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**(2005) 03 P&H CK 0062**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revision No. 1690 of 1991**

Tuli Construction Company Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

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**Date of Decision :** 23-03-2005

**Acts Referred:**

Arbitration Act, 1940 — Section 20

**Citation :** (2005) 140 PLR 613 : (2005) 2 RCR(Civil) 835

**Hon'ble Judges :** Surya Kant, J

**Bench :** Single Bench

**Advocate :** H.S. Tuli, Party in Person, for the Appellant; Daya Chaudhary, Senior Standing Counsel and Ashwini Kumar Bansal, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Surya Kant, J.—This revision petition has been directed against the order dated 11.10.1990 passed by the Sub Judge First Class, Chandigarh whereby an application u/s 20 of the Arbitration Act, 1940 moved by the petitioner, was dismissed as well as against the judgment dated 25.4.1991 passed by the Additional District Judge, Chandigarh upholding the afore-mentioned order of the Sub Judge First Class, Chandigarh.

2. Briefly, the facts are that M/s Tuli Construction Co. Pvt. Ltd. was an approved contractor by MES Chief Engineer, Western Command. It submitted a tender for a lump-sum amount of Rs. 11,06,297.19 for building construction, namely, "provision of huttet accommodation for certain units at Bhatinda". The tender was accepted by the respondents and a contract agreement No. CWE/BTD-10/84-85 was concluded between the parties on 29.1.1985. The contractor started work on 12.2.1985 which was to be completed by 11.7.1985, however, for various reasons, the work could only be completed by the extended date of 10.1.1986. According to the petitioner, the authorities of MES Chief Engineer, Western Command did not finalise rates of extra and additional works done by the contractor due to which the company could not submit its final bill and

requested the G.E. on 22.3.1986 to resolve the matter followed by another letter dated 12.4.1986 (Ex.P14), a copy of which was also endorsed to the Chief Engineer with a request to appoint an arbitrator in case the G.E. does not respond. However, on 17.4.1986, the bills prepared by the Department were signed on behalf of the petitioner, the payment due towards the petitioner in terms thereof was accepted and a No Claim Certificate was also signed on the afore-mentioned date on behalf of the petitioner. According to the petitioner, the bills referred to above were got signed and No Claim Certificate was obtained from it by the Department through coercive means, therefore, a protest letter was sent on that very day i.e. 17.4.1986. Thereafter, on 4.5.1986, the petitioner issued a notice in terms of condition No. 70 of the agreement which contained arbitration clause thereby requesting the Chief Engineer to appoint an arbitrator to adjudicate the matter. It was after a reminder to the Chief Engineer vide letter dated 31.5.1986 (Ex. P17) that the Chief Engineer asked the contractor to submit brief description of each item of claim/dispute and their respective amount. The said letter was replied on 30.6.1986 followed by another letter dated 12.7.1986. The Chief Engineer on 11.8.1986 informed the petitioner that its case was receiving due attention and final reply was expected shortly. It was despite a protracted correspondence with the Chief Engineer that the petitioner could not secure appointment of an arbitrator as per Clause 70 of the agreement, therefore, approached the learned civil court with a request u/s 20 of the Arbitration Act, 1940. The said application having been dismissed and that order thereafter having been upheld by the learned Additional District Judge that the petitioner has approached this Court through this revision petition.

3. It may be mentioned at this stage that the learned civil court as well as the learned Addl. District Judge have turned down the petitioner's claim for referring the matter to the arbitrator for adjudication on the ground that the petitioner had received the payment of the final bill on 17.4.1986 vide Ex.R5 which was duly signed by the contractor in token of full and final settlement of the said contract and thus, there existed no dispute between the parties which required reference to the arbitrator for adjudication.

4. I have heard Shri H.S. Tuli in person who, in terms of an, order dated 11.2.2004 passed by this Court, was stated to have been authorised by the company to represent it and Mrs. Daya Chaudhary, learned Senior Central Govt. Standing Counsel for the Union of India at length and have perused the record.

