Chander Bhan Harbhajan Lal

Vs

State of Punjab

Civil Appeal No. 2070 of 1968

Messrs. Harbhagwan Harbhajan Lal

Vs

State of Haryana

Civil Appeal No. 1784 of 1969

(CJI M.H. Beg, P.S. Kailasam JJ )

22.02.1977

JUDGMENT

KAILASAM, J. –

Civil Appeal 2070 of 1968 is by special leave by the appellant against the judgment of the Punjab and Haryana High Court dismissing the appellant's petition for revising an order passed by the Subordinate Judge, Ambala City, allowing an application by the State (respondent) and appointing the Arbitration Committee. The appellant entered into an agreement with the Public Works Department, Punjab State, for execution of certain construction works in August, 1952. He entered into an agreement, Ex. A1. The agreement provided an arbitration clause in the following terms :

> 1. In the matter of dispute, the case shall be referred to the Settlement Committee consisting of a Superintending Engineer, an officer of the Finance Department of the rank of at least Deputy Secretary and an Accounts Officer, all to be nominated by the Government for arbitration whose decision will be final.
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> Disputes arose between the parties and the State of Punjab appointed a Settlement Committee by notification dated January 31, 1958. The Settlement Committee entered upon the arbitration but before the Arbitration Committee concluded its work the State Government unilaterally abolished the Committee by an order dated March 27, 1962. Subsequently by a notification dated May 18, 1962, the State Government constituted a Committee giving the names of three officers with headquarters at Nangal. The new Committee took up the dispute as well as a claim made by the Government and issued noticed to the parties. The new Settlement Committee passed an award on July 25, 1962. The appellant, challenged the validity of the award in the Civil Court. The Civil Court set aside the second Settlement Committee's award on the ground that it was made by the Committee even before the expiry of the time given by it to the appellant. Thereafter, the second Settlement Committee also ceased to function.

2. The State Government gave notice to the appellant under Section 8(1) of the Arbitration Act to concur in the appointment of a fresh Settlement Committee to arbitrate the matter between the parties. The appellant did not respond to the notice. The State Government made an application to the trial Court for appointment of an arbitrator under Section 8(2) of the Arbitration Act. The appellant raised two objection, namely that Section 8 was not applicable to the case and that by abolition of the first Settlement Committee the State Government had put an end to the arbitration clause agreed to between the parties by the agreement at Ex. A1. The learned Judge rejected both the grounds and held that after the State Government withdrew the personnel of the first Settlement Committee they became incapable of acting and therefore the Court was entitled to act under Section 8(1)(b) of the Act. On the second point it held that the terms of the arbitration clause in the agreement Ex. A1 did not justify reading into it the condition that the intention of the parties was that the vacancies in the Settlement Committee for arbitration were not to be filled.

3. In the Revision Application before the High Court the appellant in effect raised the same contentions though in a slightly different form. The High Court agreed with the view of the trial Judge that when once the Government abolished the first Settlement Committee it became incapable of acting and Section 8(1)(b) became applicable. It also agreed with the trial Court and found that there was nothing in the terms of the arbitration clause in Ex. A1 to justify the contention that when once a Settlement Committee was appointed the power under the clause is exhausted. The High Court held that the trial Court was justified in proceeding under sub-section (1) of Section 8 asking the appellant to give the names for consideration of the Court for the reconstitution of the Committee and as the appellant did not give the names the trial Court was justified in accepting the names given by the State Government.

4. In the appeal before us the same contentions were raised. It was submitted that when one of the parties to the arbitration agreement unilaterally disabled the Settlement Committee from functioning the Court will not assist that party by holding that the Committee became incapable of acting. It was contended that the provisions of Section 8 of the Arbitration Act will not be applicable when one of the parties could appoint a Settlement Committee by itself without reference to the other party. The learned Counsel for the appellant also contended that when the first Settlement Committee ceased to exist by the Government unilaterally putting an end to it, the arbitration clause worked itself out and no other committee could be appointed. The relevant clause in the agreement though given earlier is again extracted :

In the matter of dispute, the case shall be referred to the Settlement Committee consisting of a Superintending Engineer, an officer of the Finance Department of the rank of at least Deputy Secretary and an Accounts Officer, all to be nominated by the Government for arbitration whose decision will be final.

