

(1997) 01 KL CK 0001
In the High Court Of Kerala
Case No : M.F.A. No. 571 of 1987

Government of Kerala and Another

APPELLANT

Vs

Luiz Paul

RESPONDENT

Date of Decision : 27-01-1997

Acts Referred:

Arbitration Act, 1940 — Section 11, 20, 5, 8

Citation : (1997) 01 KL CK 0001

Hon'ble Judges : K.K. Usha, J;G. Sivarajan, J

Bench : Division Bench

Advocate : K. Sasikumar, Government Pleader, for the Appellant; Joseph Franclin, for the Respondent

Final Decision : Allowed

Judgement

K.K. Usha, J.—The appeal is at the instance of State of Kerala challenging the judgment of the Additional Sub Judge in O.S. No. 660/83. The matter arises under the Arbitration Act. The Appellants were Defendants. Suit was filed by the Respondent under Sections 5, 8, 11 and 20 of the Act for making an order of reference of all disputes that have arisen between the parties in respect of the contract relating to the work of P.V.I.P. constructing, Kanjiramattom Distributory from ch. 1000 Mts. to 1200 Mts. including C.D. work. Before the Court below, the Appellants contended that the clauses relating to arbitration have been deleted in the tender notice itself and consequently, there was no arbitration clause in the agreement executed by the parties. Under these circumstances, the Plaintiff-Respondent cannot seek a reference for arbitration.

2. The contention raised by the Respondent that Madras Detailed Standard Specification was made applicable to the contract as per the agreement and hence all the provisions of Madras Detailed Standard Specification are to be applied in the case including the clause relating to the arbitration was not accepted by the Court below. The Court below found that the Madras Detailed Standard Specification had been made applicable only excluding the Clause 73

and other clauses relating to arbitration and therefore on the basis of the Madras Detailed Standard Specification, no contention can be put forward by the Plaintiff seeking a reference to arbitration. The Court below at the same time took the view that since Kerala P.W.D. Specifications are made applicable to the agreement, the Plaintiff is entitled to seek a reference for arbitration in view of Clause 14, which reads as follows:

Any dispute or difference that may arise between the Division Officer and the Contractor on account of the contract, shall at the instance of either party be referred to the Government Arbitrator for dealing with Arbitration cases, whose decision given in writing shall be final, conclusive and binding.

3. It is contended before us by the learned Government Pleader that the principles laid down by the Supreme Court in *Sasidharan v. K.S.F.D.C.* 1994 (2) KLT 1065 will be applicable in the present case also. Since the parties have agreed to exclude the arbitration clause in the main agreement itself, it cannot be contended that Clause 14 of the P.W.D. Specifications can be resorted to by the Plaintiff to seek a reference for arbitration.

4. We find merit in the argument put forward by the Appellants. In the above-mentioned decision of the Supreme Court, what was considered was the effect of Clause 73 in Madras Detailed Standard Specifications, in a contract where parties have specifically excluded the arbitration clause. The Apex Court took the view that since the parties have specifically excluded the arbitration clause in the contract, by necessary implication, it has to be taken that they have excluded the clause relating to arbitration in the Madras Detailed Standard Specifications also. If Clause 73 is to be taken as part of the contract, it must expressly and specifically be incorporated in the contract. When the clause relating to arbitration has been specifically excluded, it is manifest that the terms in the Madras Detailed Standard Specifications referred to in the agreement are only of the terms referable to the execution of the work and not one concerned with an agreement to refer for an arbitration any dispute arising between the parties at a later point of time or during the course of the execution of the work or after the completion thereof or any dispute arising between the parties in relation to the contract. In this case also, we are of the view that since the clause relating to arbitration had been specifically excluded as per the provisions contained in the tender notice itself, Clause 14 of the Kerala P.W.D. Specifications cannot be taken as a term of an agreement to refer any dispute arising between the parties for arbitration. Apart from the above, we are of the view that Clause 14 relied on by the Court below does not have the effect of a provision for arbitration of a dispute arising between the parties concerning the agreement during the course of the execution of the work or after the execution of the work. The dispute referred to therein relates only to specifications as is very clear from the document placed at page 43 of Ext. B-1 file.

5. In view of the above, we hold that there are no provisions referring the dispute between the parties for arbitration in the agreement entered into

between them and the Court below has gone wrong in decreeing the suit and appointing the Chief Engineer as Arbitrator. The judgment under appeal is set aside. The appeal stands allowed, but in the circumstances without any order as to costs.