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Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a

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Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

UNRAVELING LEGAL KNOTS- ASSESSING THE VALIDITY OF ARBITRATION AGREEMENTS

AUTHORED BY: RITIKA SEHGAL & MUSKAN DUTTA

(Student of LLM – ADR, at Fairfield Institute of Management And Technology,

Guru Gobind Singh Indraprastha University)

Case Title: In Re: Interplay between arbitration agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899.

Bench: A seven-judge bench comprising CJI Chandruchud and Justices Kaul, Khanna, Gavai, Kant with J.B. Pardiwala and Manoj Misra

Citation: CURATIVE PETITION(CIVIL) 44/2023

Introduction:

The enforceability of an unstamped arbitration agreement was the subject of a ruling reserved by a Seven-Judge Supreme Court bench on October 12, 2023. This bench was reexamining the ruling made on April 25, 2023, by the five-judge bench in N.N. Global Mercantile Private Limited v. Indo Unique Flame¹.

The recent developments in the legal landscape, most notably the case "In Re Interplay Between Arbitration Agreements Under The Arbitration And Conciliation Act 1996 And The Indian Stamp Act 1899,"² have raised important questions about the enforceability of arbitration agreements and how they relate to stamping laws.

A major turning point in Indian jurisprudence is thus represented by this case, which was heard by a seven-judge Supreme Court bench. It concerns a curative petition against a 2020 decision in Dharmaratnakara Rai Bahadur v. Bhaskar Raju & Brothers³, and examines the legality of a 2022 judgement in N.N. Global Mercantile Private Limited v. Indo Unique Flame Ltd. And Ors. This case

¹ N.N. Global Mercantile Private Limited v. Indo Unique Flame, (2021) 4 SCC 379 (India)

² Curative Petition (C)No. 44/2023

³ Dharmaratnakara Rai Bahadur v. Bhaskar Raju And Brothers Civil Appeal No. 1599 OF 2020, 26 (India)

examines the complex interplay between stamping regulations outlined in the Indian Stamp Act, 1899, and arbitration agreements governed by the Arbitration and Conciliation Act, 1996 (henceforth referred to as the “Arbitration Act”).

Background:

Since 2011, the Supreme Court has examined the central issue in this case in a number of instances. In *SMS Tea Estate Pvt. Ltd. v. Chandmari Tea Company Pvt. Ltd.* (2011)⁴, a three-judge division bench of the Supreme Court ruled that an unstapled arbitration agreement could not be upheld. They reasoned that an agreement could not be valid if there was insufficient stamp duty paid.

2015 saw the addition of Section 11(6A) of the Arbitration and Conciliation Act⁵. According to this clause, the Court's investigation into the "existence of an arbitration agreement" should be the only thing it looks at when choosing an arbitrator. This clause appears to imply that the Court is not permitted to investigate an agreement's legality in light of the Act.

A second three-judge split bench of the Supreme Court ruled in *Garware Wall Ropes Ltd. v. Coastal Marina Constructions and Engineering, Ltd.* (2019)⁶ that contracts, including agreements, are only enforceable if they are properly stamped.

On 14-02-2020, In *Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram v. Bhaskar Raju & Bros.*, (2020), a three-judge panel made up of former Chief Justice SA Bobde, Justice BR Gavai, and Justice Surya Kant held that the arbitration clause in the lease deed, which needed to be properly stamped, was not sufficiently stamped, and although the registrar had instructed the respondents to pay the stamp duty and penalty, the respondents did not comply. The High Court erred by depending on the lease deed as a result. Thus, the court cannot act upon an arbitration clause in an inadequately stamped agreement.

In 2020, the N.N. Global case came up. The Supreme Court was consulted by N.N. Global Mercantile

⁴ *SMS Tea Estates Private Limited v. Chandmari Tea Company Private Limited* (2011) 14 SCC 66 (India)

⁵ Arbitration and Conciliation (Amendment) Act (2015), s. 11(6A)

⁶ *Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engineering Ltd.* 2019 SCC Online SC 515 (India)

Pvt. Ltd. in relation to a disagreement regarding the use of a bank guarantee in a contract with Indo Unique Flame Ltd. According to N.N. Global, the agreement was not stamped, making it unenforceable. A three-judge bench expressed disagreement with the rulings in SMS Tea Estates and Garware in January 2021.