5. During the course of hearing, it was found expedient to examine the original records pertaining to the acceptance of final bills by the petitioner-company and/or the alleged protest letter in writing sent by it on that very day i.e. 17.4.1986. Consequently, vide order dated 22.9.2004, learned counsel for the respondents was directed to produce the original records. Some of the records, relevant to the controversy involved herein, were produced and perused. An attested copy of those records was taken and has been marked "A".

6. Shri Tuli, who, I must compliment, has a good amount of knowledge of

Arbitration Law, very ably argued that the courts below have totally misdirected themselves in overlooking the language of arbitration Clause No. 70 of the agreement between the parties according to which all the disputes between the parties to the contract were required to be referred to the sole arbitration of an Engineer to be appointed by the authority mentioned in the tender documents. According to Shri Tuli, as per condition No. 65, the final bill was required to be submitted by the contractor. No final bill was submitted by the petitioner and the bill which the respondents claim to have been signed on behalf of the petitioner as a final bill was prepared by the respondents themselves. Shri Tuli contended that the expression "all disputes" referred in condition No 70 is of widest amplitude and the question as to whether the final bills signed by the petitioner acknowledging full and final payment of the contract work and the protest letter sent by the petitioner on that very day constitute a dispute or not, itself is a dispute referable to the arbitrator and the courts below could not have taken the task to resolve it upon themselves. In other words, according to Shri Tuli, the finding that there does not exist any dispute between the parties, could also be returned by the sole arbitrator and not by the courts below.

7. On facts, Shri Tuli has laid emphasis on the averments made in the pleadings and has placed heavy reliance upon the statements of the G.E., Shri R.K. Gupta, who, in his cross examination, has stated as follows:-

"It is correct that the petitioner have received the final payment of final bill again said t here is a letter dated 17 Apr. 1986 in my file and page 349, wherein the petitioner received the payment of final bill under protest on the ground that the substantial items have not been included in the bill."

8. Shri Tuli also pointed out that as per the averments made in para 5 of the plaint, the petitioner was entitled for an additional payment of Rs. 15 lacs against the work done as well as damages to the tune of Rs. 50 lacs and since liability to pay these amounts has been denied by the respondents in their written statement, it stood established that there existed a dispute in relation to the contract which was required to be referred to the arbitration for adjudication in terms of Clause 70 of the agreement.

9. Shri Tuli, in support of his afore-mentioned submissions, has relied upon (i) Champsey Bhara Company v. The Jivraj Balloo Spinning and Weaving Company Ltd. AIR 1923 PC 66 (ii) Heyman and Anr. v. Darwins Limited 1942 AC 356 (iii) A.M. Mair & Co. v. Gordhandass Sagarmull 1950 SCC 792 (iv) The Union of India Vs. Kishorilal Gupta and Bros., , (v) The Naihati Jute Mills Ltd. v. Khyaliram Jagannath 1968 (1) S.C.R. 822, (vi) Union of India (UOI) Vs. Salween Timber Construction (India) and Others, , (vii) Damodar Valley Corporation Vs. K.K. Kar, , (viii) Bharat Heavy Electricals Ltd. v. Amar Nath Bhan Prakash , (ix) Union of India (UOI) and Another Vs. L.K. Ahuja and Co., , (x) Chairman and M.D., N.T.P.C. Ltd. Vs. Reshmi Constructions, Builders and Contractors, , and a Division Bench judgment of this court dated 19th July, 1980 passed in F.A.O. No. 77 of 1980, Union of India v. Harbans Singh Tuli and Sons, as well as some more

judgments of different High Courts on the same proposition.

