

Saipem v Bangladesh (Italy-Bangladesh BIT)

AREAS OF POLICY AFFECTED: public contracting (pipeline construction), energy (gas pipeline).

CASE SUMMARY: An Italian company sued Bangladesh under a bilateral investment treaty (BIT). The lawsuit was heard by a tribunal of the World Bank's International Centre for Settlement of Investment Disputes (ICSID). The dispute arose from a project to build a gas pipeline. The project was sponsored by the World Bank and financed largely by the World Bank's International Development Association.

According to the claimant, as cited by the tribunal, the project was delayed due to "problems with the local population which rebelled against the project". In time, the project was completed and taken over by the state company PetroBangla. The claimant alleged that PetroBangla owed funds to the claimant under the pipeline contract. It began arbitration proceedings at the International Chamber of Commerce (ICC) where, after a closed process, an ICC tribunal awarded damages to the claimant. However, PetroBangla had challenged ICC's authority in the domestic courts in Bangladesh, which refused to recognize the authority of the ICC arbitration.

The ICSID tribunal found that Bangladesh violated the BIT and awarded about U.S. \$6.3 million plus interest to the claimant.

COMMENT: The tribunal adopted expansive interpretations of the BIT. For example, it took a broad approach to the concept of investment by characterizing as an investment the investor's right to proceeds of an ICC arbitration award. Also, the tribunal adopted a broad approach to the concept of expropriation in that it treated a domestic court's refusal to recognize the authority of a commercial arbitration as an expropriation under international law. In terms of its outcome, the case demonstrates how a domestic court's application of domestic law may be trumped, in effect, by an investment treaty tribunal.

Finally, the case indicates a basis for perceived bias, at an institutional level, where a dispute arising from a World Bank-sponsored project is subject to arbitration at ICSID. (Under the ICSID Convention, the World Bank President has the final authority over important aspects of an ICSID arbitration, such as the appointment of arbitrators and the resolution of conflict of interest claims against arbitrators.)

Source: www.iiapp.org (February 2011), based on information in publicly-available awards and materials in known investment arbitrations (for texts of awards, see www.italaw.com). This report was produced by a research team coordinated by professor Gus Van Harten (gvanharten@osgoode.yorku.ca) of Osgoode Hall Law School of York University in Toronto, Canada. Please see the disclaimer and statement on terms of use available at www.iiapp.org. © Gus Van Harten 2011. You may forward or re-publish the information in this report with attribution to www.iiapp.org.