A five-judge Supreme Court Constitution Bench made up of Justices K.M. Joseph, Aniruddha Bose, C.T. Ravikumar, Ajay Rastogi, and Hrishikesh Roy ruled 3:2 on April 25, 2023, that an unstamping arbitration agreement was null and void. Additionally, an arbitration agreement could not be isolated from the main contract, according to the majority. Consequently, the arbitration clause was equally void if stamp duty on the primary contract was not paid.

Analysis:

The five-judge bench's judgement was immediately criticised. Many argued that the ruling caused delays and practical issues in the arbitration process, particularly in cases of urgency. This seemed counterintuitive because arbitration was intended to be an alternative dispute resolution process that would provide quick and efficient means of resolving conflicts without the need for court intervention.

Thus the matter was reconsideration by a seven-judge bench.

A five-judge Supreme Court bench decided on September 26, 2023, reexamined the ruling in N.N. Global in light of the decision's more significant repercussions. CJI D.Y. Chandrachud, together with Justices S.K. Kaul, Sanjiv Khanna, B.R. Gavai, and Surya Kant, made up the bench. Strangely, a curative petition challenging the 2020 Dharmaratnakara ruling was the case's main petition. All that was N.N. Global was a tagged matter.

Legal Arguments:

Senior Advocate Shyam Divan contended during this preliminary hearing on behalf of the respondents in the curative petition that the Court's curative jurisdiction was too limited to allow the case to be reopened on facts. The bench listed the case for hearing by a seven-judge bench on October 11, 2023, while assuring him that they would take his worries into consideration. The Indian Stamp

Act,⁷(henceforth referred to as the "Stamp Act"), which requires that various documents, including arbitration agreements, be properly stamped in order to be regarded as legally legitimate and enforceable, was the source of the dispute. The main question was whether failure to pay stamp duty under the Stamp Act could invalidate an arbitration agreement, which is governed by the Arbitration Act.

A. The Primacy of the Arbitration Act

Senior advocates Darius Khambata, Gourab Banerjee, Jayanth Mehta, Nikhil Sakhardande, and Arvind Datar filed a petition arguing that the majority ruling in N.N. Global was wrong. They emphasised that the Court's authority under Section 11(6A) of the Arbitration Act was restricted, meaning it was unable to determine whether an arbitration agreement was legitimate. The Court's authority was limited to ascertaining the presence of an arbitration agreement.

Moreover, they argued that an arbitration agreement could not be invalidated by using a "curable defect"—that is, the failure to stamp or insufficient stamping of an agreement. An unstamped arbitration was not "void" in accordance with contract law, even though it was unenforceable under the Stamp Act of 1899.

Last but not least, the petitioners argued that an arbitration clause existed outside from the primary contract. Thus, the arbitration clause was not automatically void in the event that the contract was deemed invalid.

The hierarchy of statutes was thus the main point of contention. It argued that the Stamp Act, a generic law, should yield to the Arbitration Act, a more particular and subsequent piece of legislation. Party A contended that the general provisions of the Stamp Act should yield to the specific provisions of the Arbitration Act, based on the doctrine of implied repeal.

Additionally, they underlined the Arbitration Act's legislative goal, which aims to minimise judicial intervention and establish a pro-arbitration framework. In order to do this, it claimed that any interpretation that made arbitration agreements more difficult to enforce would be counterproductive

⁷The Indian Stamp Act (1899)

to the legislative goal.

B. The Dual Compliance Conundrum

Senior Advocates Shyam Divan and Nikhil Nayyar, who represented the respondents, countered that the Court lacked the authority to address any legal issues raised by the case. Divan argued that on its face, this was a request for a cure. The Court was in violation of its curative jurisdiction guidelines when it granted a petition to revisit the decision in one case (N.N. Global) through a curative petition in another (Dharmaratnakara). Nonetheless, the bench reasoned that because the case raised a crucial legal issue, they had to hear it. Divan was given the assurance that they would just address one query and would not reopen the facts.

