

Hari Dutt Bhardwaj

Vs

Haryana State Agriculture Marketing Board, Punchkula and Another

Civil Appeal No. 2591 of 1989

(CJI R. S. Pathak, S. Natarajan JJ)

01.05.1989

JUDGMENT

PATHAK, C. J. –

1. Special leave granted.
2. This appeal by special leave is directed against the order of the High Court of Punjab and Haryana setting aside an arbitration award.
3. The Haryana State Agricultural Marketing Board (referred to shortly as the "Marketing Board") entered into a contract with the appellant for the construction of their office building at Punchkula near Chandigarh. It was stipulated that the work would be completed within six months. It was also stipulated that in case of a dispute between the parties, the Superintending Engineer of the Marketing Board would be appointed as sole arbitrator.
4. A dispute arose between the parties in regard to completion of the construction, and it was decided to refer the matter to arbitration. On March 11, 1983 the respondent appointed Shri D. P. Gupta, Superintending Engineer of the Marketing Board as arbitrator. While the arbitrator was seized of the dispute between the parties, the Chairman of the Marketing Board purported to revert him to his parent department. On April 6, 1984 the arbitrator made his award. Under the award the appellant was held entitled to Rs. 55,242.66 with interest. On May 2, 1984 the appellant applied before the learned Subordinate Judge, 1st Class, Chandigarh, for making the award a rule of the Court.
5. Meanwhile, on May 24, 1984 the State Government passed an order confirming that Shri D. P. Gupta continued in his post as Superintending Engineer of the Marketing Board. On February 28, 1985 the Marketing Board passed a resolution, giving effect to the direction of the government extending the deputation tenure of Shri. D. P. Gupta to September 3, 1985. On July 30, 1985 the trial court made the award a rule of the Court. In appeal to the High Court, it was urged that on April 6, 1984, the date on which the arbitrator made his award, the arbitrator had lost jurisdiction since he had been transferred out on April 4, 1984 from the post of Superintending Engineer of the Marketing Board to his parent department in the Haryana Government. The High Court accepted the plea and reversed the order of the trial court and set aside the award.
6. The sole question before us is whether the arbitrator, Shri. D. P. Gupta, had jurisdiction to make the award on April 6, 1984 or had lost jurisdiction because of the order dated April 4, 1984 reverting him to his parent department. The material before us shows that Shri. D. P. Gupta was on

deputation with the Marketing Board up to September 4, 1984 and that he was prematurely required by the Chairman of the Marketing Board by order dated April 4, 1984 to revert to his parent department. The State Government, however, ordered on May 24, 1984 that Shri D. P. Gupta would continue on deputation with the Board, and it is not disputed that Shri. Gupta rejoined the Board. He did not in fact ever resume a post in his parent department. The necessary consequence of the order of the State Government continuing him on deputation with the Marketing Board was to nullify the order dated April 4, 1984 passed by the Chairman purporting to revert Shri. Gupta to his parent department. It appears from the record that Shri. Gupta was paid his salary by the Marketing Board for the entire month of April 1984, a circumstance which established that the Board itself considered him as continuing on deputation when he made the award. That being so, he must be deemed to have enjoyed jurisdiction as arbitrator on April 6, 1984 when he made the award. The deputation of Shri Gupta with the Marketing Board did never terminate.

7. In the result the appeal is allowed, the judgment and order of the High Court are set aside and the judgment and decree of the trial court are restored. No order as to costs.

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