

SUPREME COURT OF INDIA

Union of India

Vs.

Sohan Lal Puglia

C.A.No.5377 of 1998

(V. N. Khare CJI., S. B. Sinha and Dr. A.R.Lakshmanan JJ.)

19.11.2003

ORDER

1. The parties herein entered into a contract on or about 2-9-1993 relating to construction of supply of 50 mm gauge stone ballast machine crushed for permanent way in stocks along with the track and in station yard etc. Disputes and differences having been arose between the parties, the respondent invoked the arbitration clause contained in the said agreement. As the appellants herein did not appoint an Arbitrator in terms thereof, an application was filed by the respondent herein under Section 20 of the *Arbitration Act, 1940* and by reason of an order dated 7-4-1997, the District and Sessions Judge, Jaipur city, Jaipur, appointed two retired District Judges as Arbitrators. The appellants herein filed a revision petition thereagainst and by reason of the impugned judgment dated 15-1-1998, the same was dismissed.

2. The core question which was raised before the High Court for consideration was as to when the appellants had not refused to appoint an Arbitrator, under Section 20 of the Act the petition was not maintainable. The High Court having regard to the decision of this Court in *G. Rama-chandra Reddy and Co. v. Chief Engineer, Madras Zone, Military Engineering Service, reported in¹* negated the said contention.

3. Mr. H. L. Agrawal, learned senior counsel appearing for the appellants, however, submitted that the District Judge, Jaipur city while making appointment ought to have taken into consideration the terms contained in the Arbitration clause as also sub-section (4) of Section 20 of the Arbitration Act and in terms whereof the parties in a case involving the dispute of more than Rs.five lacs were to appoint Gazetted Officers. Sub-sec. (4) of Section 20 of the Arbitration Act, 1940 reads as under:

"20(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed by the parties, whether in the agreement or otherwise, or, where the parties cannot agree upon an arbitrator, to an arbitrator appointed by the Court"

4. In view of said provision, we are of the opinion that the learned District Judge ought to have directed the parties to appoint Arbitrators in terms of the Arbitration agreement. This aspect of the matter has not been considered by the High Court.

5. We, therefore, in modification of the order passed by the District Judge, direct the parties to appoint Arbitrators in consonance with the arbitration clause contained in the contract.

6. The appeal is allowed to the aforementioned extent.

7. Learned counsel appearing for the appellants stated that within a period of one month from this date, the Arbitrator shall be named and intimation thereof shall be given to the respondent. Consequently, the respondent herein is directed to appoint an Arbitrator within the aforementioned period and intimate thereabout to the appellants. We hope that the learned Arbitrators would give an Award within a period of four months from the date of entering into the Reference keeping in view the fact that the matter is pending for a long time. The fees of the Arbitrators will be fixed by the Arbitrators themselves.

Appeal allowed.

¹1994 (5) SCC 142