Next, Divan and Nayyar contended that the five-judge bench was correct to rule that an arbitration that was not stamped was null and invalid. They contended that an unenforceable agreement, like an unstamped arbitration agreement, was null and invalid under contract law. They added that it was not possible to separate the arbitration clause from the main contract.

Therefore, it was argued that the Stamp Act is a budgetary act with unavoidable required components. The argument put forth was that although the Arbitration Act encourages arbitration, it does not specifically exempt arbitration agreements from the Stamp Act's stamping obligation. They maintained that the arbitration agreement cannot be enforceable unless the Stamp Act is followed, and that both legislation must be interpreted in a way that makes sense.

The argument also included the claim that the two legislation have different goals: the Stamp Act collects money by properly stamping documents, whereas the Arbitration Act facilitates and promotes arbitration. Party B stressed how crucial it is for the state to generate revenue and demanded that the court uphold the fiscal statutes.

Judicial Reasoning:

During its deliberations, the court thoroughly examined the two legislation and how they interacted. The court recognised the seeming contradiction between the Stamp Act's revenue-centricity and the Arbitration Act's pro-arbitration position. It acknowledged that the Stamp Act strives to assure tax

collection, while the Arbitration Act tries to create a climate that is favourable to arbitration.

Upon scrutinising the Arbitration Act's precise wording, the court concluded that there was no explicit clause that released arbitration agreements from the need for stamping. It did note, nevertheless, that the Stamp Act is not specifically incorporated into the Arbitration Act. In order to clear up this ambiguity, the court turned to statutory interpretation rules.

Invoking the concept of harmonious construction, the court noted that statutes should be interpreted whenever possible so that they can both function simultaneously without any provision being rendered null and void. It made clear that, notwithstanding their differences, the Arbitration Act and the Stamp Act may be interpreted in tandem without undermining their respective goals.

The court tended to agree that a more recent, focused statute should take precedence over a more ancient, broad one when evaluating the hierarchy of statutes. It was decided that the Arbitration Act, which is a thorough arbitration statute with particular provisions addressing the enforceability and validity of arbitration agreements, should take precedence over the Stamp Act.

The court also examined arbitration agreements' nature, highlighting their contractual aspect. It drew comparisons with other contractual duties, pointing out that an arbitration agreement is executory in character, whereas the Stamp Act primarily covers executed papers. The court held that although stamp duty becomes due at the time the agreement is executed, it does not alter the agreement's existence or enforceability if it is not paid.

Implications and Critique

The ruling has a big impact on whether arbitration agreements may be enforced in India. The court has strengthened the Indian judiciary's pro-arbitration position by giving the Arbitration Act precedence over the Stamp Act. This ruling gives a positive signal to foreign investors and enterprises and is in line with the global trend of endorsing arbitration as a productive means of resolving disputes.

Nonetheless, there are many who disagree with the decision. Some contend that it would compromise

the Stamp Act's goals for raising money, thus resulting in a loss of revenue for the state. Concerns regarding judicial activism may arise from the court's reliance on the harmonious construction principle, which is perceived as a divergence from a rigorous textual reading of statutes.

Furthermore, the ruling raises a few unsolved problems. It does not address the stamping requirements for other documents relating to arbitration procedures, such as awards or settlement agreements, even though it specifies the status of arbitration agreements. This ambiguity could result in further lawsuits and confusion.

Conclusion

An important advancement in Indian arbitration jurisprudence is the *In Re Interplay Between Arbitration Agreements Under The Arbitration and Conciliation Act, 1996, And The Indian Stamp Act, 1899*. The court has reinforced the enforcement of arbitration agreements by maintaining the priority of the Arbitration Act, bringing Indian law into line with global best practises.

The ruling, however, brings up significant issues on how to strike a balance between advancing arbitration and maintaining fiscal statutes. In order to create a more thorough framework for the interaction between arbitration and stamping requirements, it is unclear how the judiciary will treat these issues going forward and whether legislative changes are required.

In summary, the goal of this case commentary has been to offer a thorough examination of the case, examining the parties' and the court's reasoning for their legal positions. The ruling highlights how arbitration law is developing in India and how important it is to creating an atmosphere that is favourable to alternative conflict settlement.