NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

ARBITRATION PETITION (CIVIL) NO.3 OF 2008

PAYAL CHAWLA SINGH ...PETITIONER (S)

VERSUS

THE COCA-COLA CO. & ANR. ...RESPONDENT (S)

JUDGMENT

1. The petitioner is a former employee of Coca-Cola India, Inc., the respondent No.2 herein. At the time of joining the respondent company an agreement dated 20.09.1995 was entered into between the petitioner and the respondent No.2, relevant features of which will be noticed in due course. It appears that while in employment in the respondent company, the petitioner had complained of gender discrimination and harassment primarily on account of the service conditions relating to pay and emoluments. The complaint of the petitioner was sought to be redressed by the respondent company by appointing an independent investigator and thereafter

through mediation proceedings which did not yield any result. With effect from 28.07.2004, the petitioner's resignation from service in the respondent No.2 company became effective and payment in full and final settlement of her claims had also been tendered and received by the petitioner.

2. It appears that on 05.12.2006 the petitioner issued a legal notice to the respondents invoking the arbitration mechanism under the "solutions programme" and claiming compensation against harassment and gender discrimination that she claimed to have suffered during the course of her employment and even after her resignation. While it will not be necessary to go into the detailed facts and circumstances in which the grievances of the petitioner came to be resurrected after her resignation, suffice it will be to notice that an SMS message received around this time by the petitioner from one Mr. Adil Malia, Vice-President, Human Resources of the respondent No.2 company, apparently, had triggered off the aforesaid response of the petitioner. The demand for arbitration made by the petitioner was refused by the

respondent on the ground that the "solutions programme" was not applicable to the petitioner and the same was meant only for employees of the first respondent in the United States of America. This has led to the filing of the instant application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short the "1996 Act") resulting in the proceedings in question.

3. It will be necessary, at this stage, to take note of the details of the "solutions programme" in terms of which the petitioner claims the mechanism for arbitration contained therein to be a part of the contract of employment between her and the respondents.

4. Some time in the year 1999 four African-Americans who were current and former employees of the first respondent had filed a complaint seeking declaratory, injunctive and other equitable reliefs and compensatory and punitive damages on account of alleged/claimed infringement and deprivation of rights of the aforesaid persons by the respondent No.1. On 16.11.2000, a settlement was arrived at between the aforesaid

employees of the first respondent and the company. The said settlement formed a part of the consent decree dated 07.06.2001 of an United States District Court (Georgia). The aforesaid decree, inter alia, provided for constitution of a task force to continuously evaluate the human resource policies and practices of the first respondent and also to consider whether implementing an arbitration procedure would be appropriate. The task force submitted its report from time to time and it was in the 3rd annual report submitted on 01.12.2004 that of the various problem resolution methods, the following were also incorporated:-

> "4) Mediation- this involves a neutral third party outside the Company and is available only for resolution of legal disputes, such as discrimination or harassment.
>
> 5) Arbitration – If mediation fails to resolve the legal dispute to the employee's satisfaction, arbitration is available. This requires both parties to explain their sides to a trained arbitrator, usually an attorney or judge."

5. This, in essence is the "solutions programme" on which the petitioner has based her claim. According to the petitioner the "solutions programme" is applicable to

all employees of Coca Cola Company, Inc. and its subsidiaries including Cola Cola India (Respondent No.2). The petitioner has contended that even admitting that the arbitration provision in the "solutions programme" applies only to employees based in the United States, the same has been expressly invoked in the case of the petitioner through correspondence, e-mails etc. The petitioner relies on an e-mail dated 25.09.2002 issued by Coca Cola Company informing its employees of the change in policy and the extension of the "solutions programme" to all employees world wide. The petitioner also relies on a blank memo dated 20.12.2002 with an intake form sent to the petitioner for accessing the conflict resolution mechanism to resolve harassment issues. As the respondents had refused to comply with the demand notice sent by the petitioner for appointment of an arbitrator, the instant petition has been filed under the provisions of 1996 Act.

6. In reply, the respondent contend that the employment agreement between the petitioner and the respondent No.2 dated 20.09.1995 does not contain any

arbitration clause. According to the respondents, the "solutions programme" is not applicable to employees of subsidiaries of the respondent No.1 outside the United States of America and the same in fact applies only to the United States based employees of the first respondent. The provisions for arbitration contained in the "solutions programme" are not incorporated in the petitioner's employment agreement dated 20.09.1995. It is further contended that by an amendment of the petitioner's employment agreement made on 05.07.1996 a provision was inserted to the following effect:-

> "In case of any dispute the jurisdiction to entertain and try such dispute shall vest exclusively in a court in Bombay".

