

(1986) 03 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 378 of 1985

Krishan Lal

APPELLANT

Vs

Haryana State Agricultural Marketing Board and Another

RESPONDENT

Date of Decision : 12-03-1986

Acts Referred:

Citation : AIR 1986 P&H 376 : (1987) 1 ILR (P&H) 227

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Judgement

1. Where the appointment of an arbitrator is by designation, is the arbitrator so appointed divested of jurisdiction to act as such on his ceasing to hold the post, whether by transfer, retirement, resignation or otherwise. This is the point that falls for determination in this appeal.

2. The matter raised here is essentially one of interpretation of the arbitration clause as it is open to the parties to provide that the arbitrator (appointed by virtue of the office he holds) must, at all times, during the arbitration proceedings, be one holding the particular post or that it would suffice if he held it at the time of the reference of the dispute to arbitration.

3. The relevant arbitration clause governing the matter reads as under:--

"If any question, difference or objection whatsoever shall arise in any in any way connected with or arising out of this instrument the meaning or operation of any part thereof or the right, duties or liabilities of either party, then save in so far as decision of any such matter is hereinbefore provided for and has been so decided every such matter including whether its decision has been otherwise provided for and has been so decided every such matter including whether its decision has been otherwise provided for and /or whether it has been finally decided according, or whether the contract should be terminated or has been rightly terminated and as regards the rights and obligations of the parties as the result of such termination shall be referred for arbitration to the SE, H. S. A. M. B.

within 180 days of the date of final measurement and its decision shall be final and binding and binding and where the matter involves a claim for or the payment or recovery or deduction or money, only the amount, of any, awarded on such arbitration shall be recoverable in respect of the matter so referred to arbitration within the specified period, shall be deemed to have been forfeited and absolutely barred."

4. The appointment of the arbitrator was thus by designation, namely, Superintending Engineer of the Haryana State Agricultural Marketing Board (hereinafter referred to as "the Board"). At the time of the reference of the present disputes to arbitration. the Superintending Engineer concerned was Shri D. P. Gupta. The impugned award by him in the case of the appellant Tara Chand is of April 17, 1984 and in the case of the other appellant-Krishan Lal of April 27, 1984. The records shows that while proceeding on leave, he relinquished charge of this post on Jan. 16, 1984. Later, by the order exhibit p/6 April 4, 1984, he was reverted to his parent department, though be the subsequent order exhibit p/7 of May 25, 1984, he was posted back as Superintending Engineer of the Board. The fact, however, remains that the impugned awards of April 17 and 27, 1984, were rendered by Shri D. P. Gupta, when he had ceased to the Board. The contention thus raised on behalf of the Board and which prevailed with the trial court being that on his relinquishing charge of the post of Superintending Engineer--Shri D. P. Gupta, was not competent to proceed with the arbitration and the impugned awards were, therefore, without jurisdiction.

5. The point now canvassed by Mr. Manohar Lal, counsel for the appellants was that the words "shall be referred for arbitration to the superintending Engineer of the Haryana State Agricultural Marketing Board", in the relevant arbitration clause implied with the requirement of the arbitrator being the Superintending Engineer of the Board was confined to the time of the reference of the dispute to arbitration and not that the arbitration proceedings must thereafter too be handled only by one holding the said post. In other words, the time to look to the jurisdiction of the arbitrator to act as such, was when the matter is referred for arbitration and not any stage subsequent thereto.

6. As precedent, reference was made to the judgment of this court in Union of India. M/s K. D. Mehta Manohar Singh and Co. (1965) Pun LR 166 . in this case the arbitration clause provided that differences and disputes between the parties "shall be referred to the General Manager for the time being of the North-western Railway ".It was held that the words "for the time being" must be construed to refer ton the person who held the post of General Manager when the dispute was referred to him for arbitration and it was not necessary that he should also be the General Manager at the time of the Award. In holding so, the Court followed the earlier judgment of the High court of Orissa in Union of India (UOI) Vs. Ch. Radhanath Nanda and Another, , where it is observed:--

"The question whether the words "shall be referred to the arbitration of the Superintending Engineer of the Circle for the time being" in the arbitration clause

of the agreement should be construed to mean that the Arbitrator must be the Superintending Engineer of the Circle concerned not only on the date on which reference was actually made to him, but must also continue to be so until the date of his passing the award, the award, depends on a construction of the expression "for the time being in that clause

Thus where parties to the contract knew fully well that officers of the Union Government were liable to transfers to distant parts of India at short notice, they were also aware that the arbitration proceeding may take some time and thus with full knowledge of all these facts the parties omitted to make any provision in the agreement as to what should be done in the event of the Superintending Engineer of the Circle for the time being to whom the reference was originally made being transferred elsewhere and being succeeded by another officer, it must be held that the words "for the time being" in that clause refer only to the date on which the reference was made to the Arbitrator, and cannot be extended to include the date on which the actual decision was given by the arbitrator. In other words, if on the date of reference the Arbitrator was the superintending Engineer of the Circle within whose jurisdiction the work in question was completed, he may dispose of the reference even though, he may be transferred elsewhere prior to his decision."

7. It will be seen that the arbitration clause in the present case is not in the same terms as in either *M/s. Mehta Manohar Singh & Co.* or *Ch. Radhanath Nanda's* cases: 1965 67 Pun LR 166 (supra). Conspicuous by their absence are the words "for the time being" or other expression to this effect with reference to the Superintending Engineer of the Board to whom the dispute is to be referred for arbitration. What clinches the matter is the earlier judgment of this Court in *Daulat Ram Rala Ram Vs. State of Punjab*, where the arbitration clause provided "in the matter of dispute the case shall be referred to the Superintending Engineer of the circle", whose order shall be final. It was held that as the nomination of the arbitrator was not by name, but by virtue of his office, on the transfer or retire of the Superintending Engineer, entitled to act, his successor is to take his place as arbitrator. This was later followed in *Bachna Ram Sawan Ram Vs. The State of Punjab*, where similar view was taken.

8. such being the clear position in law, there can be no escape from the conclusion that once *Shri D. P. Gupta* had relinquished charge of his post as Superintending Engineer of the Board, he ceased to have jurisdiction to act as arbitrator in the matter and consequently the awards rendered by him, when he no longer held the post, were rightly held by the trial court to be without jurisdiction. There is thus no merit in this appeal and it is accordingly hereby dismissed with costs.

9. Appeal dismissed.