

ODC-1

APOT/308/2023  
with  
AP/482/2021  
IA No. GA/1/2023

IN THE HIGH COURT AT CALCUTTA  
In appeal from its  
ORDINARY ORIGINAL CIVIL JURISDICTION  
CIVIL APPELLATE JURISDICTION  
(Commercial Division)

Rashmi Metaliks Limited  
Versus  
Union of India & Anr.

Before:

The Hon'ble Justice I. P. MUKERJI

And

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 18<sup>th</sup> September, 2023.

Appearance:

Mr. Abhrajit Mitra, Sr. Advocate  
Mr. Soumabho Ghose, Advocate  
Mr. Sarvapriya Mukherjee, Advocate  
Mr. Biswajit Kumar, Advocate.  
...for the appellant.

Mr. Siddhartha Lahiri, Advocate  
Mrs. Amrita Pandey, Advocate  
...for the respondent.

The Court: Order in terms of prayer (a) of the stay petition.

This is an appeal from a judgment and order dated 8<sup>th</sup> August, 2023 on an application by the Union of India under Section 36(2) of the Arbitration and Conciliation Act, 1996. By the said order a learned Single Judge has ordered inter alia unconditional stay of the award.

At the outset, Mr. Abhrajit Mitra, learned senior advocate appearing for the appellant conceded that as far as this part of the impugned judgment and order was concerned, it was not appealable.

However, there are other parts of the judgment and order which very badly affected the interests of his client, the award-holder and is also highly prejudicial to them.

In the impugned judgment and order directly or indirectly most scurrilous remarks have been made against the character, honesty and integrity of railway officials and, in our prima facie opinion also, against

the members of the arbitral Tribunal. Learned counsel submits that the Court had no jurisdiction to make an enquiry into these areas in the Section 36 application and that the part of the judgment and order adjudicating upon the same and expressing the above harsh views was totally without jurisdiction and is to be treated as non-est and expunged from the judgment and order. Hence, an appeal lay from that part of the order.

Mr. Lahiri, learned advocating appearing for the respondent/railways submitted that the learned judge had the power to make such enquiry and express such views and that this appeal was not maintainable.

This appeal is admitted subject to the question of maintainability. Prima facie whether the Court under Section 36 has the jurisdiction to make this kind of an order has to be investigated. There is no doubt that a High Court enjoys unlimited power to do justice between the parties. This power includes in appropriate cases directing an enquiry or investigation into alleged fraudulent or wrongful acts by a specialised investigating agency. But before such an order is made, the delinquent must have had some kind of a case or preliminary charge before him to answer and he after having failed to do so, such an order could have been passed. In a Section 36 application, unilaterally this kind of an order, without even a chance to the concerned persons to explain themselves, appears to be prima facie without jurisdiction.

This question can be fully decided on hearing the appeal.

We shall be able to decide whether the Court at all had jurisdiction to pass such an order only upon hearing the appeal

Till disposal of the appeal or until further orders, whichever is earlier, the direction in paragraph 48 of the impugned judgment and order for constitution of a “multi- member high-level enquiry committee” and “to complete the enquiry and submit a report before this Court within three months from the date of this order” shall remain stayed.

However, we make it clear that the Section 34 application of the railways may be heard out. Mr. Mitra once again reiterates that his client is at the moment not interested in the execution of the award. We also observe that the Hon'ble Court hearing the Section 34 application shall not be guided by any of the remarks of the learned Judge in the impugned judgment and order as tabulated in ground III of the memorandum of appeal. Nevertheless, we also make it absolutely clear that all grounds available to the railways to challenge the award including fraud and corruption if any as made out in the Section 34 application are open before it. The learned Judge shall consider those grounds as grounds of challenge to the award.

We expedite hearing of the appeal.

As the respondents are represented by learned counsel, issuance and service of the notice of appeal are dispensed with.

Advocate on record for the appellant is directed to file an informal paper book by 3<sup>rd</sup> October, 2023, serving a copy thereof upon the advocate on record for the respondents, at least seven days before the date of hearing of the appeal.

List the appeal for hearing on 11<sup>th</sup> October, 2023 .

The stay application (GA/1/2023) is disposed of.

As affidavits were not invited, allegations contained in the stay application are deemed not to have been admitted.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)