The clause is an amendment to the original condition 5. The clause further provided that the agreement is supplemental to the original agreement and save as varied as hereinbefore provided the said agreement and all the terms and conditions thereof shall continue to be binding and in full force and effect. The submission of the learned Counsel for the appellant is that the clause referred only to

the matter already in dispute and to a Settlement Committee which had been already appointed Reliance was placed on the words in italics in the clause "In the matter of dispute", and "referred to the Settlement Committee". This plea cannot be accepted for in the later part of the condition it is made clear by the words "all to be nominated by the Government for arbitration whose decision will be final". "To be nominated" contemplates a future appointment. But we do not think that this makes any difference for there could be no doubt that the condition enables the Government to appoint three persons holding the ranks specified in the condition as the Settlement Committee. There is no indication at all that when once the Committee was dissolved no new committee could be appointed. In fact it has to be noted that after the first Settlement Committee was dissolved by the unilateral act of the Government a second Committee came into existence and gave an award which was set aside by the Civil Court. After the award was set aside the second Committee also ceased to function. There is no material on record to show that the appellants objected to the constitution of the second Committee on the ground that the condition did not provide for the appointment of a second Settlement Committee. There is no reason alleged as to why the second Settlement Committee ceased to function. If the second Committee was also not terminated by the action of the Government the contention of the appellant that a unilateral act would put the case outside the purview of Section 8 of the Arbitration Act would not be available.

5. On a careful reading of the condition relating to arbitration we agree with the High Court as well as the trial Court that there is no bar to the Government appointment a fresh Committee for going into the dispute consisting of there officers as stipulated in the condition. As the appellant would not reply to the letter of the Government seeking to nominate a Settlement Committee the Government moved the Court for appointment of the Committee. The trial Court gave an option to the appellant to furnish names but as he did not furnish the names the trial Court accepted the names suggested by the Government. On our finding that the Government was entitled to appoint a Committee under the new agreement the Government could have very well appointed a committee by itself without coming to Court. But may be by way of abundant caution the Government came to Court and the Court has appointed a committee as suggested by the State. We are equally clear that under Section 8, the Court is entitled to act and appoint a committee. As already found by us when the second Settlement Committee ceased to function the Committee became "incapable of acting" and therefore it was within the competency of the Court to proceed to appoint a new committee. Equally untenable is the contention that Section 8 is not applicable to cases where the condition stipulate the appointment of a Settlement Committee by a one of the parties. This submission was made relying on the wording of the section that any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in the appointment or appointment or in supplying the vacancy. This part of the section no doubt contemplates two parties but the section cannot be read as not being applicable where the agreement provides for the nomination of the committee by one of the parties for the section itself says that the party may serve the other parties. "May serve the other parties" will include not serving other parties in cases in which the service on the other party is not contemplated.

6. In the circumstances we are satisfied that the order of the High Court is proper and cannot be interfered with. The appeal is dismissed. The parties will bear their own costs.

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7. This appeal is similar to the one which we have just now disposed of i.e., C.A. 2070 of 1968. The High Court also dismissed the petition under appeal on the ground that the facts of the case are similar to the one in Civil Revision Petition 107 of 1966 out of which C.A. 2070 of 1968 arose and

dismissed the petition on the same grounds. In this appeal before us the learned Counsel for the appellant adopted the arguments advanced by the Counsel in C.A. 2070 of 1968 an did not wish to add anything further. For the reasons stated in C.A. 2070 of 1968 we dismiss this appeal also. No order as to costs.

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