

SUPREME COURT OF INDIA

Union of India

Vs.

Premier Files Ltd.

C.A.No.5075 of 2009

(Tarun Chatterjee and R.M.Lodha JJ.)

04.08.2009

JUDGMENT

Tarun Chatterjee, J.

1. Leave granted.

2. An agreement was entered into between M/s. Premier Files Ltd., the respondent herein, with the appellant- Union of India for piling work in respect of which clause 25 provides for settlement of disputes in relation to the said work. The work agreement was completed and final bill for the said work was paid along with incentive for one week early completion of work under clause 34 of the Agreement. Some differences and disputes in relation to the said work arose between the parties. The respondent requested the appointing authority of the appellant to appoint an Arbitrator as per arbitration clause to adjudicate the dispute between the parties. The appellant appointed one Shri O.P.Gaddhyan as an Arbitrator to adjudicate the said dispute. The said Arbitrator entered into the reference and thereafter Shri O.P.Gaddhyan resigned. After his resignation, the respondent filed an arbitration application for appointment of an Arbitrator before the High Court at Calcutta. It is not in dispute that when the application for appointment of Arbitrator was pending before the High Court, another Arbitrator was appointed by the appointing authority on 14th of July, 2006. However, by the impugned order, the High Court had disposed of the said application filed by the respondent appointing a senior advocate of the Calcutta High Court as an Arbitrator in terms of Section 11(6) of the *Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act')*.

3. Feeling aggrieved, the Union of India has come up to this Court by way of a special leave petition which, on grant of leave, was heard in presence of the learned counsel for the parties.

4. It is not in dispute that clause 25 provides for settlement of dispute in relation to the work agreement for piling work. It is also not in dispute that the work agreement was completed and final bill was passed. Since some differences and disputes arose, an Arbitrator was appointed by the competent authority who subsequently resigned. After the resignation of the Arbitrator appointed by the competent authority, no appointment was made by the competent

authority after the resignation for about two months. As noted herein above, a lawyer Arbitrator was appointed by the High Court by the impugned order. In our view, in the facts and circumstances of the present case and in view of the specific clause being clause 25 of the Arbitration Agreement, the impugned order appointing a lawyer Arbitrator in the aforesaid matter must be said to be in violation of the provisions of clause 25 of the agreement which clearly says that the Arbitrator must be appointed by the competent authority. That apart, before the appointment of a lawyer Arbitrator in the matter, the competent authority has already appointed Shri S.C.Padhi as an Arbitrator and in fact the said Arbitrator has already entered appearance and proceeded with the arbitration and, therefore, it would not be justified for appointing a lawyer Arbitrator at that stage. Considering the fact that the Arbitrator has already been appointed in terms of the agreement and that such appointment was made before the final order was passed under section 11 of the Act appointing a lawyer Arbitrator to decide the disputes between the parties, we set aside the order of the High Court and restore the order of the competent authority appointing Shri S.C.Padhi as a sole Arbitrator to decide the disputes between the parties. The learned Arbitrator is directed to pass an award within six months from the date of communication of this order to him after giving hearing to the parties and pass a reasoned award in accordance with law.

5. For the reasons aforesaid, the impugned order is set aside. The appeal is allowed to the extent indicated above. The application filed by the respondent under Section 11(6) of the Act, therefore, stands rejected. No order as to costs.