

(1984) 01 DEL CK 0012
In the Delhi High Court
Case No : First Appeal No. 145 of 1982

Union of India

APPELLANT

Vs

Som Nath Chadha and Co.

RESPONDENT

Date of Decision : 31-01-1984

Acts Referred:

Citation : (1984) 25 DLT 226 : (1984) RLR 452

Hon'ble Judges : Gian Chand Jain, J;A.B. Rohtagi, J

Bench : Division Bench

Advocate : P. Dayal, A.B. Dayal and Sanat Kumar, for the Appellant;

Judgement

G.C. Jain, J.

(1) This appeal is directed against the order of the learned Single Judge dated August 27, 1982. It was dismissed by us by a short order dated January 25, 1984, Now we proceed to give reasons for that order.

(2) Messrs Som Nath Chadha & Co., respondent herein, entered into a contract with the President of India on June 25, 1969. Under that agreement it Was appointed a member of the panel of auctioneers for conducting sales by public auction of such properties the Director General of Supplies and Disposals, Ministry of Works and Housing and Supply, Government of India, New Delhi, may from time to time, at his discretion entrust to it for disposal by auction. The agreement contained arbitration clause, namely, clause 15, which reads as under."

"15.All disputes and differences arising out of or in any way touching or concerning this agreement whatsoever, shall be referred to the sole arbitration of any person nominated by the Secretary of the Government of India or if there be no Secretary, the administrative Head of the Ministry of the Government of India under whose administrative control the Dgs & D may be placed for the time being at the time of such nomination. There will be no objection to any such appointment that the person appointed is a Government servant, that he had to

deal with the matters to which the agreement relates and that in the course of his duties as such Govt. servant he has expressed any views on all or any of the matters in dispute or difference. The award of such arbitrator shall be final and binding on the parties to this agreement. It is a term of this agreement that in the event of such arbitrator to whom the matter is originally referred being transferred or vacating his office by resignation or otherwise or becoming unable to act for any reason, such secretary or administrative Head as aforesaid at the time of such transfer, vacation of office or inability to act, shall appoint another person to act as Arbitrator in accordance with the terms of this agreement. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of this agreement that no person other than a person nominated by the Secretary or Administrative Head of the Ministry as aforesaid should act as arbitrator and, if for any reason that is not possible, the matter is not to be referred to arbitration at all. Subject as aforesaid, the Indian Arbitration Act 1940 shall apply to the arbitration proceedings under this clause."

(3) The respondent it appears, realised sales tax from the purchasers of the properties sold by auction held by it. Alleging that the Excise and Taxation Officer, Jullundur, had held that the respondent did not fall under the definition of a "dealer" as defined u/s 2(d) of the Punjab Sales Tax Act and had refunded a sum of Rs. 1,90,864.36 deposited by the respondent towards sales tax to it, the appellant, Union of India, claimed a sura of Rs. 1,02,609.87 on account of the sales tax realised by the respondent acting as their agent during the period July 1971 to November 1971. The respondent disputed the claim. The Director General Supplies and Disposals requested the Secretary to the Government of India, Ministry of Supply and Rehabilitation, to appoint a sole arbitrator under the terms of the arbitration clause to adjudicate upon the said dispute. The Secretary, consequently, appointed Shri N. S. Mehta, Additional Legal Advisor to the Government of India, as the sole arbitrator by order dated December 16, 1976. There is nothing on the record to show whether he entered upon the reference or resigned and vacated his office and, if so, when. However, by an order dated December, 22, 1977, the Secretary concerned appointed Dr. Bakhshish Singh, Additional Legal Advisor, as the sole arbitrator, to adjudicate upon the dispute.

(4) Dr. Bakhshish Singh entered on the reference and called upon the Union of India to file its statement of claim. Statement of claim was, however, not filed in spite of adjournments. On July 14, 1978, observing that the time for making the award had expired the parties were required to file a joint memo extending the time or to get it extended from the court of competent jurisdiction. Nothing happened thereafter till April 28, 1980, when Mr. P.C. Rao was appointed as the sole arbitrator to decide this dispute for the reason that Dr. Bakhshish Singh had resigned his appointment.

