

Union of India and others

Vs

Prabhat Kumar & Bros. and another

Civil Appeal No. 2244 of 1992

(Dr. T. K. Thommen, V. Ramaswami, Yogeshwar Dayal JJ)

06.03.1992

JUDGMENT

1. Special leave granted.

2. This appeal is by the Union of India against the order of the High Court in Civil Revision No. 3153 of 1991. A dispute arose between the appellant and the respondent and that dispute was in terms of their contract referred to an Arbitrator appointed under Condition 70 of General Conditions of Contract. We shall read Condition 70 so far as it is material

"Arbitration — All disputes between the parties to the contract (other than those for which the decision of the CWE or any other person is by the Contract expressed to be viable and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of an Engineer Officer to be appointed by the authority mentioned in the tender documents".

If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new arbitrator to act in his place".

3. The Arbitrator appointed in terms of Condition 70 conducted the proceedings until he retired voluntarily from the Govt. service on 17th September, 1990. The respondent-Contractor then filed an application before the Senior Sub-Judge, Ferozpur under Section 28 of the Arbitration Act, 1940 seeking extension of time for the Arbitrator to make the award. Objection was raised by the Union of India, the present appellant, on the ground that the Arbitrator having retired from Govt. Service was no longer competent to function as an Arbitrator and no further time could be granted to enable him to make an award. It was further submitted that in terms of Condition 70, a new Arbitrator had to be appointed. This contention of the appellant was rejected by the learned Sub-Judge and time was accordingly granted as prayed for by the respondent. Appeal filed by the Union of India was rejected by the learned District Judge. The Civil Revision filed by the Union of India was rejected by the High Court by the impugned order.

4. The question which now arises in this appeal is covered by the order of this Court dated November 13, 1991 which is Annexure P-4 to this appeal.

5. We are of the view that the Arbitrator who had been appointed by the Government ceased to be

the Arbitrator on his retirement from Govt. service on 17th September, 1990. In terms of Condition 70, the Union of India is competent to appoint a new Arbitrator. Accordingly we set aside the impugned orders of the High Court and the courts below.

6. Counsel appearing on behalf of the Union of India submits that an Arbitrator would be appointed in terms of Condition 70 within one month from today. The submission is recorded. In the circumstances, the parties are directed to appear before the new Arbitrator to be appointed by the Union of India. The Arbitrator shall complete the proceedings expeditiously. We make it clear that the proceedings before the earlier Arbitrator and the records furnished to him prior to the date of his retirement will form part of the proceedings and records before the new Arbitrator. The parties are at liberty to file fresh documents.

7. The appeal is allowed in the above terms. We make no order as to costs. Appeal allowed.

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