
(2011) 12 GUJ CK 0060
In the Gujarat High Court
Case No : First Appeal No. 918 of 1992

State of Gujarat and 1

APPELLANT

Vs

Associated Business Corpn. and 1

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Arbitration Act, 1940 — Section 11, 2, 20, 5

Citation : (2011) 12 GUJ CK 0060

Hon'ble Judges : J.C. Upadhyaya, J

Bench : Single Bench

Advocate : Mukesh Dave, AGPs - 2, for the Appellant;

Final Decision : Dismissed

Judgement

Honourable Mr. Justice J.C. Upadhyaya

1. Challenge in this appeal is to the judgment and decree dated 23/1/1990 passed by the Ld. 5th Jt. Civil Judge [S.D.] Vadodara in Civil Misc. Application No. 185/1988.

2. At the time of final hearing of this appeal, Mr. Mukesh Dave, Ld. AGP for the appellants drew my attention to a copy of oral judgment dated 2/12/2010 rendered in First Appeal No. 1374/1990 and other two allied appeals and submitted that this Court in the said oral judgment, dealt with all the contentions and grounds raised by the appellant State in this appeal and had dismissed said appeals. It is further submitted that said appeals were between the same parties arising out of the same impugned judgment, which is under challenge in this appeal.

3. Considering the above referred oral judgment dated 2/12/2010, following observations were made :

1. The question that has arisen for my consideration in these appeals is whether the assent of a party to a dispute arising out of a contract containing express

provision of an arbitration clause is necessary when a reference of the dispute is to be made to arbitration.

2. The facts in brief are that the appellant-State and the respondent-Company had entered into a contract agreement for carrying out certain works in an irrigation project. While the work was in progress, dispute arose between the parties, which was referred to the competent authority. However, when the dispute could not be settled, it was referred to an Arbitrator, as per the provisions of the contract agreement. The Arbitrator published his award in the arbitration case. Thereafter, applications were filed before the Court below praying to pass a decree in terms of the said award. The Court below, after appreciating the documents on record, passed a decree in terms of the award of the Arbitrator except the claim regarding interest.

3. The appellant-State has challenged the judgment and decree passed by the Courts below mainly on the ground that the appellant-State had not granted its assent for appointment of the Arbitrator as named by the Contractor and also that the award

4. Heard learned counsel for the respective parties and perused the documents on record. The appointment of an Arbitrator could be said to be illegal if the provisions of Clause nos.51 & 52 of the contract agreement entered into between the parties have not been duly followed. In the present case, I find that the said two provisions of the contract agreement have been duly followed while appointing the Arbitrator.

5. If the appellant-State had grievance against the said appointment, then it had the remedy to move appropriate application before the competent Court u/s.5 or 11 of the Arbitration Act at the relevant point of time. However, no such steps were taken by the appellant-State. Therefore, at this stage, it does not lie in the mouth of the appellant to say that the appointment of the Arbitrator is bad in law or illegal.

6. Considering the facts of the case, it would be relevant to refer to a decision of the Apex Court in the case of Banwari Lal Kotiya Vs. P.C. Aggarwal, In that case, it has been held that where the arbitration agreement conforms to the definition given in Section 2(a) of the Arbitration Act, the party desiring passed by the Arbitrator is ex-parte inasmuch as the appellant-State was not heard. arbitration can straightway approach the arbitrator/s and therefore, resort to Section 20 of the said Act is unnecessary; and the aspect that differences or disputes actually arose subsequently would be inconsequential because the arbitration agreement, as defined in Section 2(a), covers not merely present but, future differences also. Accordingly, it was held that the arbitration clause contained in the Contract Notes read with the relevant Bye-laws of the Delhi Stock Exchange wasn't a bare arbitration agreement but was clearly an arbitration agreement as defined in S. 2(a) and resort, therefore, to S. 20 was not necessary.

6.1 In this case, the arbitration clause contained in the contract agreement

entered into between the parties was clearly an arbitration agreement falling within the definition of S. 2(a) of the said Act. Hence, the consent of the appellant-State was not necessary before making the reference of the dispute to the Arbitrator.

7. In view of the above discussion, I find no merits in the present appeals. Hence, the appeals are dismissed. No orders as to costs.

4. In view of above facts, this Court is of the opinion that the instant appeal does not survive and deserves dismissal on the same line.

5. For the foregoing reasons, the appeal stands dismissed.