
(1989) 08 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 249 of 1987

Raj Kumar Mahajan

APPELLANT

Vs

H.P. State Electricity Board etc.

RESPONDENT

Date of Decision : 30-08-1989

Acts Referred:

Arbitration Act, 1940 — Section 20, 39, 8

Citation : (1992) 2 ShimLC 299

Hon'ble Judges : V.P. Bhatnagar, J

Bench : Single Bench

Advocate : G.D. Verma, for the Appellant; P.A. Sharma, for the Respondent

Judgement

V.P. Bhatnagar, J.—Shri Raj Kumar Mahajan filed an application purporting to be u/s 8 of the Arbitration Act alleging that work had been allotted to him by Himachal Pradesh State Electricity Board with respect to which full payment has; not been made to him. Even the correct measurements of the total work done by him had not been taken inspite of various demands. The payments made were also not according to rates payable. It was prayed in the end that an Arbitrator be appointed with a direction to him to give his award in accordance with the law since disputes had arisen between the parties.

2. This application was contested by the Respondents mainly on the ground that final payment with respect to the work done had been made to the Applicant and that is disputes exist between the parties which could be referred to the Arbitrator. The learned Subordinate Judge. Ist Class (III), Shimla vide his judgment dated June 30, (sic) dismissed the application on the ground that the Applicant has failed to prove that disputes had arisen under the agreement. In the first appeal, the learned Addl. District Judge (11), Shimla concluded that the said appeal was not maintainable u/s 39 of the Arbitration Act as the order of the Court below had been passed u/s 8 thereof. Aggrieved from the said judgment, the present second appeal has been preferred.

3. At the admission stage itself, the following order was made by the Court on March 31, 1988:

....Arguments, at the admission stage, have been partly heard. It is not disputed that the execution of a work was allotted to the Appellant-Applicant by the HPSEB and that the agreement executed therefore contained an arbitration clause. The main point of controversy between the parties is as to whether a dispute covered by the aforesaid arbitration agreement exists or not. Mr. P.A. Sharma, learned Counsel for the Board, has forcefully urged that there is no such dispute as has been held by the learned trial Court and that the question of appointing any arbitrator or filing the arbitration agreement in to the Court would not arise. Mr. G.D. Verma, learned Counsel for the Appellant, has on the other hand relied upon the law laid down in *Bharat Heavy Electricals Ltd. v. Amar Nath Bhan Prakash* to contend that this question would also be determined by the arbitrator and not by the civil courts. Be that as it may, it appears to be a fit case where some amicable settlement is brought about in between the parties. It will have to be borne in mind that the Arbitrator is to be named by the Board under the arbitration clause. Further, in case some genuine dues are recoverable by the contractor, the Board would not be interested in denying the same. Keeping in view the above observations, it would be expedient in the interest of justice that the Secretary and the Deputy Secretary (Law) of the Board should be personally present in the Court on April 5, 1988, for which date this case be listed for admission.

The perusal of the order dated April 5, 1988 shows that no amicable settlement could be arrived at between the parties with the result that the appeal was admitted and the case was ordered to be listed for final hearing.

4. As regards the ground on which the first appeal has been held to be not maintainable, the learned lower appellate court appears to have fallen into an error because of the wrong description of the provisions of the Arbitration Act under which the application was stated to have been moved. If the application is read on the whole, it hardly leaves any scope for doubt that it could be deemed to be one u/s 20 of the Arbitration Act and, therefore, an order could have been made directing the appointment of the Arbitrator and calling upon him to enter into reference.

5. I am also of the view that the findings of the learned Subordinate Judge to the effect that no dispute under the agreement exists between the parties has to be set aside. The Applicant has voiced his grievance with respect to less payment for the work done by him and incorrect measurements relating thereto. He has averred that the Respondents are liable to pay him an additional amount of Rs. 50,000. The above Government, in my opinion, certainly show that disputes have arisen between the parties and I find no merit in the contention of Mr. P.A. Sharma, learned Counsel for the Respondents, that the Applicant was required to adduce detailed evidence with regard to the payment and measurement in the Court of the Subordinate Judge to establish the existence of a dispute. In such

type of cases, it will be for the Arbitrator to hear the parties and give his findings by way or an award as to whether less payment for the work done has been made or not. It may also be noticed here that. It is not disputed that the Arbitrator under the agreement is to be nominated by the Board itself. I also do not agree with the contention put forward by Mr. P. A. Sharma on behalf of the Respondents that this appeal is not maintainable.

6. In the above view, it is ordered that the agreement in question be filed in the Court and that an Arbitrator be appointed under the terms of the agreement within a period of two months from today. The Arbitrator shall, thereafter, proceed in accordance with law and give his award after hearing the parties. The orders are made accordingly.