

Writ Petition need not be entertained by a Court in view of an Arbitration Clause in the Contract

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In a recent Judgment of Delhi High Court in the case of Apna Logistics² Hon'ble Justice Mr Vibhu Bakhru, held that even though Arbitration clause would not preclude the Court from exercising its Jurisdiction under Article 226 of the Constitution of India, the courts must be circumspect in exercising such jurisdiction and do so only where an element of Public Law is involved and where actions of the state fall foul of the Wednesbury principle, that is, no reasonable person could possibly take such a decision. When the employer is a Government Institution or a State, parties choose to file Writ Petitions under Article 226 of the Constitution of India in the High Court seeking indulgence on the ground of violation of Article 14 or 19 and in some cases Courts also have granted certain relief to those petitioners in some cases. This judgment clearly distinguishes the cases where such a discretionary indulgence by a High Court can be justified.

Facts of the Case: In the said case the petitioner filed a Writ Petition seeking to challenge the termination order passed by the Respondent terminating the contract on the grounds that the said termination is illegal and arbitrary. The Contract provided for an Exit clause that enables the Respondent to terminate the contract after giving a 60 days notice in case of "*strong business reasons to do so, as determined by its management*". It is also important to note that the contract also has an arbitration clause. The Respondent terminated the contract and the Petitioner challenged the same by way of a Writ Petition on the ground that the termination order is illegal and arbitrary.

Contentions: Relying on a Judgment of the Supreme Court of India in the matter of Harbanslal Sahnia³, it was contended that an Arbitration Clause would not preclude this court from exercising its jurisdiction Under Article 226 of the Constitution of India. It was also contended that the Respondent being a State Institution, ought to have acted fairly and not arbitrarily.

Conclusion: The Court did not reject the above-said proposition and also confirmed that plainly existence of an Arbitration Agreement does not denude this court of its Jurisdiction under Article 226 of the Constitution of India. But the Court went ahead and examined the scope of Judicial review in Contract matters to decide this case. The Court followed another Judgment of the Supreme Court of

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² Apna Logistics Pvt Limited Vs Container Corporation of India Limited (2019 SCC Online Del 8704)

³ Harbanslal Sahnia Vs Indian oil Corporation Limited (2003)2SCC 107

India in Joshi Technologies International case⁴ and held that there is absolutely no bar in maintainability of a Writ Petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. It further held that the discretion lies with the High Court to refuse to exercise such a discretion in the following situations:

- a. The impugned action has some public law character attached to it
- b. In case of matters where the settlement of disputes is to be resorted to by the means of Arbitration
- c. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination

Hence, in view of the above said finding, the Court dismissed the Writ Petition and directed the parties to avail the remedies under the mechanism provided under the contract between the parties.

⁴ Joshi Technologies International Inc Vs Union of India (2015) 7 SCC 728