The Swastik Gases Case and Validity of Exclusive Jurisdiction Clauses

Introduction

An Exclusive jurisdiction clause is a term in a contract which confers the power to adjudicate the case to the exclusion of the other courts. There has been an increase in the usage of such clauses in contracts. There have also been plenty of court cases regarding this matter and one such case is the Swastik gases case.

The case of *Swastik Gases (P) Ltd. v. Indian Oil Corporation Ltd.*[[1]](#footnote-1)is a case regarding the validity of ouster clauses. It was a judgement given by a 3 judge bench of the Supreme Court. In the present case the Indian Oil Corporation Limited (Herein referred to as the Respondent) was engaged in the business of manufacturing, storing, marketing and distributing petroleum products. Swastik Gases Private Limited (Herein referred to as the Appellant) was duly appointed to be the agent for the Respondent for marketing the products in Jaipur. The Appellant was unsuccessful in selling the stock of products and so disputes arose between the two parties. Several attempts were made by the parties to amicably resolve the matter however all of them failed. Eventually the Respondent filed a case against the Appellant at the Rajasthan High Court; however, Clause 18 of the agreement stated that “*The Agreement shall be subject to jurisdiction of the courts at Kolkata.*” The Rajasthan High Court dismissed the application of the Appellants while telling them to approach the Calcutta High Court, which was the Court that had exclusive jurisdiction on this case. When the parties approached the Supreme Court it dismissed the appeal and held that only the Calcutta High Court had the jurisdiction to entertain the disputes between the parties.

The majority reasoning in the judgement was based on the maxim “*Expressio unius est exclusion alterius*” which means that when there is an express mention of a thing then the others from the same class are excluded. In a concurring judgement Justice Lokur classified the exclusive jurisdiction clauses into two sets: (i) the intention of the parties can be understood by the use of terms such as “only”, “exclusive” and “alone”; and (ii) where there is no use of words such as “only”, “exclusive” or “alone”. Justice Lokur stated that the present case fell into the second category and that the very existence of the clause should clarify the intention of the parties.

While this 2013 judgement gives us more precedent in the issue of the validity of exclusive jurisdiction clauses, there have been previous judgements which have given different interpretations to the same issue.

A look at Previous Judgements

In the case of *A.B.C. Laminart (P) Ltd. and Another v. A.P. Agencies, Salem*,[[2]](#footnote-2)the exclusive jurisdiction clause giving Kaira the jurisdiction was rejected as it was not clear, unambiguous and did not explicitly exclude. Hence the Court of Salem had the jurisdiction to hear the case.

Pursuant to the A.B.C. Laminart case there have been varied judgements in this issue. Cases such as *Balaji Coke Industry Pvt. Ltd. v. M/S. MAA Bhagwati Coke Gujarat Pvt. Ltd.*,[[3]](#footnote-3) *Shriram City Union Finance Corporation Ltd. v. Rama Mishra*[[4]](#footnote-4)and *Angile Insulations v. Davy Ashmore India Ltd. and Another*[[5]](#footnote-5)have held the exclusive jurisdiction clauses to be valid even without the use of terms such as “only”, “exclusive” or “alone”. Surprisingly all of these cases have cited the A.B.C. Laminart case but no actual analysis of the reasoning has been provided. In the Balaji Coke Industry case the exclusive jurisdiction clause giving the place of arbitration as Calcutta was held to be valid as the parties had knowingly and voluntarily agreed to subject all disputes to the jurisdiction of Calcutta. In the Angile Insulationscasethe exclusive jurisdiction clause giving the Karnataka High Court exclusive jurisdiction was considered valid as it was not void under Section 23 and Section 28 of the Indian Contract Act, 1872.

However, in the case of *R.S.D.V. Finance Co. Pvt. Ltd v. Vallabh Glass Works Ltd.*[[6]](#footnote-6) the exclusive jurisdiction clause did not contain words such as “only”, “exclusive” or “alone”. The Supreme Court rendered the use of the maxim “expression unius est exclusion alterius” in such circumstances inapplicable. This case followed the A.B.C. Laminart judgement and held the clause not to be exclusionary.

Also, in the case of *M/S Hanil Era Textiles Ltd. v. M/S Puromatic Filters (P) Ltd.*[[7]](#footnote-7) the exclusive jurisdiction clause giving the Bombay High Court exclusive jurisdiction was held to be valid. This decision was arrived at using Section 20(c) of the Code of Civil Procedure, 1908 (Herein referred to as the Code). Section 20(c) of the Code states that all the courts where the cause of action wholly or partly arise have jurisdiction to try the case. As in this case a major part of the deal occurred in Bombay and there was a clear intention to exclude the others and confine the jurisdiction of the case to the courts in Bombay.

In the case of *New Moga Transport Co. v. United India Insurance Co. Ltd. and Others*,[[8]](#footnote-8) the Supreme Court held that terms such as “only”, “exclusive” or “alone” is required to be present with reference to a particular court to gather the unambiguous, explicit and specific meaning of the parties. Hence, with respect to the New Moga Transport case, the present case is in contradiction to the principle laid down by the Supreme Court in the former case.

However in the case of *Patel Roadways Limited, Bombay v. Prasasd Trading Company*,[[9]](#footnote-9) the Supreme Court held that a case can be filed at the place where the principal office is located or at the place where the business carried on gave rise to the cause of action as long as a subordination of the corporation is situated in that place. The present case has given a ruling which is opposite to this case.

