

SUPREME COURT OF INDIA

Union of India

Vs.

M/s. Talson Builders

C.A.No.5605 of 2008

(Tarun Chatterjee and Aftab Alam JJ.)

11.09.2008

ORDER

1. Delay of 264 days in filing the special leave petition is condoned.
2. Leave granted.
3. This appeal is directed against the judgment and final order dated 24th of February, 2006 passed by the High Court of Judicature at Allahabad in Original Arbitration Petition No.117 of 2003 whereby the Chief Justice of the High Court had appointed a retired Judge of the Allahabad High Court as Arbitrator to decide the dispute raised by the parties. The order passed by the High Court runs as under:

“For the purpose of acting as Arbitrator in this matter, Hon'ble R.K.Gulati of 11, Taskhand Marg, Allahabad, a retired Judge of this Hon'ble Court is hereby nominated and appointed.”

4. It is not in dispute that the respondents filed an application for appointment of an Arbitrator under Section 11(6) of the *Arbitration and Conciliation Act, 1996*. The respondent was granted certain contracts for Military Engineering service out of which, we are only concerned relating to CA NO.CWE/KAN/22 of 1996-97. After completion of contract work, the respondent submitted its final bill wherein it was specifically certified that the final bill included all claims raised by it from time to time irrespective of the fact whether they were admitted by the department or not and that there were no more claims in respect of the contract and the amount so claimed must be held to be full and final settlement of the claim of the respondent under the contract agreement. According to the appellants, the respondent submitted its final bill and received full payment without any protest. However, on 14th of August, 2000, the respondent sent a letter to the appellants for appointment of an Arbitrator which was not agreed to by them with the observation that the final bill in respect of the subject work had been signed and the amount had already been paid in full and final settlement and therefore, there was no dispute to be referred to the Arbitrator as prayed for by the respondent. By the aforesaid order and without going into the question whether there

was any dispute pending between the parties, the High Court, by the impugned order, appointed a retired Judge of the High Court as an Arbitrator to decide the dispute between the parties. Now, the question is - when such objections were raised against the appointment of an arbitrator on the ground that the claim could not be referred to the Arbitrator because of full and final settlement and the claim stood liquidated, the High Court ought not to have referred such dispute by appointing an Arbitrator without deciding the objections so raised, or it would be left open to the Arbitrator to go into this question after the parties had entered appearance before him. This question has already been decided by a three-Judge Bench of this Court in Northern Railway Administration, Ministry of Railway, New Delhi vs. Patel Engineering Company Ltd. dated 18th of August, 2008. This Court after giving due consideration of the expression "due regard" has observed in paragraph 13 as follows:

“In all these cases at hand the High Court does not appear to have focused on the requirement to have due regard to the qualifications required by the agreement or other considerations necessary to secure the appointment of an independent and impartial arbitrator. It needs no reiteration that appointment of the arbitrator or arbitrators named in the arbitration agreement is not a must, but while making the appointment the twin requirements of sub-section (8) of Section 11 have to be kept in view, considered and taken into account. If it is not done, the appointment becomes vulnerable. In the circumstances, we set aside the appointment made in each case, remit the matters to the High Court to make fresh appointments keeping in view the parameters indicated above.”

5. In view of the aforesaid decision, we have no other alternative but to set aside the order of the High Court and request the High Court to go into the dispute and then dispose of the application for appointment of an Arbitrator under Section 11(6) of the Act in accordance with law. It is expected that the High Court shall decide the said application as early as possible preferably within three months from the date of supply of a copy of this order to it. The impugned order is thus set side. The appeal is allowed to the extent indicated above.

There will be no order as to costs.