

MYSORE HIGH COURT

Boriah Basavish

Vs

Indian Telephone Industries Ltd

C.R.P. 2654 of 1972

(Venkataramiah, J.)

20.03.1973

JUDGMENT

Venkataramiah, J.

1. A dispute having arisen between the petitioner and the respondent in respect of certain terms and conditions embodied in an agreement dated 23-4-1969 as modified by a subsequent agreement dated 3-1-1972, the petitioner filed an application under Section 8 of the Arbitration Act (hereinafter called the Act) before the Civil Judge, Bangalore City, for the appointment of an Arbitrator. The said application was opposed by the respondent. The Court below rejected it. Aggrieved by the order of the Court below, the petitioner has filed this revision petition.

2. The relevant clause of the agreement is Clause 45 and it reads :

"In all cases of dispute or difference arising out of the work, which is not expressly provided herein shall be referred to the arbitration of an arbitrator to be appointed by the President of the Institute of Engineers, Bangalore, or by his nominees, under the provisions of the Indian Arbitration Act, 1940, or any statutory modifications thereof and the decisions of the said arbitrator shall be final and binding on the Company and the Contractor."

One of the contentions raised on behalf of the petitioner in the Court below was that the application was not maintainable under Section 8 of the Act. It is seen from the arbitration clause extracted above that both the parties have agreed upon the person who should act as the arbitrator. He is a person to be appointed by the President of the Institute of Engineers, Bangalore, or by his nominee. This is a case where both parties have already agreed upon the arbitrator and not a case where the Court has got to exercise its jurisdiction under Section 8 of the Act where the parties have not agreed upon the appointment of the arbitrator or arbitrators or where there is a vacancy created on account of the arbitrator already appointed not being available to decide the dispute. In cases where the arbitrator has already been agreed upon between the parties, what remains to be done after the dispute arises is only a reference to the

named arbitrator. No question of appointing an arbitrator or filling up a vacancy in the board of arbitrators would arise. In such a case, a party who wishes to have the dispute decided by the named arbitrator, has to resort to the provision of Section 20 of the Act. Sub-section (4) of Section 20 provides that 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. The above view is in accord with the observations of the High Court of Allahabad in *Union of India v. Gorakh Mohan Das*¹, which are as follows :

"Section 8 of the Arbitration Act provides so far as is material to this case, that where an arbitration agreement provides that the reference shall be to one or more arbitrators to be appointed by consent of the parties, and all the parties do not, after differences have arisen, concur in the appointment, then if the appointment is not made within fifteen clear days after service of notice by one party calling upon the others to concur in such appointment, the Court is empowered upon an application of the party giving the notice to appoint an arbitrator.

Section 20 of the Act entitles a party to an arbitration agreement to apply to a Court for the filing of the agreement in Court, and the Court is required, in the absence of sufficient cause shown by the other parties to the agreement to be filed and to 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"

3. The High Court of Allahabad rested its decision on the decision in *Thawar Das Perumal v. Union of India*³, In the circumstances of this case, I am of the opinion that the Court below was right in coming to the conclusion that the application was not maintainable under Section 8 of the Act. The Court below should have dismissed the application on that ground alone, but it however proceeded to make certain observations with regard to other matters. I feel that the observations of the Court below with regard to these matters were uncalled for and they are set aside. But the decision of the Court below dismissing the petition on the ground that it was not maintainable under Section 8 of the Act is affirmed.

The revision petition is accordingly disposed of.

Revision dismissed.

¹ AIR 1964 All 477

² AIR 1955 SC 464