

GOVIND PRASAD SHARMA & ORS.

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v.

DOON VALLEY OFFICERS COOPERATIVE
HOUSING SOCIETY LTD

(Civil Appeal No. 10786 of 2017)

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AUGUST 23, 2017

[R.F. NARIMAN AND SANJAY KISHAN KAUL, JJ.]

Arbitration and Conciliation Act, 1996 – ss.75 and 81 – By impugned judgment, demarcation report made by a government agency in the course of conciliation proceedings between the parties admitted into evidence – Admissibility of the report challenged – Held: s.75 contemplates that both the conciliator and the parties must keep as confidential all matters relating to conciliation proceedings – In the instant case, the demarcation report has its genesis only in the conciliation proceedings – Therefore, it cannot be relied upon – Impugned judgment is set aside – However, it will be open for the respondent to adduce, by way of evidence, any report that he may obtain from authorities for the purpose of demarcating property, which may then be introduced by way of evidence in accordance with law.

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Disposing of the appeal, the Court.

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HELD: 1. Reading of Section 75 shows that the object of the section is sub-served by the expression “relating to” which is an expression of extremely wide import. It is clear, therefore, that both the conciliator and the parties must keep as confidential, all matters relating to conciliation proceedings. It is of no matter that the instant case does not fall within the four pigeon holes contained in Section 81, as otherwise, if there are insidious encroachments on confidentiality, a free and fair settlement may never be arrived at, thus stultifying the object sought to be achieved by Part III of the 1996 Act. [Paras 5, 7] [655-H; 656-D,E]

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Renusagar Power Company Limited v. General Electric Company (1984) 4 SCC 679; [1985] 1 SCR 432; Ruby General Insurance Co. Ltd. v. Pearey Lal Kumar and Another [1952] SCR 501 – relied on.

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A *Union Carbide Canada Inc. and Dow Chemical Canada Inc. v. Bombardier Inc., Bombardier Recreational Products Inc. and Allianz Global Risks US Insurance Company* [2014] 1 SCR 800 – distinguished.

Case Law Reference

B	[1985] 1 SCR 432	relied on	Para 5
	[1952] SCR 501	relied on	Para 6
	[2014] 1 SCR 800	distinguished	Para 8

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10786 of 2017.

From the impugned final Judgment and Order dated 12.12.2014 passed by the High Court of Uttarakhand at Nainital in Writ Petition No.2664 of 2012 (M/S).

D V. Hansaria, Sr. Adv., P.I. Jose, Govind Prasad Sharma, Shashank Mishra, Ms. Pooja Mishra, Advs. for the Appellants.

Hrishikesh Baruah, Pranav Jain, Advs. for the Respondent.

E The Judgment of the Court was delivered by

R.F. NARIMAN, J. 1. Leave granted.

F 2. The appellants are before us, against a judgment dated 12.12.2014, passed by the High Court of Uttarakhand at Nainital, in which a demarcation report made by a government agency, in the course of conciliation proceedings between the parties, was sought to be relied upon. The Special Judge at Dehradun, specifically referring to Sections 75 and 81 of the Arbitration and Conciliation Act, 1996, dismissed the Revision Petition on 11.12.2012 that was filed against an order dated 06.12.2010, by which an application by the plaintiff for taking the said report as evidence was dismissed. Interfering with the said orders in a G Writ Petition filed, the impugned order has allowed the said report to be admitted into evidence.

3. Mr. V. Hansaria, learned Senior Counsel appearing on behalf of the appellants, has argued that Section 75 is in very wide terms and that parties are to keep confidential all matters relating to conciliation

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proceedings. He also referred to Section 81 of the Act, and stated that parties cannot rely upon or introduce as evidence in arbitral or judicial proceedings, proposals made by the conciliator under sub-clause (c) from which the said report emanated. A

4. Mr. Hrishikesh Baruah, learned counsel appearing on behalf of the respondent, has argued that quite clearly none of the sub-clauses in Section 81 would apply. In any case, according to him, the various sub-clauses in Section 81 only reflect the extent of confidentiality that arises out of the earlier sections contained in Part III dealing with Conciliation, and that, therefore, the moment the case does not fit into any of the four pigeon holes of Section 81, the report can certainly be admitted into evidence and relied upon. He also cited a Canadian Supreme Court judgment, which we will deal with, in support of this proposition. B C

5. Sections 75 and 81 of the Arbitration and Conciliation Act, 1996 read thus:

“75. Confidentiality.— Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement. D E

81. Admissibility of evidence in other proceedings.— The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,—

(a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute; F

(b) admissions made by the other party in the course of the conciliation proceedings;

(c) proposals made by the conciliator;

(d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.” G

On a reading of Section 75, it is clear that the object of the section is sub-served by the expression “relating to” which is an expression of extremely wide import. (See: **Renusagar Power Company Limited**

A v. **General Electric Company**, (1984) 4 SCC 679 at 704). It is clear, therefore, that both the conciliator and the parties must keep as confidential all matters relating to conciliation proceedings.

6. The litmus test for determining whether the matter relates to conciliation proceedings was laid down by an earlier judgment of this Court. In Ruby General Insurance Co. Ltd. vs. Pearey Lal Kumar and Another, [1952] S.C.R. 501, the question to be decided was as to whether a dispute or difference arose out of a certain insurance policy. This Court laid down that the test for determining whether a dispute or difference arose out of the said policy is whether recourse to the contract, by which the parties are bound, is necessary for the purpose of determining the matter in dispute between them. If it is found that such recourse is necessary, then the matter would certainly fall within the policy. Following this judgment, and applying it to the facts of this case, it is clear that recourse needs to be had to conciliation proceedings as the genesis of this demarcation report is only in conciliation proceedings and not otherwise.

7. This being the case, it is of no matter that the present case does not fall within the four pigeon holes contained in Section 81, as otherwise, if there are insidious encroachments on confidentiality, a free and fair settlement may never be arrived at, thus stultifying the object sought to be achieved by Part III of the 1996 Act.

8. Mr. Baruah cited before us a judgment of the Supreme Court of Canada in Union Carbide Canada Inc. and Dow Chemical Canada Inc. vs. Bombardier Inc., Bombardier Recreational Products Inc. and Allianz Global Risks US Insurance Company [2014] 1 SCR 800. He relied, in particular, on a sentence contained in para 36 of the said judgment which reads as under:-

“Moreover, a litigant cannot object to evidence of a fact that is independent of and separate from a settlement offer.”

We agree with this decision. In that a litigant cannot possibly object to evidence of a fact that is independent of or separate from a settlement offer. In the facts of the present case, this case is wholly distinguishable and would not apply for the simple reason that the demarcation report has its genesis only in the conciliation proceedings, as has been held by us above.

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9. In this view of the matter, we allow the appeal and set aside the impugned judgment dated 12.12.2014. However, it will be open for the respondent to adduce, by way of evidence, any report that he may obtain from authorities for the purpose of demarcating property, which may then be introduced by way of evidence in accordance with law. A

10. The appeal is disposed of accordingly. B

Devika Gujral

Appeal disposed of.