ORISSA HIGH COURT

Praharaj Partners

Vs

State (Orissa)

Misc. Appeal No. 153 of 1979 and Civil Revn. No. 478 of 1979

(R.N. Misra, C.J.)

26.02.1981

ORDER

R.N. Misra, C.J.

1. The appeal is under Section 39 of the Arbitration Act and the revision applition is under section 115 of the Civil Procedure Code, Both are, however, directed against one and the same order dated 10-8-79 passed by the learned Subordinate Judge, Bhubaneswar, rejecting an application under section 8 of the Arbitration Act on the basis that there was no clause for arbitration in the event of disputes in the agreement entered into between the parties. The original application before the learned Subordinate Judge was under Section 8 (2) of the Arbitration Act and not under Section 20 thereof, Section 39 (1) (iv) of the Act has, therefore, no application, and in my view the appeal is not maintainable. Accordingly. I dismiss the appeal on that count.

2. Admittedly the petitioner had undertaken execution of certain works on behalf of the State of Orissa through the Executive Engineer, Cuttack Public Health Division (opposite party No. 2). The contract contained the following clause:-

> "Decision of Public Health Engineer to be final:
> Except where otherwise specified in this contract the decision of the Public Health Engineer for the time being shall be final, conclusive and binding on all parties to the contract upon all questions relating to the meaning of the specifications, drawings and instructions hereinbefore mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, drawing, specifications, estimates, instructions, orders or those conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the completion or the sooner determination thereof of the contract.

3. The sole question for consideration is whether from this clause an arbitration agreement can be

construed. There is no dispute before me that no particular form is needed to bring into existence an arbitration agreement, nor is it necessary that words like 'arbitrator' or 'arbitration' need be mentioned in an arrangement where parties had really intended to submit their differences of disputes to arbitration. A Full Bench of the Punjab High Court in *Ram Lal Jagan Nath v. Punjab State*[1], supports this view. Though this decision has been referred to in the decision reported in *(State of U. P. v. Tipper Chand*[2]*),* this proposition has not been disputed. On the other hand, the statement of the law in *Smt. Rukmanibai Gupta v. Collector, Jabalpur*[3]*,* supports the same view in clear terms. In Chief Conservator of Forests, Rewa v.Ratan Singh Hans, AIR 1967 Supreme Court 166, the question for consideration was whether the following clause in the contract amounted to an arbitration clause:-

> "In the event of any doubt or dispute arising between the parties as to the interpretation of any of the conditions of this contract or as to the performance or breach thereof, the matter shall be referred to the Chief Conservator of Forests, Madhya Pradesh, Nagpur, whose decision shall be final and binding on the parties hereto.'

The court accepted this provision to amount to an arbitration clause. In *Smt. Rukmanibai Gupta v. Collector, AIR 1981 Supreme Court 479* (supra) the question for consideration was whether the provision in the mining lease, running as follows, constituted the arbitration clause:-

> "Whenever any doubt, difference or dispute shall hereafter arise touching the construction of these presents or anything herein contained or any matter or things connected with the said lands or the working or non-working thereof or the amount or payment of any rent or royalty reserved or made payable hereunder, the matter in difference shall be decided by the lessor whose decision shall be final."

While dealing with the matter, the learned Judges referred to a passage from Russel on Arbitration, 19th Ed. p. 59 where it has been said:

> "If it appears from the terms of the agreement by which a matter is submitted to a person's decision that the intention of the parties was that he should hold an inquiry in the nature of a judicial inquiry and hear the respective cases of the parties and decide upon evidence laid before him, then the case is one of an arbitration."

On the bash of the principle indicated by Russel and referring to the provisions in the clause, the court held that it amounted to an arbitration agreement. The learned Government Advocate, on the other hand, relies upon an earlier decision of the Supreme Court, being the case of *State of U. P. v. Tipper Chand, AIR 1980 Supreme Court 1522* (supra), where interpreting the following clause the court held that it did not constitute an arbitration agreement :-

> "Except where otherwise specified in the contract the decision of the Superintending Engineer for the time being shall be final, conclusive and
> binding on all parties to the contract upon all questions relating to the meaning of the specifications, design, drawing and instructions hereinbefore mentioned. The decision of

such Engineer as to the quality of workmanship, or materials used on the work, or as to any other question, claim, right, matter or things whatsoever, in any way arising out of or relating to the contract, designs, drawing, specifications, estimates, instructions, orders, or these conditions, or otherwise concerning the works, or the execution or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment of the contract by the contractor, shall also be final, conclusive and binding on the contractor" In a brief analysis of the provision, it was held that it did not constitute an arbitration clause.

Clear reason has been given in *Smt. Rukmanibai Gupta v. Collector, AIR 1981 Supreme Court 479* (supra) and tested by the reasonings indicated therein, in my opinion the provision contains an arbitration clause. The relevant clause in the contract under consideration contemplates of parties, disputes and finality of decision. These are the essential ingredients to bring in the provision of arbitration, and I am inclined to agree with the sub-mission of the petitioner's counsel that this did constitute an arbitration clause. The learned Subordinate Judge, therefore, went wrong in interpretation of the clause and in his ultimate conclusion that there were no arbitration clause.

4. The Civil Revision is allowed. The impugned order is vacated and the matter is remitted to the learned Subordinate Judge for further action in accordance with law. Since an interesting question arose where two views were possible, I do not think it would be proper for making any order for costs.
Revision allowed.

Cases Referred.

[1] AIR 1966 Pun 436
[2] AIR 1980 SC 1522
[3] AIR 1981 SC 479