

Union of India and Others

Vs

M/S. Allied Construction Company

Civil Appeals Nos. 104-105 of 1978

(O. Chinnappa Reddy, R. S. Pathak JJ)

16.01.1980

JUDGMENT

PATHAK, J. -

1. These appeals by special leave are directed against an order dated July 6, 1977 of the Orissa High Court and arise out of the proceedings under the Indian Arbitration Act.
2. The respondent M/s. Allied Construction Company, entered into contracts with the Union of India in the Defence Department undertaking the construction of residential quarters at Chandipur in the district of Balasore. Both contracts contained an arbitration clause, Clause 70, which provided for arbitration in the event of disputes between the parties.
3. It appears that after the work had progressed to a certain stage the contracts were terminated at the instance of the respondent. The respondent invoked Clause 70 of the contract, and requested that the disputes, which arose out of the termination of the contracts, should be referred for arbitration. It seems that when no action was taken by the appellants the respondent made an application under Sections 8 and 20 of the Arbitration Act in relation to each contract before the learned Subordinate Judge at Balasore. By his order of December 2, 1976, the learned Subordinate Judge granted each application, directed the arbitration agreements be filed in court, and appointed a highly qualified Engineer, Shri Banabasi Patnaik, as arbitrator. Against the two orders the respondent filed two respective appeals before the Orissa High Court. Corresponding revision petitions were also filed in the fear that the appeals may not be maintainable. Meanwhile, the appellant agreed to refer the two disputes to arbitration. The High Court dismissed the appeals and revision petitions by its order of July 6, 1977.
4. In these appeals the principal contention of the appellants is that on the facts of the case, the proviso to Clause 70 of the contracts was attracted inasmuch as there was an abandonment of the works by the respondent and therefore no reference to arbitration was permissible before alternative arrangements were finalised by the government to get the work completed by or through any other contractor. The point was raised before the High Court and was repelled. The learned Attorney-General of India, appearing for the appellants, contends that the High Court has erred in the construction of the arbitration clause and urges that the reference to arbitration in each case must be considered to be premature. On the particular facts before us we consider it unnecessary to enter into the controversy. It appears from the order dated December 2, 1976 of the learned Subordinate Judge, Balasore, which has been affirmed by the High Court, that Shri Banabasi Patnaik is the Superintending Engineer of the National Highway Circle, Sambalpur in Orissa and is a person whose ability and integrity are not doubted. The name was selected by the learned subordinate

Judge from a panel of names prepared by the respondent, and no objection was entered by the appellants to it. In the circumstances, we see no reason why Shri Banabasi Patnaik should not be allowed to enter upon the arbitration and make his award in each of the two cases.

5. The appeals are dismissed, but with no order as to costs.

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