
GOVERNMENT CANNOT CLAIM PRIVILEGES IN ARBITRATION
MATTERS – Supreme Court of India

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The Arbitration & Conciliation Act, 1996 (herein after ‘The Act’) with its advent has paved way for an effective alternate dispute resolution mechanism but reduces importance of certain the procedural and other substantive laws that forms the basis of settling disputes before the courts. The Act focuses on party autonomy where the mutual rights and liabilities emerge out of the contract between the parties at the same time treating all the parties involved alike. The question in this case which perturbs us, as to what is the position when one of the party is the Government? Does the government enjoy any special privilege as it does in the case of suits filed before courts under Civil Procedure Code? This is what exactly was an elaborate point of discussion in ***Pam Developments Private Ltd. Vs. State of West Bengal ((2019)8 SCC 112)***.

As per the Indian law, if a party wishes to challenge the award and get a stay of the enforcement of an award, court shall direct a deposit of a minimum of 80% of the award amount. The Hon’ble Apex Court in the above said case, was faced with a situation where the State of West Bengal had obtained an order of unconditional stay of the award under section 36(2) of the Arbitration & Conciliation Act, 1996 (as amended up to date) after relying on the provisions of Order XXVII Rule 8A of CPC, in the pending proceedings under Section 34 of the Arbitration Act filed in the High Court of Calcutta. The execution petition filed by Pam Developments Pvt. Ltd. was also dismissed by the executing court based on an order of a co-ordinate bench of the High Court wherein an unconditional stay of award had been granted to the State Government. Pam Developments, visibly aggrieved, approached the Hon’ble Supreme Court.

Pam Developments assailed the order of unconditional stay on two main grounds (i) The provision of Order XXVII Rule 8A of CPC could not have been applicable and the same should not have been considered while deciding the application for stay of the award under Section 36 of the Arbitration Act. (ii) Even if the provision of Order XXVII Rule 8A is to be taken into account, then too the Courts should not pass an order of unconditional stay of award and could still direct deposit of the awarded amount as security.

It is relevant at this juncture first to see what Order XXVII Rule 8A of the Code of Civil procedure, 1908 says: *It says that no such security as is mentioned in rules 5 and 6 of Order XLI shall be required from the Government, for granting stay by the Appellate court or the court which passed the decree.*

The moot question which came up for consideration was, “*whether the Government can be given special treatment/privileges as per the Civil Procedure Code in the Arbitration Proceedings like in civil proceedings before courts*”?

The Supreme Court while dealing with the said question & analyzing the law w.r.t. the same, culled out the following:-

- (i) Sub-Section (3) of Section 36 of the Arbitration Act mandates that, while considering an application for stay filed along with or after filing of objection under Section 34 of the Arbitration Act, if stay is to be granted then, it shall be subject to such conditions as may be deemed fit. The said Sub-section makes it clear that, the grant of stay of the operation of the award is to be for reasons to be recorded in writing "subject to such conditions as it may deem fit". The proviso says, the Court has to "have due regard to the provisions for grant of stay of a money decree under the provisions of the CPC". The phrase "have due regard to" would only mean that the provisions of CPC are to be taken into consideration, and not that they are mandatory.
- (ii) The phrase used is “having regard to” the provisions of CPC and not “in accordance with” the provisions of CPC. Mere reference to CPC in the said Section 36 cannot be construed in such a manner that it takes away the power conferred in the main statute (i.e. Arbitration Act) itself. Since, the Arbitration Act is a self-contained Act, the provisions of the CPC will apply only insofar as the same are not inconsistent with the spirit and provisions of the Arbitration Act.
- (iii) Even otherwise a plain reading of Order XXVII Rule 8A of CPC would make it clear that, the same is only regarding security as mentioned in Rule 5 and 6 of Order XLI of CPC (which is granting of stay in appeals before courts), which is not to be demanded from the Government while considering the stay application filed by the Government.
- (iv) The Arbitration Act is a special Act which provides for quick resolution of disputes between the parties and Section 18 of the Act makes it clear that the parties shall be treated with equality. On a detailed reading of the mandate of the Act, it is manifest that it nowhere provides for differential/special treatment to the Government as a party, while considering an application for

grant of stay of a money decree in proceedings under Section 34 of the Arbitration Act.

- (v) Although CPC provides for a differential treatment to the Government in certain cases, but the same may not be so applicable while considering a case against the Government under the Arbitration Act.

The Hon'ble Apex court thus reached the conclusion that unconditional order of stay of the arbitral award could not have been passed by the Calcutta High Court, based on the detailed analysis of the Act, while clearly delineating the position of the Government as it enjoys while being before the Civil court as one of the party and its status under the Arbitration Act. The ratio of this judgment has been able to bind the ethos of the Arbitration Act. As has been rightly observed by our Hon'ble Apex Court, the seepage of the strict rigours of the Civil Procedure Code in the arbitral proceedings will denude this special Act of its very element of being an "*informal & speedier dispute resolution mechanism*".