

(2006) 07 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

ROHIT CHEMICALS And ALLIED INDUSTRIES (PVT.) LTD.	APPELLANT
Vs	
NATIONAL RESEARCH And DEVELOPMENT CORPORATION	RESPONDENT

Date of Decision : 19-07-2006

Acts Referred:

Citation : 2006 2 CPR 148 : 2006 3 CPJ 442 : 2013 4 CPJ 87

Hon'ble Judges : K.S.Gupta J.

Final Decision : Ordered accordingly

Judgement

1. COMPLAINT was filed by M/s. Rohit Chemicals and Allied Industries (P) Ltd. seeking direction to the opposite party to pay amount of Rs. 82,25,722.42 with interest which is being contested by filing written version by the opposite party. For purpose of this order the allegations made in complaint and written version need not be referred to. Order dated 11.4.1996 by which the case was referred for consensual adjudication to Justice M.S. Gujral, which is material, is reproduced below : "It is jointly represented before us by Mr. C.S. Vaidyanathan, Senior Advocate appearing for the complainant and Mr. I.S. Bakshi, learned Advocate appearing for the opposite party that the parties are agreed that the dispute involved in the present case may be referred for consensual adjudication to Justice M.S. Gujral, former Chief Justice of the Sikkim High Court, and all the points raised in the pleadings of both the parties may be included within the scope of the reference made to the consensual adjudicator. Accordingly, we direct that the entire dispute raised in the pleadings of both the parties will stand referred to Justice Gujral for consensual adjudication. It will be open to Mr. Justice Gujral to fix his terms as regards the remuneration payable to him. Having regard to the nature of the dispute we make it clear that it will be open to Mr. Justice Gujral to seek the assistance of any technical expert with respect to any of the points raised in the dispute between the parties in case he considers it necessary to do so. The parties shall appear before the consensual adjudicator on 11th May, 1996 to seek directions from Mr. Justice Gujral as to the date on which he would commence the adjudication proceedings. We request the adjudicator to enter on the reference on as early a date as possible after 11th

May, 1996. One set of records will be forwarded forthwith to Mr. Justice Gujral by the Registry of this Commission. The adjudicator is requested to complete the adjudication proceedings within a period not exceeding four months from the date on which he enters on the reference. At the conclusion of the proceedings he is requested to forward his report to this Commission so that it may be incorporated in the final orders to be passed in this matter."

2. WITH reference to the letter dated 17.9.2004 for sending the award, Mr. Justice Gujral sent a letter dated 5.10.2004. This letter notices that the award was prepared by him sometime in early 1999 but it is found that last few pages thereof are missing. He suggested two options, (i) to again hear the arguments of both the parties and again record finding on remaining two issues and (ii) to place the award as it is before this Commission for whatever it is worth. He undertook to re-hear the arguments and record evidence on remaining issues though his failing health and very weak eye sight would cause strain to him. Pursuant to the order dated 5.7.2005 Mr. Justice Gujral sent the letter dated 18.7.2005. This letter notices that his eye sight had deteriorated so much that he cannot read any typed or printed material and it is impossible for him to hear the arguments and to complete the award. Undated award sent by Mr. Justice Gujral would show that out of seven issues, complete finding on first four issues and incomplete finding on issue No. 5 have been recorded. Complaint is pending adjudication for over 11 years it having been filed sometime in the year 1994. In order to avoid further delay I have heard Mr. R.K. Dhawan for complainant and Mr. I.S. Bakshi for the opposite party if the evidence including documentary recorded by Mr. Justice Gujral can be made use of for deciding the complaint. Contention advanced by Mr. Bakshi was that this Commission could not have even referred the case to consensual adjudication by a third party de hors the Arbitration Act and the evidence recorded and the documents produced before Mr. Justice Gujral cannot be considered for deciding the complaint. As part of this contention it was further urged that in case the complaint is decided on basis of materials before Mr. Justice Gujral, the opposite party will be prejudiced as it was not allowed to cross-examine Tilak Ram, one of the witnesses examined by complainant. Reliance was also placed on the decisions in Skypak Couriers Ltd. v. Tata Chemicals Ltd., II (2000) CPJ 6 (SC)=IV (2000) SLT 494=AIR 2000 SC 2008 and Neeraj Munjal and Ors. v. Atul Grover, IV (2005) CPJ 29 (SC)=VI (2005) SLT 637=2005 (Suppl.) Arb.LR 22 (SC). Neeraj Munjal's case was decided on the basis of decision in Skypak's case. Only Paras 5 and 8 of the later decision which are material, are reproduced below : "5. Section 22 of the Consumer Protection Act provides that the Commission shall have the powers of a Court. These powers would include the power to call for documents and take evidence either by itself or on Commission. However, the final adjudication has to be by the Commission. For purposes of this order we will presume, without laying down any law in this behalf, that the Commission may even refer disputes to Arbitration/Conciliation. How-ever, such reference to Arbitration could only be under the provisions of Arbitration Act, 1940 or the Arbitration and Conciliation

Act, 1966. There is no provision in law and we consider it an unhealthy practice for Courts/Commission/Tribunal to abdicate their duties and functions and to delegate adjudication of disputes before them to third parties. The adjudication can only be by the concerned Court/Commission/Tribunal. For an effective adjudication the Commission/Court must address itself to the evidence, documents, respective case of the parties, including submission on their behalf and then give a finding on that basis..... 8. The question then arises as to what is to happen in all these cases. As stated above, we have proceeded on the basis that all parties has consented to their matters being referred to third persons. All parties have participated in the proceedings before the third person. Awards have been passed. In our view, it would be inequitable to now set at naught all the awards and relegate the parties back to the original proceedings. In our view the reference being by consent, must now be treated as reference to Arbitration under the Arbitration Act. The award must be treated as awards of Arbitrators."

Opposite party having failed to cross-examine said Tilak Ram despite having been given number of adjournments for that purpose the Arbitrator had closed the cross-examination of this witness. Having considered particularly para 8 of the said decision and the facts that complaint is pending for over 11 years, both the parties have spent considerable amount in prosecuting the matter before Mr. Justice Gujral and recording of evidence afresh may take another couple of years it would be fair and equitable that the complaint is decided on the basis of the evidence recorded and documents produced before Mr. Justice Gujral.

List on 16.10.2006 for arguments.

3. BRIEF notes of submission of not more than five pages each be filed by parties" learned Counsel a week before the said date. Ordered accordingly.