
(2013) 07 P&H CK 0268
In the Punjab And Haryana At Chandigarh
Case No : CR No. 3398 of 2010

Gian Chand Garg

APPELLANT

Vs

Haryana State Agricultural Marketing

RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Arbitration Act, 1940 — Section 14, 17, 30
Constitution of India, 1950 — Article 227

Citation : (2014) 1 PLR 199

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Sanjeev Manrai, for the Appellant; Rajesh Sheoran, for the Respondent

Judgement

L.N. Mittal, J.—This revision petition filed under Article 227 of the Constitution of India assailing order dated 04.02.2010 passed by learned Civil Judge (Senior Division), Karnal raises an important question of law. The petitioner-Contractor executed some work of the respondent-Marketing Board. Dispute arose between the parties. The said dispute was referred to Arbitrator by Chief Engineer of the respondent-Board vide order dated 09.04.1993 when the Arbitration Act, 1940 (for short "the 1940 Act") was in force. The Arbitrator gave award dated 06.01.1994 awarding Rs. 9,25,000/- in favour of the Marketing Board. The Board filed petition under Sections 14 and 17 of the 1940 Act for making the award as Rule of the Court. The Arbitrator filed objections u/s 30 of the 1940 Act. The said objections were allowed by learned Civil Judge (Senior Division), Karnal vide judgment dated 01.02.2002 (Annexure P-2) and award dated 06.01.1994 was set aside. The matter was remitted back to the Chief Engineer of the Board to appoint Arbitrator again to settle the dispute between the parties. Accordingly, the Chief Engineer vide order dated 27.03.2002(Annexure P-3) appointed Arbitrator who was changed by the Court vide order dated 14.09.2004. The said Arbitrator made award dated 11.02.2005 and sent it to the trial Court i.e. Civil Judge (Senior Division), Karnal.

2. Respondent - Board made application (Annexure P-4) in the said Court for sending the award of the Arbitrator to District Judge for execution alleging that the award has been made under the Arbitration and Conciliation Act, 1996 (in short "the 1996 Act") and the same is directly executable in the Court of District Judge.

3. The petitioner Contractor by filing reply (Annexure P-5) opposed the aforesaid application and pleaded that the 1940 Act is applicable.

4. Learned trial Court vide impugned order (Annexure P-1) held that the 1996 Act is applicable because the Arbitrator entered into reference on 12.10.2004 and announced the award on 11.02.2005 while the 1996 Act was in force and, therefore, the said Act is applicable.

5. Feeling aggrieved, the Director has filed this revision petition.

6. I have heard counsel for the parties and perused the case file.

7. Counsel for the parties could not cite any judgment directly applicable to the facts of the case in hand. In the instant case, the arbitration proceedings initially commenced while the 1940 Act was in force. Award was also made while the 1940 Act was in force and, accordingly, petition and objections under the 1940 Act were filed. The said objections were allowed vide judgment dated 01.02.2002 and the matter was remitted to the Board for appointment of Arbitrator afresh while the 1996 Act had come into force. Award dated 11.02.2005, which is now the bone of contention between the parties, was passed by the Arbitrator who was appointed after coming into force of the 1996 Act and all the arbitration proceedings culminating into the said award were held by the said Arbitrator after coming into force of the 1996 Act.

8. In the aforesaid circumstances, significant question that arises for determination is as to whether the 1940 Act is applicable to the case because initially arbitration proceedings commenced when the said Act was in force or the 1996 Act is applicable to the case because the Arbitrator who made award dated 11.02.2005 was appointed while the 1996 Act was in force and the arbitration proceedings culminating into award dated 11.02.2005 were held thereafter. Ancillary question would be as to whether the arbitration proceedings by the Arbitrator who has made award dated 11.02.2005 are continuation of the arbitration proceedings which had resulted in award dated 06.01.1994 (which was set aside vide judgment Annexure P-2), thereby award dated 11.02.2005 coming within the purview of the 1940 Act or the arbitration proceedings resulting in award dated 11.02.2005 would be treated as fresh proceedings coming within the net of the 1996 Act. The aforesaid questions may arise frequently in many cases. These are important questions of law arising in this revision petition. I am of the considered opinion that these questions should be authoritatively answered by Larger Bench. The papers, therefore, be placed before Hon'ble the Chief Justice for constituting Larger Bench for determining the aforesaid questions.