

SUPREME COURT OF INDIA

Klassic Construction (Pvt.) Ltd.

Vs.

Army W. H. Organisation

C.A.No.5352 of 2002

(Dr. A. R. Lakshmanan and Lokeshwar Singh Panta, JJ.)

25.05.2006

ORDER

1. Heard Mr. P.N. Kumar, learned counsel for the appellant and Mr. Arvind Kumar Tewari, learned counsel for the respondent. The appellant before us is a contractor. The respondent is the Army Welfare Housing Organisation represented by its Chairman/Managing Director.

2. Both the appellant and respondent entered into an agreement on 8-5-1990 by which the contract was awarded to the appellant for executing certain construction works. Clause 131 of the contract deals with the arbitration which reads as under:

"131. If any dispute arises and persists between the contractor and Employer, the same shall be referred to the Sole Arbitrator to be appointed by the Chairman, Army Welfare Housing Organisation, whose award shall be final and binding on both parties. The Arbitrator shall submit his award within four months of his entering on the reference. This period may be extended by the Arbitrator with the consent of both the parties."

3. On 17-5-2006, after hearing both the parties, we passed a detailed order directing the Army Welfare Housing Organisation to submit a panel of three names to this Court with a copy to the learned counsel for appellant in the form of an affidavit. Pursuant to the said directions, an affidavit dated 22-5-2006 on behalf of respondent has been filed before us. A copy of the said affidavit has also been served on the counsel for the appellant. The affidavit reads thus:

"An affidavit on behalf of the Respondent of the compliance of orders/directions dated 17-5-2006 of this Hon'ble Court.

I, Col. A.K. Opal, Secretary Army Welfare Housing Organisation, a society registered under the Societies Registration Act XXI of 1860 having its registered office at South Hutments, Kashmir House, Rajaji Marg, New Delhi 110 011 do hereby solemnly affirm on oath and state as follows:

That I am the secretary of the respondent society in the aforesaid case. I am conversant with the facts and circumstances of the case, as such competent to affirm this affidavit.

1. I say that after hearing the counsel of the parties in the aforesaid case this Hon'ble Court vide its order dated 17-5-2006 was pleased to direct the Ex-Officio Chairman of the Army Welfare Housing Organisation/respondent herein, to nominate a panel of three names out of which this Hon'ble Court may appoint one such nominee as a sole arbitrator to adjudicate the disputes between the parties herein.

2. I say that in compliance to the order(s)/direction(s) dated 17-5-2006 of this Hon'ble Court, Ex-Officio Chairman of the Army Welfare Housing Organisation / respondent herein, has been pleased to comply with the directions of this Hon'ble Court and has nominated a panel of the following three engineer officers:

a. Brig. Anil Wasan, age 53 years, Deputy Director General (Navy and Defence Production), Officer shall superannuate from present appointment on 31 July, 2008.

b. Brig AK Jairath, age 52 years, Deputy Director General (Policy Planning and Co-ordination). As a sole arbitrator has adjudicated 06 cases. Tenure of the officer in the present appointments in till November, 2008. Officer superannuates in 2011.

c. Mr. Satish Chandar, age 49 years, Joint Director General (Contracts). Officer's tenure in present appointment is till Aug. 2009. Officer superannuation in January, 2017. As a sole arbitrator has adjudicated 40 cases.

3. I say that none of the aforesaid three officers are in any way involved in the management of the respondent herein.

In the premise, it is most respectfully prayed that this Hon'ble Court be pleased to:

a. Order/direct one of the aforesaid three named officers as a sole arbitrator to adjudicate the disputes between the parties herein and publish a speaking award:

b. Order/direct the sole arbitrator to adjudicate the disputes between the parties herein from the stage from where the erstwhile sole arbitrator(s) could not proceed with the adjudication of the disputes between the parties pursuant to the orders dated 25-1-2002 of this Hon'ble Court;

c. Order/direct the parties to amend their respective claims and counter claims, if they so desire, as already filed before the erstwhile sole arbitrator(s);

d. Any other order(s)/direction(s) in the circumstances of the case as may be deemed fit and appropriate by this Hon'ble Court."

4. We gave option to the counsel for the appellant to select one name among the three from the panel. Learned counsel for the appellant suggests the name of Mr. Satish Chander, who is now working as Joint Director General (Contracts) as the sole Arbitrator. Learned counsel for the respondent has no objection in nominating Mr. Satish Chandar as the sole Arbitrator. Accordingly, we, by consent of both the parties, nominate Mr. Satish Chandar as the sole Arbitrator. The parties will inform Mr. Satish Chandar that he has been appointed as a sole Arbitrator to adjudicate upon the disputes between the parties. Both parties are at liberty to file any additional documents before the said sole Arbitrator. The sole Arbitrator shall adjudicate the disputes between the parties and pass a speaking award. The sole Arbitrator shall adjudicate the disputes between the parties from the stage from where the erstwhile sole Arbitrator could not proceed with the adjudication of disputes between the parties pursuant to the order, passed by this Court on 25-1-2002. Parties are at liberty to amend their respective claims and counter-claims, if they so desire. The parties are at liberty to approach the sole Arbitrator for any further direction. The sole Arbitrator is directed to complete the arbitration proceedings within six months from the date of entering upon the reference.

5. The sole Arbitrator shall enter upon the reference on or before 15-6-2006. Additional documents, if any, shall be filed within four weeks from the date of entering upon the reference. The Civil Appeal is disposed of accordingly. A copy of this order shall also be forwarded to the sole Arbitrator Mr. Satish Chandar c/o Engineering in Chief Branch, Army Welfare Housing Organisation, South Hutments, Kashmir House, Rajaji Marg, New Delhi 110011.

6. The interim order passed by this Court stands vacated. The sole Arbitrator shall submit his award to this Court.

Order accordingly.