivery of possession of the land as contained in the award is, invalid, void and inexecutable. Accordingly, it is set aside.”



*Learned counsel for the respondent has further relied upon **Sunder Dass Vs. Ram Prakash 1977 Rajdhani Law Reporter (SC) 227** and **Ramjilal etc. Vs. Ram Pershad etc. 1979 Rajdhani Law Reporter 392.***

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In such circumstances, this court is of the considered opinion that the arbitration agreement dated 06-10-04 was itself a nullity as its objects and considerations were unlawful. At this stage, the court asked Mr. Kela to submit regarding the said agreement and he submits that there is no illegality. Learned counsel for petitioner submits that the petitioner was appointed as supervisor to supervise the routes plied by the buses of respondents and, therefore, he was not doing charity and he is entitled for the amount by the respondents. On the other hand, learned counsel for the respondents submits that the routes and timings were settled by the DTC and their officers at the relevant time were to supervise and inspect the functioning of the buses and thus there was no need for any other person as petitioner to do such things.

This court is of the considered opinion that it is duty of the DTC or licensing authority or office which provide permits for the buses to their owners. If there was any such apprehension then the traffic police as well as the concerned police was available on the roads which can definitely supervise the buses.

This court is of further considered opinion that if an award or decree based upon an illegal agreement then executing court has to see whether such an award or decree can be executed. The contract which is illegal and void in terms of Section 23 and 24 referred herein above, therefore, no decree or award can be executed as the same is in opposition of public policy.

In such circumstances, the present petition is dismissed. The objections filed by the respondents are allowed. This court is of the further considered opinion that the petitioner has entered into an agreement and sought to enforce the same which is per se illegal and rather going to encroach upon the powers of the State. Therefore, the present petition is hereby dismissed with the cost of Rs.25,000/- payable by the petitioner to the respondents. Consequently, the award passed by the learned arbitrator dated 09-05-05 is set aside.

With these directions, the present petition is hereby dismissed. File be consigned to record room.” (underlining added)

6. I completely agree with the aforesaid reasoning and conclusions of the executing court though the counsel for the petitioner has sought to argue that



really the petitioner was employed as an employee by the bus owners, however, it is not conceivable as to why bus owners who appoint a single person such as the petitioner for controlling of the operation and running of the private buses when they already have necessary permits and are subject to the conditions of the permits and the Motor Vehicles Act and its Rules. Therefore, I completely agree with the contention urged on behalf of the counsel for the respondent that really the amount received under the Agreement dated 6.10.2004 was protection money being paid when the buses used to ply through 'area' under the 'control' of the petitioner. Surely, the petitioner is not a Traffic Inspector under the Motor Vehicles Act or any other designated authority under the Motor Vehicles Act and therefore if the petitioner is given money by each bus owner running buses on route no. 212 it can only be because either the petitioner was a 'saint' who was trusted by all the bus owners for disciplining the bus owners or actually the petitioner is a notorious person who was taking money in the guise of the Agreement dated 6.10.2004, and in my opinion, actually it is the latter which the petitioner is and with respect to which aspect one is left in doubt when one reads the clauses of the Agreement dated 6.10.2004 and the reasoning given by the executing court below.



7. Counsel for the petitioner also sought to urge that objections v were filed under Section 34 of the Arbitration and Conciliation Act, 1996 to the Award by the respondent and which were dismissed, and therefore the executing court had no option but to proceed to execute the Award, however, it is conceded on behalf of the petitioner that the objections filed by the respondent against the Award dated 9.5.2005 were dismissed not on merits but only on the ground that they were time barred. The issues which have been raised and decided by the impugned judgment were therefore not decided by the court in which objections were filed under Section 34 of the Arbitration and Conciliation, 1996. An Award which is a nullity being against public policy can always be challenged even at the stage of execution inasmuch as, if we take a most extreme example that an Award is passed that 'A' will steal money for 'B' then surely 'B' cannot enforce the Award/decreree stating that 'A' should give him particular amount of money which was to be stolen by 'B' for being given to 'A'.

8. In view of the above, there is no merit in the petition which is an abuse of the process of law and is therefore dismissed with costs of Rs.1,00,000/- to be deposited within a period of four weeks with the Prime Minister's National Relief Fund. In case the costs are not deposited with the



Prime Minister's National Relief Fund within four weeks, then the matt

listed before the Registrar General of this Court on 01.12.2014 who can recover the same from the petitioner as arrears of land revenue for being deposited in the Prime Minister's National Relief Fund.

9. It is clarified that in case the respondents have paid any amount to the petitioner pursuant to the illegal Award dated 09.2.2005, the respondents are entitled to restitution under Section 144 of Code of Civil Procedure, 1908 (CPC) and other powers of restitution provided in law alongwith the interest @ 12% per annum simple. The restitution proceedings can be initiated in the executing court itself by the respondents.

OCTOBER 15, 2014
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VALMIKI J. MEHTA, J.