

(2001) 01 P&H CK 0062

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 5805 of 2000

M/s. Bhullar Construction Co.

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Jan. 3, 2001

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 14, 15

Citation: (2001) 2 RCR(Civil) 192

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Mr. Ashwani Talwar, for the Appellant;

Judgement

R.L. Anand, J.

This is a Civil Revision and has been-directed against the order dated 10.8.2000 passed by the Court of Additional District Judge, Patiala who rejected the prayer of the petitioner for the removal of Shri Ashok Sood, the Arbitrator, who was nominated by the Chief Engineer S, Sarabjit Singh, for the reasons given in para No. 9 of the impugned order, which is reproduced as under:-

"After considering the rival contentions of the parties, I do not find any force in the argument of the learned counsel for the applicant M/s Bhullar Construction Company. Admittedly, Shri Sarab- jit Singh, Superintending Engineer was appointed as Sole arbitrator by the Chief Engineer on 6.10.1998 and the statements of the claims were filed on 11.12.1998 by the appellant and the respondents filed the counter claims on 5.5.1999 and after filing of the rejoinder, the proceedings were adjourned for 9.6.1999. After 9.6.1999, no proceedings were held. The present petition was tiled 3.1.2000 and Shri Sarabjit Singh, Superintending Engineer, appointed Arbitrator was promoted and thereafter a panel of Arbitrators as per the terms and conditions was submitted and as per clause 67 of the Agreement. The Arbitrator has to be appointed from amongst the officers of the rank of serving

Superintending Engineers of the Department and Shri Ashok Sood, Superintending Engineer has been appointed as Arbitrator. There are no allegations of misconduct on the part of the previous Arbitrator and the new Arbitrator has been appointed as per the terms and conditions of the agreement between the parties. The argument of the learned counsel for the applicant that it is for the Court to appoint the Arbitrator, is without any basis and the Court has to appoint the Arbitrator once the department fails to appoint the named Arbitrator. In the authority relied upon by the learned counsel for the applicant M/s, Deepak Galvanizing and Engineering Industries Pvt. Ltd. v. Govt. of India (supra), it was held that once the department fails to appoint the named Arbitrator, then it loses right to appoint the named arbitrator and contractor is entitled to move the Court for appointing a new Arbitrator, but in this case, the department has already appointed the named Arbitrator and as such this authority is not applicable. In case of Satya Kailashchandra Sahu and others v. M/s Vidharbha Distillers and others (supra) the Arbitrator refused to act as Arbitrator and there was no agreement for appointing another Arbitrator and in that case it was held that the Chief Justice is required to take necessary measures for appointment of Arbitrator but this authority is not again applicable because in the present case, the appointed arbitrator was promoted as Chief Engineer and as such he could not continue with the arbitration proceedings and the new Arbitrator Shri Ashok Sood has been appointed as per the terms and conditions of Clause 67 of the agreement. The present application was filed by the applicant M/s Bhullar Construction Company, under Sections 14 read with Section 15 of the Act for termination of the mandate of the sole Arbitrator Shri Sarabjit Singh, respondent No. 3 and for his replacement by another impartial and independent sole arbitrator and for staying the proceedings before the sole arbitrator Shri Sarjeet Singh respondent. Thus, the mandate of the respondent No. 3 has been automatically terminated with his promotion and on the appointment of a new Arbitrator as well as the prayer for staying the proceedings before him also become infructuous as he is no more acting as Arbitrator."

2. Some facts can be noticed in the following manner. Shri Sarabjit Singh, when he was serving as Superintending Engineer was nominated as an Arbitrator by the Chief Engineer in terms of Clause 67 of the agreement which lays down that the appointment of the Arbitrator shall be from amongst the officers of the rank of the serving Superintending Engineers of the Department. The petitioner filed an application u/s 14 of the Arbitration and Reconciliation Act, 1996 for the removal of the Arbitrator Shri Sarabjit Singh on the plea that he has not taken sufficient steps in the proceedings. Shri Sarabjit Singh filed reply annexure P-3 and he stated that he was very busy and hence was not in a position to perform the duty of Arbitrator in the said matter. In the meanwhile Shri Sarabjit Singh the sole Arbitrator was promoted as Chief Engineer. In the capacity of a Chief Engineer he nominated Shri Ashok Sood, as Arbitrator in his place in terms of Clause 67 of the agreement. The petitioner made a prayer that this appointment of Shri Ashok Sood, as an

Arbitrator, by Sarabjit Singh, is illegal and against the provisions of law. This prayer did not find favour with the Court. Hence the present revision.

3. I have heard the learned counsel for the petitioner and with his assistance have gone through the record of this case.

4. The grouse of the learned counsel for the petitioner is two fold; firstly, that Shri Sarabjit Singh could not nominate Shri Ashok Sood and secondly when the petition u/s 14 of the Arbitration and Reconciliation Act, 1996, is pending before the Civil Court, any action on the part of the Chief Engineer for the appointment of Arbitrator is illegal.

5. I do not subscribe to the arguments raised by the learned counsel for the petitioner. In my opinion, the petition u/s 14 of the Arbitration and Reconciliation Act, itself had become infructuous with the promotion of Superintending Engineering to the Post of Chief Engineer (S. Sarabjit Singh). The main grouse of the petitioner, rather from the very beginning was that Shri Sarabjit Singh should be removed from conducting the arbitration proceedings because he was not taking any interest in the proceedings. Sarabjit Singh could not conduct the proceedings as he was very busy. In the meanwhile, Sarabjit Singh became Chief Engineer. As per clause 67, the gap which was created by the promotion of Sarabjit Singh, as Chief Engineer, has to be filled according to the agreement itself which lays down that Arbitrator is to be appointed from the officers of the rank of serving Superintending Engineers by the Department.

6. The learned counsel for the petitioner submitted that with the appointment of the Shri Ashok Sood, as an Arbitrator, his client cannot expect justice as he is a man of the Department. Moreover, he is serving under S. Sarabjit Singh and in these circumstances, some independent person should be appointed. The submission of the learned counsel for the petitioner cannot be accepted. The sanctity to the arbitration clause is to be given unless the things are to the contrary on the face of it. As per the arbitration clause 67, the appointment of the Arbitrator is supposed to be made from amongst the officers of the rank of serving Superintending Engineers. Admittedly, Shri Ashok Sood is a serving Superintending Engineer. Therefore, his appointment has rightly been made by Shri Sarabjit Singh in the capacity and powers of Chief Engineer. The learned counsel for the petitioner also cited [Pratima Sarkar Vs. Corporation of Calcutta and Others](#). These authorities are not applicable to the facts of the case in hand.

7. It may be clarified that if any claim of the petitioner is pending before the Arbitrator, that shall also be adjudicated by him after giving notice to the Department according to the rules and law.

8. Petition dismissed.