7. The respondents have further contended that the "solutions programme" contemplated arbitration in the United States of America under the Federal Arbitration Act and incorporates the National Rules for the resolution of employment disputes of the American Arbitration Association (AAA). Therefore, according to the respondents, even assuming that the "solutions

programme" is applicable to the petitioner, the specific reference to the Federal Arbitration Act in the "solutions programme" and the applicability of the procedure visualized by the National Rules for resolution of employment disputes of the American Arbitration Association would specifically exclude the applicability of Part I of the 1996 Act. On the aforesaid basis, it is submitted, that the present application filed under Section 11(6) of the 1996 Act will not be maintainable. Furthermore, the respondents contend that the "solutions programme" does not contemplate mandatory recourse to arbitration under the 1996 Act. It merely contemplates a possibility of the employees seeking arbitration as opposed to an obligation to refer all disputes arising to arbitration inasmuch as under the "solutions programme" it is also open to an employee to approach the Court instead of invoking arbitration. It is further submitted that the mandatory requirement under Section 7 of the 1996 Act obliging parties to abide by the decision of the Arbitral Tribunal is departed from under the "solutions programme" wherein an employee has a choice to accept

the arbitrator's decision and the legal dispute or reject such decision and pursue other legal options.

8. Having heard the petitioner-in-person and Shri Amit Sibal, learned senior counsel appearing for the respondents, this Court unhesitatingly comes to the conclusion that there is no binding arbitration agreement between the petitioner and her employer so as to enable this Court to exercise its jurisdiction under Section 11(6) of the 1996 Act. The attempt of the petitioner to bring in the provision for arbitration contained in the "solutions programme" as a part of the terms of her employment with the respondent No.2 remains wholly unsubstantiated. Not only the employment contract signed by the petitioner does not contain any specific clause of arbitration or makes the provision for arbitration contained in the "solutions programme" applicable to her employment, the clause providing for exclusive jurisdiction of the courts in Bombay specifically negate the claim of the existence of an arbitration clause in the contract of employment of the petitioner. There is no

specific incorporation of the provisions for arbitration contained in the "solutions programme" to the case of the petitioner by any other communication though a bald assertion to the said effect has been made by the petitioner in her pleadings which has remained unsubstantiated. Even on a hypothetical application of the "solutions programme" the provisions contained therein with regard to conduct of arbitration proceedings in terms with the Federal Arbitration Act and the National Rules for resolution of employment disputes of the American Arbitration Association would specifically exclude the provisions of Part I including Section 11(6) of the 1996 Act on the strength of the decisions of this Court in ***Bhatia International*** *Vs.* ***Bulk Trading S.A. & Anr.***[1] followed in ***Videocon Industries Limited*** *Vs.* ***Union of India & Anr.***[2] and ***Yograj Infrastructure Limited*** *Vs.* ***Ssang Yong Engineering and Construction Company Limited***[3] which would be applicable to the issue having regard to the point of time when the question had arisen. Besides, under Section 7 of the 1996

[1] (2002) 4 SCC 105
[2] (2011) 6 SCC 161
[3] (2011) 9 SCC 735\

Act the parties to an arbitration agreement must agree to submit their disputes to arbitration. What is contemplated under the "solutions programme" is a mere possibility of the employee seeking arbitration as opposed to an obligation to refer all disputes to arbitration. Also as held by this Court in ***K.K. Modi*** *Vs.* ***K.N. Modi & Ors.***[4] an integral element of Section 7 of the 1996 Act is the agreement of the parties to be bound by the decision of the arbitrator. The same is not to be found in the "solutions programme" which leaves the employee with an option to accept or reject the decision of the arbitrator.

9. For the aforesaid reasons, we are of the view that the petitioner is not entitled to invoke this Court's jurisdiction under Section 11(6) of the 1996 Act. In view of the aforesaid conclusion, it will not be necessary for this Court to go into certain other issues that have been raised by the contesting parties, namely, whether the petitioner's claim is time barred and whether the same has been instituted with oblique/collateral motives.

10. In view of the foregoing discussions, the application

[4] (1998) 3 SCC 573

filed by the petitioner has to fail. It is accordingly dismissed. However, in the facts and circumstances of the case there will be no order as to costs.

.....J.
(RANJAN GOGOI)

NEW DELHI
APRIL 10, 2015