
(1946) 05 CAL CK 0005
In the Calcutta High Court
Case No : Suit No. 6A of 1946

The Governor-General of India in Council	APPELLANT
Vs	
Bilash Singh	RESPONDENT

Date of Decision : 08-05-1946

Acts Referred:

Citation : (1946) 05 CAL CK 0005

Final Decision : Dismissed

Judgement

Majumdar, J.—The facts that have given rise to the present application are as follows: On or about the 19th of February, 1944, Bilash Singh, a contractor, agreed with the Governor-General of India in Council representing the B.A. Railway administration to perform certain works required by the said administration. The agreement contained an arbitration clause to the effect that in case of any dispute arising between the parties touching the various matters referred to therein (which are not material for the purposes of this application) it will be referred to the decision of two arbitrators, one to be nominated by the Railway and the other to be nominated by the contractor; or in the case of the said arbitrators not agreeing, to an umpire (to be appointed by the arbitrators in writing before proceeding with the reference) and the decision of the arbitrators, or in the event of their not agreeing, that of the umpire appointed by them shall be final and conclusive, and this condition shall be deemed to be submission to arbitration within the meaning of the Arbitration Act of 1899, or any statutory enactment or any modification thereof for the time being in force. Disputes having arisen between the parties, they were referred by agreement in writing, dated the 30th of July, 1945, and in conformity with the said arbitration clause to two arbitrators appointed by the respective parties. The arbitrators proceeded with the reference, but did not appoint the umpire before proceeding with the reference, as they were required to do under the said arbitration clause. Some correspondence passed between the arbitrators, which show that they were unable to agree upon an umpire. They were, however, agreeable to have an umpire appointed by the Court. The Respondent, Bilash Singh by his letter dated

the 11th February, 1946, addressed to the Deputy Chief Engineer B.A. Railway, was complaining that no application for the, appointment of an umpire, which was proposed to have been made, was yet made. Thereupon the present notice of motion dated the 14th March, 1946, was taken out on behalf of the Governor-General in Council representing the B.A. Railway Administration, inter alia, for an order that a person be appointed umpire as to this Court may seem fit and proper. The application was admittedly one in which the intervention of the Court was sought for under sec. 8, sub-sec. (2) of the Indian Arbitration Act. It is also admitted that no notice contemplated by sec. 8 was given to the arbitrators.

2. Sec. 8, sub-sec. (1), cl. (c) of the said Act provides that where the parties or the arbitrators are required to appoint an umpire and do not appoint him, any party may serve the other party or arbitrators, as the case may be, with a written notice to concur in the appointment or appointments or in supplying the vacancy. Sec. 8, sub-sec. (2) states that if the appointment is not made within 15 clear days after the service of the said notice, the Court may on the application of the party, who gave the notice, and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have alike power to act in the reference and to make an award, as if he or they had been appointed by consent of parties. The explanation of this sub-section is not relevant for the purpose of this application and I do not, therefore, mention it here.

3. The only question that is involved in this case is whether it would be competent for the Court to appoint an umpire on the application of the Petitioner in the absence of any notice on the arbitrators as required by sec. 8, sub-sec. (1), cl. (c). It seems to me that the Arbitration Act was passed in order to give to the Court certain powers which the Court did not otherwise possess, one of such powers being power to appoint an umpire under sec. 8, sub-sec. (2) of the Act. Thus where the arbitrators would appoint an umpire, but they could not concur in such appointment, the section enables the Court to assist them by selection and appointment of an individual as an umpire. This seems to me to be a special jurisdiction conferred upon the Court and that jurisdiction can only be exercised if necessary conditions precedent required by the section have been fulfilled. The learned Counsel appearing on behalf of the Petitioner contended that giving notice is merely a question of procedure and does not in any way affect the jurisdiction of the Court. I am unable to accept that contention. In my opinion to give jurisdiction to Court to act under the said section it is essential that as a condition precedent a notice should be given, and unless it is done the Court is not competent to appoint an umpire. In this view of the matter and inasmuch as the Petitioner has failed to serve the required notice and apply to the Court in the manner laid down in sec. 8, sub-sec. (2) of the Arbitration Act, the Court has no authority to appoint an umpire.

4. The result is that the application should be dismissed. But having regard to the facts and circumstances of this case, I am not making an order as to costs.

Each party will bear its own costs. This judgment will govern the other cases also in which the same question arises.