(5) The Union of India filed its statement of claim. Respondent refuted the

allegations. It was also averred that the reference was invalid. The reliquary objection raised by the respondent was rejected by the learned arbitrator,

(6) On April 21, 1981 the respondent filed a petition under sections 5, 11, 12 and 33 of the Arbitration Act in this Court for determining the true effect of the arbitration agreement; revoking the authority of the arbitrator (impendent No. 2) and removing the arbitrator.

(7) IT.WAS averred that the reference to arbitration was illegal and invalid being a unilateral reference. Dr. Bakhshish Singh, who had been appointed as an arbitrator earlier, failed to make the award within the prescribed period and, Therefore, .Mr. P. C. Rao could not be appointed unless the time was extended by the Court and that the Union of India was guilty of laches and gross-negligence in prosecuting its claim and the respondent was being unnecessarily harassed for last several years.

(8) This application was opposed. It was averred that the appointment of the arbitrator was valid. On the expiry of the period for making the award Dr. Bakhshish Singh did not become functus officio and on his resignation a new arbitrator could be appointed.

(9) The learned Single Judge vide his impugned order held that the reference of the dispute to Shri N. S. Metha and then to Dr. Bakhshish Singh was invalid being unilateral reference. He, further held that Dr. Bakhshish Singh had become functus officio and, Therefore, there was no question of appointing a new arbitrator in his place. The Union of India was guilty of laches and gross negligence and had failed to make out a case for extension of time. With these findings it was held that the arbitration agreement had ceased to have any effect and the authority of the arbitrator was liable to be revoked. The petition was consequently allowed.

(10) Mr. Prahlad Dayal, learned counsel appearing for the Union of India, appellant, has raised three points- (1) the arbitration clause was arbitration agreement as well as reference and consequently the appointment of Shri N. S.Mehta or Dr. Bakhshish Singh did not suffer from the vice of unilateral reference; (2) under the arbitration clause on the resignation of Dr. Bakhshish Singh the Secretary to the Government of India could appoint a new arbitrator ; and (3) the fact that time for making the award had expired would not have the effect of superseding the arbitration agreement.

(11) On a careful consideration of all the facts and the circumstances of the case we are of the opinion that we need not go into these questions because good cause has been made out for revoking the authority of the arbitrator. The main object of referring a dispute to an arbitrator for adjudication is the speedy end of the strife. This object, in our view, stands frustrated on account of unreasonable neglect on the part of the appellant/claimant to promote the conduct of arbitration proceedings. Admittedly, on July 14, 1978 Dr. Bakhshish Singh, the then sole arbitrator, had made it clear to the parties that time for making the

award had since expired. The parties were required to extend the time of mutual consent or get the time extended from the Court of competent jurisdiction. The appellant/claimant, however, kept quiet for about twenty-one months and took no steps in this behalf. It was only on April 28, 1980 that Mr. P. C. Rao was appointed as the sole arbitrator in place of Dr. Bakhshish Singh allegedly on account of his having resigned the office. No Explanation, not to speak of a reasonable Explanation, is forthcoming for this inordinate delay on the part of the appellant/claimant.

(12) In *O. R. Coley v. V. A. Dacosta* (I.L.R. XVII Calcutta 200) the appointment of the arbitrator was evoked on the ground of unreasonable and unexplained delay.

(13) Mr. Prahlad Dayal, learned counsel for the appellant, contended that the appellant/claimant was Union of India and its machinery moved slowly. This argument has not impressed us much. Machinery of the Union of India may be a bit slow but in the present case it appears that there was no movement at all. There is no Explanation whatsoever as to where the file got stuck up and why. The delay in taking steps after the order made by Dr. Bakhshish Singh on July 14, 1975 was unreasonable. It remains unexplained. The authority of Mr. P. C. Rao, respondent No. 2, and consequently the arbitration agreement were liable to be revoked and were rightly revoked by the learned Single Judge.

(14) In result, we find no merit in the appeal and dismiss the same with costs.