It is important to notice that none of the agreements made in any of the cases had terms such as “only”, “exclusive” and “alone”; however, the Supreme Court has given differing opinions in these cases. The A.B.C. Laminart case started the use of the maxim “*expression unius est exclusion alterius*” but no guideline for its usage was given. The Hanila Era case used the aforesaid maxim as well as Section 20(c) of the Code. Section 20(c) reads as “*Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction* - (c) *the cause of action, whole or in part arises.*” This provision does not specify any preference depending upon the proportionality of the cause of action. This provision has been used by several Courts to decide the jurisdiction of issues.[[10]](#footnote-10)

Analysis

In the present case the Chief Justice or any qualified Judge of the Rajasthan High Court would have had the jurisdiction to hear this case under Section 20(c) of the Code. However, the parties could have agreed to give exclusive jurisdiction to the courts in Calcutta by virtue of Clause 18 of the agreement. Paragraph number 12 of the present case shows that the Respondent did not deny the fact that all the steps, apart from the execution of the agreement which took place at Calcutta, had taken place at Jaipur. Using the principle given in the Hanil Era case the Rajasthan High Court would have had jurisdiction to hear the present case.

The present case has mentioned the A.B.C. Laminart case, the Hanil Era case and the New Moga Transport case; however, no reasoning has been given as to why the principle laid down in these cases should not be applied. Furthermore, the principle laid down in the Patel Roadways case has not even been mentioned.

As of now various Courts have been using the Swastik Gases case and adjudging on the issue related to exclusive jurisdiction clauses.[[11]](#footnote-11) However there have been cases that have used past judgements given in the Patel Roadways case or the Hanil Era case.[[12]](#footnote-12) Various judgements have also been using Section 20(c) of the Civil Procedure Code.[[13]](#footnote-13)

Just like all of the previous cases the present case does not lay down a certain set of guidelines to apply the maxim “*expression unius est exclusion alterius*”. Since the principle laid down in the A.B.C. Laminart case still holds good, terms such as “only”, “exclusive” or “alone” are required to be used in jurisdiction clauses. This would also help to avoid any confusion in the further cases. However it is up to a larger bench of the Supreme Court to take a final decision and hopefully come up with one answer rather than letting the Courts apply any of the principles that have been laid down in the numerous cases.

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1. *Swastik Gases (P) Ltd. v. Indian Oil Corporation Ltd.*,2013 (SCC) Online SC 564. [↑](#footnote-ref-1)
2. *A.B.C. Laminart (P) Ltd. and Another v. A.P. Agencies, Salem*, AIR 1989 SC 1239. [↑](#footnote-ref-2)
3. *Balaji Coke Industry Pvt. Ltd. v. M/S. MAA Bhagwati Coke Gujarat Pvt. Ltd.*, (2009) 9 SCC 403. [↑](#footnote-ref-3)
4. *Shriram City Union Finance Corporation Ltd. v. Rama Mishra*, (2002) 9 SCC 613. [↑](#footnote-ref-4)
5. *Angile Insulations v. Davy Ashmore India Ltd. and Another*, 1995 (3) SCR 443. [↑](#footnote-ref-5)
6. *R.S.D.V. Finance Co. Pvt. Ltd v. Vallabh Glass Works Ltd.*, 1993 SCR (1) 455. [↑](#footnote-ref-6)
7. *M/S Hanil Era Textiles Ltd. v. M/S Puromatic Filters (P) Ltd.*, (2001) 1 SCC 269. [↑](#footnote-ref-7)
8. *New Moga Transport Co. v. United India Insurance Co. Ltd. and Others*, (2004) 4 SCC 677. [↑](#footnote-ref-8)
9. *Patel Roadways Limited, Bombay v. Prasasd Trading Company*, 1991 SCR (3) 391. [↑](#footnote-ref-9)
10. *Laxman Prasad v. Prodigy Electronics Ltd. and Another*, (2008) 1 SCC 618; *Gujarat Insecticides Limited v. Jainsons Minerals & Another*, 2008 SCC Online Del 1079; *Srodeep Polymers Ltd. v. SCJ Master Batches*, 2011 SCC Online Del 1843. [↑](#footnote-ref-10)
11. *B.E Simoese Von Staraburg Niedenthal and Another v. Chhattisgarh Investment Ltd.*, (2015) 12 SCC 225; *Excel Dealcomm (P) Ltd. v. Asset Reconstruction Co. (India) and Others*, (2015) 8 SCC 219; *Bhandari Udyog Limited v. Industrial Facilitation Council and Another*, (2015) 14 SCC 515; *Mukesh Aghi v. Steria Ltd. & Ors.*, 2016 SCC Online Del 1482; *Futecht Project (India) Pvt. Ltd. v. Abott Healthcare Pvt. Ltd. & Anr.*, 2016 SCC Online Del 763. [↑](#footnote-ref-11)
12. *Videocon Industries Ltd. Chitegaon v. Rajesh Kumar Kedia*, 2013 SCC Online Bom 271; *Indian Performing Rights Society Limited v. Sanjay Dalia and Another*, (2015) 10 SCC 161. [↑](#footnote-ref-12)
13. *Supra* 10. [↑](#footnote-ref-13)