

# SUPREME COURT OF INDIA

Union of India

Vs.

Onkar Nath Bhalla

C.A.No.2622 of 2009

(Tarun Chatterjee and H.L. Dattu JJ.)

17.04.2009

## JUDGEMENT

**H.L.Dattu, J.**

1. Leave granted.
2. This appeal is directed against the judgment and the order passed by the Punjab and Haryana High Court at Chandigarh in A.A. No. 193/2006 dated 26.4.2007. By the impugned judgment, the High Court has appointed Justice G. C. Mittal (retired Chief Justice) as the sole Arbitrator.
3. The facts in brief are: - the appellant, Engineer-in-Chief, had entered into a contract agreement with respondent/contractor. The contract was completed on 20.9.2002. A final bill was prepared, settling all claims, by the respondent and was forwarded to the appellants. Respondent after receiving payment of final bill signed the same, without any protest or reservation on 27.3.2001. Again after two years, respondent submitted a list of 20 claims to the appellants. Appellants in their reply stated that as per condition 65 of IAFW 2249 (General Conditions of Contracts) forming part of CA, no further claim shall be made by the contractor after submission of final bill and the claim now submitted are deemed to have been waived and extinguished. Respondent then approached E-in-C for appointment of arbitrator on 17.8.2003. Appellants did not appoint an Arbitrator as no dispute existed. Respondent went before the Civil Judge (Senior Division) Amritsar on 19.9.2003. Civil Judge transferred the same to the Distt. Judge, which was further transferred to Punjab & Haryana High Court.
4. High Court allowing the application of the respondent, stated, that, as per the arbitration clause, as no affidavit has been filed within the stipulated period of the notice invoking the arbitration clause, the appellants have forfeited their right to appoint the Arbitrator. Aggrieved by the said order, appellants are before us by this special leave petition.

5. The Learned counsel for the appellants would contend, that, the final bill of the work was signed by the applicant on 21.12.2000 and the payment for the same was made to the applicant on 27.3.2001. The applicant signed the final bill and no further claim certificate was also signed without any reservation and also got the payment of final bill by signing the same without any protest. It is further contended that when the agreement provided for arbitration by serving officer having degree in Engineering or equivalent, then a Retired High Court Judge cannot be appointed as an Arbitrator. To support his contentions he would rely on the decision of this court in *P. K. Ramaiah & Co. v. N.T.P.C.*<sup>1</sup>, wherein this Court has held that:

“.....Admittedly the full and final satisfaction was acknowledged by a receipt in writing and the amount was received unconditionally. Thus there is accord and satisfaction by final settlement of the claims. The subsequent allegation of coercion is an afterthought and a devise to get over the settlement of the dispute, acceptance of the payment and receipt voluntarily given. In Russell on Arbitration, 19th Edn., p. 396 it is stated that "an accord and satisfaction may be pleaded in an action on award and will constitute a good defence.

Accordingly, we hold that the appellant having acknowledged the settlement and also accepted measurements and having received the amount in full and final settlement of the claim, there is accord and satisfaction.”

6. Learned Counsel would also invite our attention to the case of *SBP & Co. v. Patel Engg. Ltd.*<sup>2</sup>, wherein this Court has observed that:

“a) The function performed by the Chief Justice of the High Court or the Chief Justice of India under sub-section (6) of Section 11 of the Act (i.e. the *Arbitration and Conciliation Act, 1996*) is administrative, pure and simple, and neither judicial nor quasi-judicial.

b) The function to be performed by the Chief Justice under sub-section (6) of Section 11 of the Act may be performed by him or by "any person or institution designated by him".

c) While performing the function under sub-section (6) of Section 11 of the Act, the Chief Justice should be prima facie satisfied that the conditions laid down in Section 11 are satisfied.”

7. In the present case, appellants made the full and final payment of the final bill and to which respondent certified by signing the bill without any protest or reservation. Respondent with the intention of receiving further payments, after two years, raised yet another claim and tried to bring up a dispute. And when the claim was denied by the appellants, respondent requested to appoint an Arbitrator.

8. The condition 65 of General conditions of contract IAFW-2249 states that no further claim shall be made by the contractor after submission of final bill and these shall be deemed to have been waived and extinguished. Also condition 70 states that, all dispute between the parties to the contract shall after written notice by either party to the contract, be referred to the sole arbitration of a serving officer having degree in Engineering or equivalent.

9. While appointing an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996, two things must be kept in mind:

“i. That there exists a dispute between the parties to the agreement and that the dispute is alive.

ii. Secondly, an Arbitrator must be appointed as per the terms and conditions of the agreement and as per the need of the dispute.”

10. It is the specific case of the appellants, respondent could not have raised yet another claim, as the respondent after signing on the final bill without any protest or reservation has waived his right as per the conditions of the contract. The Court without considering that whether any dispute exists between the parties, could not have appointed an Arbitrator.

11. Therefore, the Court was not justified in appointing a Retired High Court Judge as the sole Arbitrator in the present case.

12. In view of the above discussion, the appeal is allowed. The impugned order passed by the High Court is set aside. No order as to costs.

<sup>1</sup>1994 (3) SCC 126

<sup>2</sup>(2005) 8 SCC 618