

(1989) 03 DEL CK 0023
In the Delhi High Court

National Research Development Corporation of India

APPELLANT

Vs

Britelite Carbons Ltd.

RESPONDENT

Date of Decision : 20-03-1989

Acts Referred:

Citation : (1989) 66 CompCas 299

Hon'ble Judges : N.N. Goswamy, J

Bench : Single Bench

Judgement

Goswamy, J.—This application by the respondents u/s 151 of the CPC has arisen in the following circumstances:-

The petitioners M/s. National Research Development Corporation of India, filed a petition u/s 20 of the Arbitration Act for filing of the arbitration agreement and for referring the disputes between the parties to arbitration in accordance with clause 12 of the agreement between the parties. According to the said clause, the disputes and differences between the parties are to be referred to the sole arbitration of the Chairman, National Research Development Corporation of India, and if he is unable to act, to the sole arbitration of some other person appointed by him and willing to act as such. Admittedly, on the date the petition came up for hearing before the learned single judge of this court, the office of the Chairman was lying vacant. This court, by agreement of the parties, directed the filing of the agreement and reference of the disputes to the Chairman, and the Union of India was directed to appoint the Chairman within one month from that date. It was further directed and again by agreement of the parties that in case the office of the Chairman was not filed within one month from that date, the differences and disputes between the parties shall automatically stand referred to the sole arbitration of another person to be appointed by him. Consequently, the office of the chairman remained vacant and the disputes stood referred to the managing director of the petitioner-company who, at the relevant time, was Mr. H. S. Rao. The said arbitrator entered upon the reference but on the request of the respondents, the matter was adjourned from time of time and

finally it came up before the arbitrator on July 7, 1986. By that date, the said Shri H. S. Rao had retired as managing director of the petitioner. The parties, however, agreed to continue with the arbitrator proceedings and by mutual consent, the time for making the award was extended by a period of four months from that date. Time was granted to the respondents for filing the reply and vakalatnama and the matter was adjourned to July 14, 1986. It appears that on that date, the respondent took the objection that the arbitrator, having retired from the office of the managing director, was not entitled to continue with the arbitrator inasmuch as his appointment is by office and not by his name. In view of the previous order and consent of the parties, the arbitrator did not agree with this objection and while fixing his fee, he gave further same to the respondents for filing the written statement.

2. Thereafter, the present application has been filed by the respondents. The prayer in this application is to the same effect that the arbitrator having relinquished the office of the managing director was not entitled to continue and as such the disputes and counter claims should be referred to the Chairman, National Research Development Corporation, and if he is unwilling to act, to the nominee of the chairman.

3. I have heard learned counsel for the parties. The contention of learned counsel for the applicant was that appointment of the arbitrator was by office and he, having relinquished that office, was not entitled to continue as an arbitrator and the matter had to be referred afresh in accordance with the terms of the agreement. This contention has to be rejected in view of the various judgments and it would be sufficient to refer to a Division Bench judgment of this court in Sushila Seth and Others Vs. State of Madhya Pradesh, . It was held that the arbitrator clause in that case provided for the decision of disputes between the parties to the contract by the designed authority. Since the cause of action arises when disputes arise between the parties, there can be no other meaning of the words "for the time being" except that it refers to the chief engineer who holds the office of the chief engineer at the time the disputes arose and the necessity for the arbitration arises. According to the Division Bench, it was irrelevant as to what happened thereafter and the crucial date was when the cause of action arose and not when the award was published. In the present case, the cause of action admittedly arose prior to the petition u/s 20 of the Arbitration Act was filed and the parties agreed on November 22, 1985, that the disputes should be referred to the managing director of the petitioner-company. Thus, the relevant date would be November 22, 1985, and the disputes had to be referred to the then managing director or in any case to the managing director who was in office one month after the said date. Admittedly, Shri H. S. Rao was the managing director at the relevant time and the disputes had been referred to him. He entered upon the reference during his tenure as managing director and retired thereafter. In this situation, according to me, he will be allowed to continue the arbitrator proceedings.

4. After the arguments in the case had concluded, learned counsel for the respondent sent a note asking me to take into consideration a later case decided by a learned single judge of the Punjab and Haryana High Court which is reported as Krishan Lal Vs. Haryana State Agricultural Marketing Board and Another, . It is true that, in that case, a different meaning was assigned to the words "for the time being" but, with respect, I cannot agree with that judgment in view of the judgment of the Division Bench of this Court referred to above.

5. There is yet another feature in this case, which is the acquiescence of the respondent. It is well settled that if the parties to the reference either agreed beforehand to the method of appointment or afterwards acquiesced in the appointment made, with full knowledge of all the circumstances, they will be precluded from objecting to such appointment as invalidating subsequent proceedings. Attending and taking part in the proceedings with full knowledge of the relevant facts will amount to such acquiescence. The arbitrator had relinquished charge of his office prior to July 7, 1986. From the order of the arbitrator dated July 7, 1986, it is clear that the parties had agreed to continue with the proceedings and, in fact, the respondent had taken time for filing of the written statement. The parties had further agreed to extend the time by a further period of four months from that date. This is a clear case where the respondent had acquiesced and, as such, it is not open to the respondent to challenge the continuation of the proceedings in this court.

6. For the reasons above, the application is dismissed. Since the proceedings before the arbitrator were stayed by this court on oral application of the plaintiff Board, I extend the time for a period of four months from 20th April, 1987, for publishing the award, when the parties will appear before the arbitrators.

7. I. As. Nos. 4512 & 5987 of 1986:

The prayer in these two applications is for stay of proceedings before the arbitrator. In view of my orders in I.A. No. 4050 of 1986, these two I. As. do not survive and are accordingly dismissed.