

(1988) 12 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 803 of 1988

The State of Punjab

APPELLANT

Vs

M/s K. Pharmaceuticals Works, Railway Road, Jind

RESPONDENT

Date of Decision : 20-12-1988

Acts Referred:

Arbitration Act, 1940 — Section 28

Citation : (1988) 12 P&H CK 0018

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : Nipun Mittal and Mr. M.S. Jain, for the Appellant; Sanjiv Sharma, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—This revision petition is directed against the order of Senior Subordinate Judge, Jind dated December 11, 1987, whereby he appointed an arbitrator, Shri P.K. Gupta, Advocate.

2. Vide order dated January 18, 1984, one Shri Kulwant Rai, Member Secretary, the Punjab Khadi and Village Industries Board, Chandigarh, was appointed as an arbitrator in the dispute between the parties. Arbitration proceedings were held by him on several dates, but the same were not finalised for the reasons best known to him. However, the State of Punjab vide its application u/s 28 of the Arbitration Act, (hereinafter called the Act), dated June 2, 1987: sought extension of time and for finalisation of the arbitration proceedings. Reply to the said application was filed on behalf of the Respondent It was pleaded therein that the said arbitrator was interested in the case and, therefore, no extension be allowed It was also stated that a new arbitrator be appointed instead of granting time to the arbitrator A rejoinder to the said application was filed by the State purporting to be an application for fresh appointment of an arbitrator u/s 8(b) of the Act. It was stated therein that during the pendency of the proceedings, the said arbitrator had retired from service, and, therefore, in view of Clause 18 of

the arbitration agreement, a new arbitrator may be appointed by the Court for which a panel of was given The learned Senior Subordinate Judge after hearing the counsel for the parties, appointed one Shri P K Gupta, Advocate as arbitrator on payment of Rs. 500/- as his fees vide impugned order dated December 11, 1987.

3. The learned Counsel for the State submitted that the arbitrator was to be appointed within Clause 18 of the arbitration agreement and no person could be appointed outside the said agreement. Thus, argued the learned Counsel, Shri P. K Gupta, could not be appointed as an arbitrator under sub-section 8(b) of the Act. On the other hand, the learned counsel for the Respondent submitted that once the arbitrator is removed, then fresh appointment is to be made by the Court In that situation according to the learned Counsel, the arbitration agreement ceased to operate and that it is for the Court to appoint an arbitrator u/s 12 of the Act. In support of the contention the learned Counsel relied upon M/s Mohindrr Singh & Co. v. Union of India A. I. R. 1972 J.& K. 63; Union of India(UOI) Vs. D.P. Singh, and Banamali Charan Mohanty Vs. Kamaladebi Saha and Others,

4. I have heard the learned Counsel for the parties and have also gone through the record of the case. Clause 18 of the arbitration agreement reads as under:-

If any question, difference or objection whatsoever shall arise, in any way connected with or arising out of this instrument or the meaning or operation of any part thereof or the rights, duties or liabilities of either party then save in so far as the decision of any such matter is hereinbefore provided for and has been so decided, every such matter including whether its decision has been otherwise provided for and or whether it has been finally decided accordingly or whether the contract should not be terminated in whole or part and as regards the rights and obligations of the parties as the result of such termination shall be referred for arbitration to any officer appointed by the Punjab Government and his decision shall be final and binding and where the matter involves a claim the amount if any awarded in such arbitration shall be recoverable in respect of the matter so referred.

The present is a case which is covered u/s 8(b) of the Act, which provides inter alia that if any appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or the arbitrators, as the case may be, do not supply the vacancy, then any party may serve the other party with a written notice to concur in the appointment or for supplying the vacancy. It is further provided that if the appointment is not made within fifteen clear days after 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. In the present case, no notice as contemplated therein was ever given by the Respondent; rather the Petitioner stated itself in the rejoinder purporting to be u/s 8(b) of the Act, to appoint a

fresh arbitrator as the earlier arbitrator was no more available having been retired meanwhile. The panel of three names was also given therein. That being so, in view of Clause 18 of the agreement, re-produced above, the Court could appoint an arbitrator out of the three names given by the State. No person other than the officer appointed by the Punjab Government could be appointed as arbitrator unless due notice was served by the Respondent on the State and no arbitrator was appointed within 15 days thereof. Such is not the position in this case as stated earlier. The judgments relied upon by the learned Counsel for the Respondent have thus no applicability to the facts of the present case.

5. In Mohinder Singh's case (supra), the case was u/s 12 of the Act, where the arbitrator was removed by the Court. In the present case, the arbitrator was never removed by the Court as such as contemplated therein, but the State Government itself applied that since the arbitrator appointed earlier had become incapable of acting as such, a new arbitrator be appointed as contemplated u/s 8(b) of the Act.

6. In D. P. Singh's case (supra), it was held that Sub-section (2) of Section 8 of the Act vests a discretion in the Court to make the appointment of an arbitrator on its own, but that Sub-section is attracted only if the appointment of an arbitrator is not made within 15 clear days after the service of the notice. Since in the present case, no such notice was ever given and the State Government itself wanted the appointment of a new arbitrator, Sub-section (2) of Section 8 was not attracted.

7. In Banamali Charan's case (supra), was also a case u/s 12 of the Act; hence has no applicability to the facts of the present case.

8. Consequently, this revision petition succeeds and is allowed. The impugned order is set aside and the case is sent back to the Court of the Senior Subordinate Judge, Jind, for appointment of a new arbitrator out of the panel of the names given by the State Government in its rejoinder dated December 11, 1987, or any other arbitrator to which both the parties may consent. Necessary directions for finalising the arbitration proceedings at the earliest within four months will be given by the trial Court. The records of the case be sent back forthwith. The parties have been directed to appear before the trial Court on January 11, 1989.