
S.C. Shukla and Bros. Vs Union of India (UOI) and Another

First Appeal from Order No. 447 of 1975

Court: Allahabad High Court

Date of Decision: Sept. 23, 1981

Acts Referred:

Arbitration Act, 1940 " Section 20

Citation: (1983) 54 CompCas 547

Hon'ble Judges: K.N. Singh, J; B.N. Saprú, J

Bench: Division Bench

Final Decision: Allowed

Judgement

K.N. Singh, J.

This is an appeal u/s 39 of the Arbitration Act, 1940, against the order of the Additional Civil Judge, Allahabad, dated May

20, 1975, dismissing the appellant's application made u/s 20 of the Indian Arbitration Act.

2. The plaintiff-appellant is a railway contractor. He entered into an agreement with the Divisional Superintendent, Northern Railway, for handling

coal in Loco Shed, Kanpur & G.M.C. Depot, as well as Phaphund, Pura, Karbigawan and Fatehpur stations for the period April 1, 1960, to

March 31, 1961. At the close of the period of the agreement railway administration invited tenders for carrying the work of coal handling for the

year 1961-62. The appellant made his offer for that year also. According to the appellant, his offer was accepted by the railway administration and

the Divisional Superintendent, Northern Railway, entered into an agreement with the appellant on April 1, 1961, permitting the appellant to handle

coal at the railway stations, mentioned above, for the period April 1, 1961, to March 31, 1962. According to the appellant, he carried out the

obligation under the agreement for the entire period ending March 31, 1962. When the appellant submitted a consolidated bill in respect of the

charges relating to the unloading of coal from the -box wagons, a dispute arose, between the appellant and the railway administration. In spite of

the appellant's repeated efforts, the railway administration did not agree to pay him unloading Charges at enhanced rates. The appellant thereupon

filed an application u/s 20 of the Arbitration Act before the court with the prayer that the respondent-railway administration be directed to file the

agreement in the court and, thereafter, the dispute be referred to arbitration for adjudicating the same. The railway administration filed a written

statement and contested the application mainly on the ground that the appellant had abandoned the work before completion of the work. The

railway administration further asserted that there was never any agreement to pay the plaintiff at a higher rate and, as such, the appellant was not

entitled to any payment at higher rate. The maintainability of the application u/s 20 was also assailed on a number of grounds.

3. The trial court rejected the appellant's application mainly on the ground that the appellant had failed to give the specific date, month or year

relating to the execution of the agreement and he further failed to disclose as to whether the agreement was written or oral or that there was an

arbitration clause in the agreement. In view of this finding the trial court held that the respondent could not be asked to file the agreement nor could

the dispute be referred to arbitration.

4. We have heard counsel for the parties and perused the record. The finding of the trial court that the plaintiff had failed to give any specific date,

month or year of the agreement is wholly incorrect. In para. 5 of his application, the appellant had clearly stated that an agreement was entered

between the Divisional Superintendent, Northern Railway, Allahabad, and the appellant. As regards the date and year are concerned, the

appellant's counsel, in his statement, under Order 10, made on April 22, 1974, stated that an agreement was entered into between the plaintiff-

appellant and the defendant on April 1, 1961, for the year 1961 K.B. Sri Mathur, counsel appearing for the railway administration, before the trial

court, admitted that there was an agreement on April 1, 1961, but the same was abandoned by the appellant. Thus, there is ample evidence on

record to show that the agreement was executed between the parties on April 1, 1961. The trial court was in error in holding that the appellant had

failed to give specified date, month or year of the execution of the agreement. When the plaintiff and his counsel stated in clear words that an

agreement was executed between the parties, there was no question of any oral agreement. The trial court again committed an error in holding that

the plaintiff had failed to prove that there was agreement in writing. The statement of the counsel for the parties recorded on April 22, 1964, made

it amply clear that a written agreement had been executed between the parties on April 1, 1961, with regard to the handling of coal by the

appellant. The trial court's order is not sustainable.

5. The trial court's finding that the plaintiff had failed to disclose as to whether there was any arbitration clause in the agreement is again incorrect.

In his replication, the appellant had averred that the agreement contained an arbitration clause. In earlier years, the contract contained an arbitration

clause and the same work was given to the appellant on the same terms and conditions, to the circumstances it would be reasonable to hold that

the arbitration clause which was contained in the agreement for the earlier year continued to be so for the subsequent years also. Moreover, this

question could have been decided if and when the copy of the agreement was filed in the court by the railway administration. Once it is admitted by

the railway administration that an agreement was executed on April 1, 1961, it was the duty of the court to summon the same and it was imperative

for the railway administration to file the same and only thereafter, the court could have satisfied itself as to whether there was an arbitration clause,

in pursuance of which, the dispute could be referred to arbitration. The trial court committed a serious error in rejecting the appellant's application

u/s 20 of the Arbitration Act.

6. In view of the above discussion, we allow the appeal and set aside the order of the Additional Civil Judge, Allahabad, dated May 20, 1975, and

direct the railway administration to file the agreement dated April 1, 1961, in the trial court, thereafter, the trial court shall decide the appellant's

application in accordance with law. The appellant is entitled to his costs.