
(1984) 01 OHC CK 0004
In the Orissa High Court
Case No : Civil Revision No. 523 of 1980

Banamali Charan Mohanty	Vs	APPELLANT
Kamaladebi Saha and Others		RESPONDENT

Date of Decision : 23-01-1984

Acts Referred:

Arbitration Act, 1940 — Section 12(2)

Citation : AIR 1984 Ori 218

Hon'ble Judges : G.P. Mohapatra, J

Bench : Single Bench

Advocate : A.S. Naidu, Prasanta Mohanty and S. Mohanty, for the Appellant; Saktidhar Das, (for No. 2), P.K. Misra, L. Mohapatra and J.P. Misra, (for No. 1) and N.C. Pati, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mohapatra, J.—The simple question involved in this Revision Petition is, whether on removing the Arbitrator appointed by a party the Court is legally bound to ask the concerned party to nominate another person to replace the Arbitrator removed and is the Court bound to appoint the said nominee of the party.

2. The facts giving rise to the petition, shortly stated, are that the petitioner and the opposite parties constituted a partnership firm under the name and style of "Modern Construction Company" as evidenced by a Deed of partnership. The arbitration clause (Clause 16) in the said Deed is to the following effect."--

"In case of any dispute or differences arising out of the partnership, the matter shall be referred to the Arbitration of four Arbitrators appointed one by each partner and decision of them shall be final and binding upon all. In case of difference of opinion between the Arbitrators, a fifth one shall be nominated by them and the decision of the majority shall be final and binding upon all partners."

Differences have been raised by the parties. They nominated a body of four Arbitrators, each of the parties nominating one. and in the said body of Arbitrators a set of disputes were referred to the Subordinate Judge, Baripada u/s 20, of the Arbitration Act in G S. No. 15/76. One Sri Debottam Das was the Arbitrator nominated by opposite party No. 1. The said Arbitrator having delayed to finalise accounts, papers in respect of which were, submitted to him, the petitioner filed an application for its removal. The learned Subordinate Judge by his order dated 7-3-1980 allowed the petition and removed Sri Debottam Das from the Board of Arbitrators The petitioner is aggrieved by the later portion of the order directing opposite party No. 1 to nominate another Arbitrator to replace his previous nominee.

3. It is contended on behalf of the petitioner that on removing an Arbitrator, it is the bounden duty of the Court to appoint another Arbitrator in his place and the court is not entitled to delegate that function to the party as has been done under the impugned order. Reference has been made in Section 12(2) of the Arbitration Act for the purpose of showing that the discretion is exclusively vested in the court and is not possible to be delegated to any party.

The contention appears to be well founded. A bare Perusal of Section 12(2) of the Arbitration Act makes it amply clear that where the court removes an Arbitrator, if any, on the application of a party to the Arbitration Agreement, either appoints a person to act as an Arbitrator in place of the person displaced or order that the Arbitration Agreement shall cease to have effect with respect to the differences referred. Thus the two alternatives which are open to the Court after removing an Arbitrator is either to appoint another Arbitrator in place of the person removed or to order that the Arbitration Agreement shall cease to have effect in respect of the disputes referred. The Court is not entitled to leave the appointment of Arbitrator to the party whose nominee has been removed. I should not be understood to say that the Court is not entitled to ask the parties to suggest names to enable him to make a suitable choice to fill up the vacancy caused by the order of removal of the Arbitrator. But it is the court who is to apply its mind and make the final choice for appointment of Arbitrator. In the present case, the court seems to have proceeded under the impression that since the Arbitrator who was removed, was the nominee of opposite party No. 1, the said opposite party is to be given the option to nominate another person in his place. This erroneous impression has vitiated the order. The view taken by me is supported by a decision of this court in the case of Fertiliser Corporation of India Ltd. Vs. Ravi Kumar Ohri, and the decision of Jammu and Kashmir High Court in the case of (Mohinder Singh & Co. v. Union of India) reported in AIR 1972 J&K 63.

4. If the learned Subordinate Judge wanted the Parties to assist him in making the choice for appointment of an Arbitrator in place of the one removed, in all fairness he should have asked each of the parties to submit a panel of names. But, instead, he has directed opposite party No. 1 to nominate a person and has appointed the said nominee of opposite party No. 1 as the Arbitrator.

5. In view of the aforesaid, the impugned order of the Subordinate Judge is not sustainable. The Revision is accordingly allowed and the impugned order is vacated. The Subordinate Judge is directed to appoint an Arbitrator after giving opportunities to the parties to submit the panel of names for such appointment. The learned Counsel appearing for the petitioner and the opposite party No. 2 have submitted two lists of names on behalf of their respective parties. They will also be considered by the Subordinate Judge while making the appointment. The parties are directed to appear before the Subordinate Judge on the 2nd of February, 1984 to receive necessary direction. The matter will be disposed of within two weeks thereafter. The records are directed to be sent back to the Subordinate Judge, Baripada, immediately. In the circumstances of the case there would be no order for costs of this proceeding.