

**SUPREME COURT OF INDIA**

Himalayan Construction Co.

Vs.

Executive Engineer, Irrigation Division

C.A.No.2174 of 2000

(S. B. Majmudar, Y. K. Sabharwal and Shivaraj V. Patil, JJ.)

16.03.2000

**ORDER**

1. Leave granted.

2. We have heard learned counsel for the parties finally in these appeals.

3. The short question involved is whether the Division Bench of the High Court in the impugned common judgment was justified in taking the view that the award which is made rule of the Court by learned single Judge of the High Court was illegal and liable to be set aside on the ground that the arbitrator who was appointed by designation had retired and had ceased to hold his office when he passed the impugned award. This question has to be resolved in the light of the earlier appointment of the arbitrator under Section 20 of the Arbitration Act of 1940. That appointment was by designation but subsequent appointment was by name and not by designation. It was further contended that the Division Bench was patently in error in upsetting the award decree.

4. This question can be resolved by having a look at the order appointing the arbitrator. It may be mentioned that earlier under Section 20 of the Arbitration Act of 1940 an arbitrator was appointed by designation. The order of 14th November 1984 of the learned single Judge reads as under :

".....In accordance with Clause 31 of the agreement read with Clause 20 of the conditions any dispute between the contractor and the Executive Engineer, respondent No. 1, shall have to be referred to the arbitration of Chief Engineer, Irrigation and Flood Control Department, Jammu. The dispute between the parties is referred with a direction to adjudicate upon the same and submit his award within the statutory period of four months. The respondents shall submit the original agreement executed between the parties before the arbitrator."

5. Therefore, so long as that order was concerned the arbitrator was appointed by designation but it appears that the said appointment did not survive further as the post itself was abolished. Under these circumstances, a fresh appointment was made by agreement of parties. That order is of 3rd January 1985. It reads as under :

"The learned counsel for the parties have agreed to the appointment of Sh. D. K. Nargotra Chief Engineer, Ravi Tawi Irrigation Complex Jammu as an Arbitrator. He is as such appointed as an Arbitrator.

He shall enter into reference and submit award within statutory period. The record be sent to the Arbitrator."

6. A mere look at this order shows that Mr. D. K. Nargotra who was then Chief Engineer, Ravi Tawi Irrigation Complex, Jammu, was appointed as arbitrator by agreement of parties. It was clearly an appointment of arbitrator by name as he was as such appointed as arbitrator as the order recites.

7. Once this conclusion is reached it become obvious that the objection by the respondent-authorities to the award that it was passed by a person who had, on retirement, ceased to hold office which he earlier held at the time of reference cannot survive as Mr. D. K. Nargotra himself passed the award. Not only that but after his retirement and before he completed the proceedings he applied to the Court for extension of time and that extension was granted after hearing the parties and no such objection was raised at that time by the respondents. Consequently, it must be held that the Division Bench had erroneously set aside the award decrees only on this ground. Reliance placed by learned counsel for the respondents on a decision of this Court in the case of *Union of India v. Prabhat Kumar and Bros.*, (1995) Supp. 4 SCC 525 : (1993 AIR SCW 4056 : AIR 1994 SC 649) cannot be of any avail as that judgment proceeded on its own facts. Therein the terms of the reference order and the terms of the arbitration clause clearly showed that appointment was by designation and not by name. On the contrary, this case is squarely covered by a latter decision of this Court in the case of *M/s. Construction India v. Secretary, Works Department, Government of*

Orissa, (1998) 2 SCC 89 : (1998 AIR SCW 415 : AIR 1998 SC 717). Following the said decision, therefore, these Civil Appeals are allowed. The impugned common judgment of the Division Bench of the High Court are set aside. As other questions which were on the anvil of scrutiny of the Division Bench of the High Court in appeal by the respondents against the award-decrees were not effectively considered by the Division Bench of the High Court, the proper order which can be passed is to restore all the ten appeals on the file of the Division Bench of the High Court along with cross-appeals with a request to the Division Bench to decide the same on the remaining points which may arise between the parties in the light of the contentions raised in the appeal memoranda and whatever points may be argued in the appeal proceedings may be decided in accordance with law. We request the High Court to make it convenient to decide the remanded proceedings at its earliest convenience and preferably within a period of three months from the receipt of a copy of this order at its end.

8. Office to send a copy of this order to the Registrar or the High Court for bringing it to the notice of Hon'ble the Chief Justice of the High Court for doing the needful.

9. No costs.

Order accordingly.