
(1976) 07 AHC CK 0030
In the Allahabad High Court
Case No : F.A.F.O. No. 4 of 1973

Chabbel Dass and Co., Sultanpur

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 23-07-1976

Acts Referred:

Arbitration Act, 1940 — Section 20

Citation : AIR 1977 All 143

Hon'ble Judges : Prem Prakash, J; Hari Swarup, J

Bench : Division Bench

Advocate : P.N. Bhatt, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Hari Swarup, J.—This appeal arises out of the order of the trial court dismissing the appellant's application u/s 20 of the Arbitration Act. The trial court has held that there was no arbitration clause in the agreement between the parties in respect of the matter regarding which the arbitration was sought.

2. The relevant clause in the agreement was in the following terms:

"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, designs, 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, designs, drawings, 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 thereof or abandonment of the contract by the contractor, shall be final, conclusive and binding on the contractor."

According to the finding, the dispute fell not in the first part but the second part

of this clause. Learned counsel for the appellant has not argued otherwise.

3. This clause came up for consideration before a Bench of this Court in *State of U.P. Vs. Sri Padam Singh Rana*, and it was held that Clause 23, quoted above, was in two parts. The first part contained an arbitration Clause whereas the second part did not constitute an arbitration agreement. The reason given in that judgment was that the second part made the decision of the Superintending Engineer binding only on the contractor and not on the other party, viz., the Government, learned counsel for the appellant has contended that this decision in *State of U. P. v. Padam Singh Rana* (supra) needs reconsideration. He has argued firstly that the two parts of Clause 23 should be read in a manner that the second part should also be deemed to be an arbitration clause making the decision of the Superintending Engineer binding on both the parties. We have read Clause 23 and find that the two parts are independent and the first part does not conduct the second part. The first part makes the decision of the Superintending Engineer binding on both the parties while the second part makes it binding only on the contractor. In view of the clear language of the agreement it is not possible to accept the contention that in respect of matters dealt with in the second part, the State Government had agreed to be bound by the decision of the Superintending Engineer. It is not for the court to determine the wisdom of the agreement. The court u/s 20 of the Arbitration Act has only to see whether there is an arbitration agreement or not, whether it should be so or not is beyond the scope of enquiry.

4. The second limb at the argument of the learned counsel is that even though the decision of a person named in the agreement may not be binding on both the parties, it will still be an arbitration agreement. We are unable to see any merit in this contention. An agreement of arbitration implies an agreement to get a dispute adjudicated by a named forum rather than in the ordinary civil court. The Arbitrator gets substituted in place of the court. If an application u/s 20 of the Arbitration Act is allowed, the Arbitrator is required to give the award. The award can under the Act be made a rule of the court. If it becomes a rule of the court, it naturally becomes binding on both the parties. The binding character of the award on all the parties, to the arbitration agreement is thus, in our opinion, an essential ingredient to an arbitration agreement. Unless the arbitration agreement makes the award or decision of the Adjudicator binding on the parties, the Adjudicator cannot be deemed to be an Arbitrator and the agreement cannot be deemed to be an arbitration agreement.

5. Learned counsel for the appellant relied on a decision in *Aghore Nauth Banerjee v. The Calcutta Tramways Co., Ltd.* ILR (1885) Cal 232, but in that case the agreement provided:

"..... and his certificate in writing in respect of the amount to be retained and the cause of such retention shall be binding and conclusive evidence between the parties in all courts of Justice."

(Emphasis ours).

The decision was thus to be binding on both the parties. This case cannot, therefore, be of any assistance to the learned counsel for the appellant. The other case relied upon by the learned counsel is *Detaram v. Forbes* AIR 1930 Sind 17. There the principle accepted by the Court was that if one party undertakes to accept the decision of the other side, it is a binding agreement. There was no question about the decision not being binding on both the sides.

6. Under the Arbitration Act "arbitration agreement" is defined in Section 2(a) as meaning "a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not". The very word "agreement" signifies that the parties agree to the reference of the dispute for adjudication so that the differences between the parties may be settled by an award. The necessary implication is that it must bind the parties. If the decision does not bind the parties, it cannot be made a rule of the court and cannot be an award within the meaning of the Arbitration Act. Hence, we are clear that unless an arbitration agreement makes adjudication of the person named binding on both the parties, it will not amount to an arbitration agreement within the meaning of Section 20 of the Arbitration Act.

7. The result is that there is no merit in the appeal and it is dismissed with costs.