

State of U. P.

Vs

Tipper Chand

Civil Appeal No. 1234(N) of 1970

(Syed M. Fazal Ali, A. D. Koshal, P. S. Kailasam JJ)

22.02.1980

JUDGMENT

FAZAL ALI, J. –

1. This is an appeal by special leave against the judgment dated September 12, 1969, of a Single Judge of the High Court of Allahabad accepting an application under Section 115 of the Code of Civil Procedure, setting aside the orders of the courts below and directing that the application made by the defendant under Section 34 of the Arbitration Act shall stand rejected so that the suit would proceed.

2. The suit out of which this appeal has arisen was filed by the respondent before us for recovery of Rs. 2,000 on account of dues recoverable from the irrigation Department of the petitioner State for work done by the plaintiff in pursuance of an agreement, Clause 22 of which runs thus :

Except where otherwise specified in the contract the decision of the Superintending Engineer for the time being shall be final, conclusive and binding on all parties to the contract upon all questions relating to the meaning of the specifications, design, drawing and instructions hereinbefore mentioned. The decision of such Engineer as to the quality of workmanship, or materials used on the work, or as to any other question, claim, right, matter or things whatsoever, in any way arising out of or relating to the contract, designs, drawing specifications, estimates, instructions, orders, or these conditions, or otherwise concerning the works, or the execution or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment of the contract by the contractor, shall also be final, conclusive and binding on the contractor.

3. The defendant-respondent made an application under Section 34 of the Arbitration Act to the trial Court on the plea that the above extracted Clause 22 amounted to an arbitration agreement. The pleas found favour with the trial Court as well as the appellate court but was rejected by the High Court in revision on the ground that it merely conferred power on the Superintending Engineer to take decisions on his own and that it did not authorise the parties to refer any matter to his arbitration. In this connection the High Court particularly adverted to the marginal note to the said clause which was to the following effect :

Direction of work.

4. After perusing the contents of the said clause and hearing learned counsel for the parties we find

ourselves in complete agreement with the view taken by the High Court. Admittedly the clause does not contain any express arbitration agreement. Nor can such an agreement be spelled out from its terms by implication, there being no mention in it of any dispute, much less of a reference thereof. On the other hand, the purpose of the clause clearly appears to be to vest the Superintending Engineer with supervision of the execution of the work and administrative control over it from time to time.

5. Mr. Dixit relied on Governor-General v. Simla Banking and Industrial Company Ltd. (AIR 1947 Lah 215 : 226 IC 444), Dewan Chand v. State of Jammu and Kashmir (AIR 1961 J&K 58) and Ram Lal v. Punjab State (AIR 1966 Punj 436 : 68 Punj LR 522 : ILR (1966) 2 Punj 428). In the first of these authorities the clause appearing in the contract of the parties which was held by Abdur Rahman, J., to amount to an arbitration agreement was practically, word for word, the same with which we are concerned here but we are of the opinion that the interpretation put thereupon was not correct. As pointed out by the High Court such a clause can be interpreted only as one conferring power on the Superintending Engineer to take decisions all by himself and not by reason of any reference which the parties might make to him.

6. In the Jammu and Kashmir case (AIR 1961 J&K 58) the relevant clause was couched in these terms :

For any dispute between the contractor and the Department the decision of the Chief Engineer PWD Jammu and Kashmir, will be final and binding upon the contractor.

The language of this clause is materially different from the clause in the present case and in our opinion was correctly interpreted as amounting to an arbitration agreement. In this connection the use of the words "any dispute between the contractor and the Department" are significant. The same is true of the clause in Ram Lal case (AIR 1966 Punj 436 : 68 Punj LR 522 : ILR (1966) 2 Punj 428) which ran thus :

In matter of dispute the case shall be referred to the Superintending Engineer of the Circle, whose order shall be final.

We need hardly say that this clause refers not only to a dispute between the parties to the contract but also specifically mentions a reference to the Superintending Engineer and must therefore be held to have been rightly interpreted as an arbitration agreement.

7. Holding, in conformity with the judgment of the High Court, that Clause 22 above extracted does not amount to an arbitration agreement, we find no force in this appeal which is dismissed with costs.

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