
(2005) 03 GAU CK 0045
In the Gauhati High Court
Case No : R.F.A No"s. 32, 33 and 34 of 2002

Dey and Co.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-03-2005

Acts Referred:

Arbitration Act, 1940 — Section 20

Arbitration and Conciliation Act, 1996 — Section 21, 85, 85(2)

Citation : (2005) 3 GLR 404 : (2006) GLT 709 Supp

Hon'ble Judges : D. Biswas, Acting C.J.;Aftab H. Saikia, J

Bench : Division Bench

Advocate : C.R. Dey, B.C. Das, G.P. Bhowmick, A. Bhattacharjee, N. Basar and G. Saikia, for the Appellant; S. Sarma, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, C.J. (Acting)

1. By this common judgment we propose to dispose of R.F.A. Nos. 32, 33 and 34 of 2002 preferred by M/s. Dey & Co. challenging the legality and validity of the order dated 24.12.2001 passed by the learned Civil Judge (Sr. Divn.) No. 1, Silchar in Title Suit Nos. 14, 15 and 16 of 1996 respectively.

2. All the three suits were filed by the appellant praying for an order of reference of the disputes relating to execution of R.C.C. construction entered into between the appellant and the respondent Railways to the arbitrator as provided by the General Terms and Conditions of Contract.

3. It is submitted that the contract was completed on different dates during the period 1990 to 1993. The final bill for payment was not prepared and no payment was made despite repeated requests by the appellant-Company. Having no other alternative, the appellant issued notice invoking the arbitral clause [Clause 63(1) of the General Terms and Conditions of Contract] on 22.7.1995 which was duly received by the Railways.

4. The learned Civil Judge dismissed the suits rejecting the appellant's prayer for referring the disputes to arbitrator on the ground that the suits ought to have been filed under the provisions of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "new Act") and not u/s 20 of the Arbitration Act, 1940 (for short "the old Act"). According to the learned Civil Judge, the Arbitration and Conciliation Ordinance was promulgated and brought into force with effect from 16.1.1996 for the first time. The second Ordinance was promulgated and brought into force with effect from 25.1.1996. The third Ordinance was promulgated and brought into force with retrospective effect from 25.1.1996. The three Ordinances promulgated from time to time could not be ratified and replaced and eventually, the new Act was enacted and brought into force with effect from 25.1.1996. The suits were filed on 14.2.1996, i.e., after 25.1.1996 when the new Act was brought into force and this led the learned Civil Judge to come to the conclusion that the suits having been filed after 25.1.1996, ought to have been filed under the provisions of the new Act of 1996 and not u/s 20 of the old Act.

5. From the factual matrix recapitulated above, it would appear that the suits undisputedly were filed after the new Act came into force. But this does not mean that the arbitral proceedings will have to be governed by the provisions of the new Act. It is the date of commencement of the arbitral proceedings which will be determinative of the issue as to whether a particular dispute has to be dealt with by the arbitrator under the provisions of the old Act or that of the new Act.

6. Section 21 of the new Act provides that unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for referring the dispute to arbitration is received by the respondent. In the instant case, the request for referring the arbitration was communicated to the Railway authorities on 22.7.1995 which was duly received by them. Receipt of the request made by the appellant-company for appointment of arbitrator has not been denied by the Railway authority. Therefore, in terms of the provisions of section 21 of the new Act, it has to be held that the proceedings in the cases at hand commenced in the year 1995. The provisions of the new Act came into force with effect from 25.1.1996. Therefore, the disputes, raised by the appellant in all the three suits would for all purposes be governed by the provisions of the old Act and not by the new Act.

7. Section 85(2) of the new Act saves the arbitral proceedings which commenced prior to coming into force of the new Act. Therefore, going by the provisions of Sections 21 and 85 of the new Act, we have no doubt left in our mind that in the cases at hand all the disputes raised by the appellant-company are subject to the provisions of the old Act. Therefore, the applications filed by the appellant-company u/s 20 of the old Act ought not to have been dismissed and, that too for want of jurisdiction.

8. Hence, we allow the appeals; set aside the impugned judgment and decree

dated 24.12.2001 passed by the learned Civil Judge (Sr. Divn.) No. 1, Silchar in Title Suit Nos. 14, 15 and 16 of 1996 and remit the matter back to the learned Civil Judge to proceed with the matter and adjudicate the same under the old Act.