
(1993) 09 P&H CK 0154
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2393 of 1992

A.S. Kaushal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-09-1993

Acts Referred:

Arbitration Act, 1940 — Section 8
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1994) 106 PLR 162

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : Satinder Khanna, for the Appellant; Deepak Thapar, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—This revision petition arises out of an order passed by the Senior Sub Judge, Ludhiana, dismissing the application filed by the petitioner u/s 8 of the Arbitration Act (in short "The Act").

2. In brief, the facts are that the petitioner was awarded contract for earth-work and for construction of minor bridges from Nangal to Sirhind. According to the petitioner, after execution of part of the contract, dispute arose between the parties and that led to the filing of an application u/s 8 of the Act for the appointment of an arbitrator. That application was dealt with by the then Senior Sub Judge, Sh. Gopi Chand, who vide his order dated 19.1.1991, allowed the application for referring the dispute to the arbitrator. In the said order, it was not made clear as to the period in which the respondents were required to appoint the arbitrator. The petitioner again on 5.2.1991, i.e. after few days of the first order, made another application u/s 8 of the Act in which a grievance was made that the respondents in terms of order dated 19.1.1991 have not appointed the arbitrator and, therefore, this Court should appoint an arbitrator. This application on contest was dismissed on the ground that such an application is not

maintainable because after the decision in the earlier application, the Court had become functus officio. The Court was also of the view that as a matter of fact, the respondents have already appointed an arbitrator to decide the dispute between the parties. This order is being impugned in the present revision petition.

3. Counsel for the petitioner contended that in terms of Clause relating to arbitration agreement, petitioner is also entitled to nominate one arbitrator out of the panel so submitted by reference. According to him, his nominee was also required to be nominated which has not been done in this case.

4. In reply, counsel for the respondents contended that on failure of the petitioner to nominate an arbitrator, a sole arbitrator was appointed and that appointment is in terms of arbitration clause contained in the contract.

5. Having heard the learned counsel for the parties, I am of the view that there is no merit in the revision petition. The Senior Sub Judge vide his order dated 15.1.1991, allowed the application u/s 8 of the Act for the appointment of the arbitrator. In pursuance of this order, the department vide communication addressed to the petitioner dated 14.2.1991, called upon him to nominate one out of the four names given in that letter. Petitioner failed to send his approval with regard to any of these names and consequently, respondents appointed one R. Ashok, a gazetted officer of the Railways, as arbitrator. This appointment is in terms of Section 9 of the Act, which provides that where in an agreement, a reference has to be made to two arbitrators, one to be appointed by each party, and if one party fails to appoint an arbitrator, either originally or by way of substitution, within 15 days after service by the other party of a notice in writing to make appointment, such other party having appointed his arbitrator before giving the notice, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator. No challenge can be made to the appointment of the arbitrator appointed by the respondents because it was open to the petitioner to give his concurrence to the one out of the four names which were suggested to the petitioner, by the respondents vide their communication dated 14.2.1991. Petitioner having failed to nominate one, now cannot be allowed to turn around and say that the appointment is not valid or his nominee is also required to be nominated. Counsel for the petitioner also stated that the arbitrator has not entered into reference and, therefore, he is required to be removed. However, I find no merit in this contention as well. Admittedly, the proceedings are pending before the Court since the year 1985 and that is why, the arbitrator has not entered into reference. Since the matter is being finally decided now, the arbitrator shall decide the matter within four months from the date of appearance of the parties before him. Mr. Khanna, counsel for the petitioner also contended that such a direction should not be given as the petitioner intends to make a fresh application to the trial Court for the removal of the arbitrator on the ground that since his appointment as such, he has not entered into reference for more than one year. I am not prepared to accept this request of counsel for the petitioner for the reason that the matter was sub-

judice and for that reason, proceedings could not take place. This Court while issuing notice of motion also stayed the proceedings before the arbitrator. This was as far back as 31.8.1992. I also fail to understand as to why the petitioner wants to continue with the litigation when his interest is to get the matter settled in terms of arbitration agreement which he on his own volition entered into at the time of award of the contract.

6. For the reasons recorded above, the revision petition is dismissed. No costs.