

POORAN CHAND NANGIA
v.
NATIONAL FERTILIZERS LTD.

OCTOBER 8, 2003

[V.N. KHARE, CJ., AND S.B. SINHA, J.]

Arbitration :

Arbitrator—Appointment of—Award challenged as without jurisdiction after accepting awarded sum—Maintainability—Work contract—Contract providing for reference of any dispute to sole arbitration of General Manager or Dy. Manager, in case former is not available—On a dispute having arisen between the parties Dy. General Manager entered into arbitration and awarded a certain amount to contractor who accepted the same—Later, the contractor challenged the award as without jurisdiction and a nullity inasmuch as instead of General Manager, the Dy. General Manager entered into the reference—Held, contractor having submitted unequivocally to the jurisdiction of the arbitrator and also having accepted the awarded amount without any reservation, cannot challenge the award—General Manager was appointed as sole arbitrator, but since contractor expressed an apprehension of getting justice from him, Dy. General Manager entered into reference—Since the reference was made in terms of the contract and the General Manager was not available, the Dy. General Manager was competent to enter into the arbitration.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1996 of 1998.

From the Judgment and Order dated 29.4.97 of the Madhya Pradesh High Court in Misc. A. No.116 of 1996.

Vijay Kumar for Ms. Sangeeta Kumar for the Appellant.

K.N. Bhat and Ghanshyam Joshi for the Respondent.

A The following Order of the Court was delivered :

The appellant herein entered into an agreement with the respondent-National Fertilizers Limited, for construction of roads, bridges/culverts, pedestrain roads and sewerage etc. The agreement was a written one. It appears that the dispute has arisen between the appellant and the respondent, as a result of which the appellant moved to the Court for appointment of an Arbitrator. The Court appointed a sole Arbitrator in terms of clause 59 of the contract, which provided resolution of the dispute by an Arbitrator. It appears that the Deputy General Manager (Materials), Vijaypur entered into the reference and submitted his award on 9th November, 1992 to the District Judge, Guna. The appellant herein accepted the award and received a sum of Rs. 69,524,04. He, however, filed an objection before the Court of the District Judge, Guna, that the award is without jurisdiction, inasmuch as instead of the General Manager, who was appointed as the sole Arbitrator, the Deputy General Manager (Materials) entered into the reference and, therefore, the award given by the Deputy General Manager (Materials) was without any jurisdiction and is a nullity. The said objection was rejected by the Court on the ground that the appellant having accepted the award, it was not open to him to challenge the same on the ground that the Arbitrator had no jurisdiction. The appellant thereafter preferred an appeal before the High Court. The High Court also agreed with the view taken by the Civil Court and dismissed the appeal. It is against the said judgment of the High Court, the appellant is in appeal before us.

We have heard learned counsel for the parties. Only two questions which arise for our consideration are : (1) whether once the appellant having accepted the award, is it open to him to challenge the same on the ground that the Arbitrator had no jurisdiction and, (2) whether the Deputy General Manager (Materials) was competent or has jurisdiction to enter into an Arbitration.

So far as the first question is concerned, it is not disputed that the appellant had received the money which was due to him under the award and once the appellant had submitted to the award unequivocally and without reservation, it is not open to him to challenge the award. We have looked into the record and find that the appellant had submitted unequivocally

to the jurisdiction of the Arbitrator. He also accepted the awarded amount without any reservation. Had the appellant desired to challenge the award, he could have reserved his right to do so, but no such reservation was made in the letters sent by him. In this view of the matter, there remains no manner of doubt about the fact that the appellant had submitted to the award and it does not lie in the mouth of the appellant to challenge the award. For these reasons, we reject the first argument of the learned counsel for the appellant. A B

So far as the second question is concerned, we may refer to clause 59 of the contract, which runs as under :

“59.1(a) Except where otherwise provided for in the contract, all questions and disputes relating to the meaning of the specifications, designs drawings and instructions herein before mentioned and as to the quality of workmanship and materials used on the work or as to any other question, claim right, matter or thing, whatsoever, in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions of otherwise concerning the works, or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the General Manager of the NEL and if the General Manager is unable or unwilling to act, then to the sole arbitration of the some other person in the employment of NEL and not below the rank of Dy. Manager appointed by the General Manager, willing to act as such arbitrator.” C D E F

The District Judge, Guna of the Civil Court appointed the General Manager of the Corporation subject to clause 59 aforementioned. It is not in dispute that an apprehension was expressed by the appellant that if the General Manager was appointed as an Arbitrator, he would not get justice. Presumably, on the aforementioned ground the Deputy General Manager (Materials) entered into the reference. Having regard to the fact that the reference was made in terms of clause 59 of the contract, we do not find any illegality in the matter of entering into the reference of the Deputy General Manager (Materials) as once the General Manager was not G H

A available, the Deputy General Manager (Materials) was totally competent to enter into the arbitration and, thus, the objection taken by the appellant that the Deputy General Manager (Materials) had no jurisdiction must be rejected.

B For all these reasons, we do not find any merit in the appeal. It fails and is, accordingly dismissed. There shall be no order as to costs.

R.P.

Appeal dismissed.