10. On the other hand, Mrs. Daya Chaudhary assisted by Shri Ashwani Kumar Bansal appearing on behalf of the respondents, in reference to the original record produced before this Court, have argued that the final bill was actually prepared on 30.1.1986. It was duly signed by the contractor on 30.1.1986 itself along with a certificate that there was no other claim pending against the respondents and it was after a long gap of more than 2-1/2 months that the payment in terms of the said final bill dated 30.1.1986 was released and accepted by the contractor on 17.4.1986. At the time of payment also, the contractor acknowledged in writing that the payment was in full and final settlement of all money due under the agreement. It is thus contended that had there been any grievance against non inclusion of an item/payment in the final bill, the contractor would have protested or submitted its own final bill during the interregnums of more than 2-1/2 months. According to the respondents, the subsequent payment having been made as per the final bill and on both the occasions, the petitioner having issued a No Claim/No Due Certificate, the contract between the parties came to an end by accord and satisfaction. The arbitration clause contained in the contract, therefore, also stood terminated. There was no dispute between the parties which could thereafter be referred to arbitration as the agreement itself having come to an end, the arbitration clause too became redundant and could not be invoked. Reliance has been placed by them on a Division Bench Judgment of the Bombay High Court in Union of India Vs. M/s. Ajit Mehta and Associates, Pune and Others, and (ii) judgment of the Apex Court in Jayesh Engineering Works v. New India Assurance Co. Ltd., .

11. Though there can be no doubt that the question as to whether there had been a full and final settlement of a claim under the contract or not, is itself a "dispute" arising in relation to the contract and similarly a claim for damages or difference which arose between the contractor and the department would also constitute a "dispute" having arisen between them thereby making it referable to the arbitrator for adjudication, the civil court is not denuded of the power to find out as to whether there was in fact a final settlement or not. The concept of arbitration, as an alternative dispute resolution forum, has been evolved to provide a speedy adjudication of certain disputes. This forum cannot be permitted to be misused or abused with vexatious, imaginary or frivolous claims thereby burdening the nominated arbitrators with heaps of cases which would tend to frustrate the legislative object behind the old and the new Arbitration Acts. At the same time, the authority to whom power to refer and/or nominate an arbitrator is conferred in terms of an agreement between the parties, cannot be permitted to usurp the authority of the arbitrator and to become a Judge in its own cause by refusing to appoint an arbitrator even when there exists a dispute. Thus, the pre-condition for invoking an arbitration clause, namely, existence of a bona fide and genuine dispute could certainly be looked into by the civil court, be that may prima-facie, only while exercising its powers u/s 20 of the 1940 Act. In other words, the civil court, u/s 20 of the 1940 Act, cannot be expected to act

mechanically and to nominate an arbitrator to "adjudicate" the "dispute" even if it does not exist.

12. As the original records testify that the final bill duly signed by the contractor was prepared on 30.1.1986 and it contains an acknowledgement that "I/we have no further claim under the CWE/BTD-10/84-85 beyond the net amount of this bill". On 17.4.1986 when the payment was received on behalf of the petitioner, there exist again an acknowledgement to the following effect: -

"Received Rs. 2215.40 (Two thousand two hundred fifteen and paise forty only). This payment is in full and final settlement of all money due under... and I have no further claim in respect of the CWE/BTD-10/84-85.

Sd/- 17.4.86 Stamp

Dated 17/4/86

Signature of Contractor Witness Sd/- Address G.E., Btd.

13. The petitioner is a big concern carrying construction activities for a long period. The petitioner and before that its predecessor (a proprietorship firm) were approved contractors of MES Chief Engineer, Western Command. As per petitioner's own showing, various contracts have been taken and executed by it on behalf of the respondents from time to time. The petitioner, thus, was aware of the procedure followed by the respondents in the matter of preparation of final bills and/or the release of payments. The acceptance of final bill by the petitioner, its silence for a period of more than 2-1/2 months and accepting the payment without even a word of reservation or protest, leads to no other conclusion but to hold that the subsequent protest was nothing but an afterthought or might be at the best an expectation of the petitioner to claim some more money from the respondents. When the final payments have been received and the contract itself has come to an end, the arbitration clause cannot be kept operative for an indefinite period. It also ceased to operate, at least after a reasonable period, along with the agreement itself.

14. The contention raised on behalf of the petitioner that the final bill was got signed and/or it was made to receive the payment due to coercive means adopted by the respondents, cannot be accepted. Firstly, no evidence in support of this plea has been led. Secondly, the courts below on an appreciation of the entire evidence on record have turned down this contention. In revisional jurisdiction even if the entire evidence is reappraised and a second view is possible, yet it cannot be substituted in place of the view taken by the courts below. Consequently, I do not find any merit in this revision which is accordingly dismissed with no order, however, as to costs.