

A

UNION OF INDIA

v.

R. B. CH. RAGHUNATH SINGH & CO.

July 27, 1979

B

[N. L. UNTWALIA AND A. P. SEN, JJ.]

Arbitration Act, 1940, Section 8(1)(b) applicability of—Arbitration agreement specifies two names of arbitrators by designation—One such designated post abolished and the second named officer refuses to act—Whether a Court can appoint another arbitrator.

C

Dismissing the appeals by certificate, the Court

HELD : 1. The Court had no power to supply the vacancy under section 8(1)(b) of the Arbitration Act only if the arbitration agreement did show that the parties did not intend to supply the vacancy. The words in section 8(1)(b) are these : "and arbitration agreement does not show that it was intended that the vacancy should not be supplied". If no such intention could be culled out from the arbitration clause, the Court could supply the vacancy.

D

[129 D-E].

M/s. Prabhat General Agencies etc. v. Union of India and Anr., [1971] 2 S.C.R. 564; affirmed.

Badam Satyanarayanamurthi v. Badam Venkataramanamurthi, A.I.R. 1948 Madras 312; distinguished.

E

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2472-2473 of 1969.

From the Judgment and Decree dated 26-4-1966 of the Allahabad High Court in F.A.F.O. No. 447/61 and 476/60.

R. N. Sachthey, R. B. Datar, Girish Chandra and Miss A. Subhashini for the Appellant.

F

R. K. Garg for the Respondent.

The Order of the Court was delivered by

G

UNTWALIA, J. These two appeals by certificate arise out of the same proceedings between the parties. The respondent company applied to the Trial Court for the filing of the Arbitration agreement under Section 20 of the Arbitration Act, 1940 hereinafter called the Act and for appointment of an Arbitrator under Section 8. The applications were allowed. An Arbitrator was appointed. The Union of India took the matter in appeals to the Allahabad High Court. The High Court has dismissed the appeal arising out of the order of the Trial Court under Section 20 of the Act and has treated the appeal arising out of Section 8 order as a revision and dismissed the same also. The Union of India has come to this Court.

H

The decisions of the courts below in regard to Section 20 matter is at an end now. It was denied on behalf of the appellant that there was any Arbitration agreement. The findings of the court below in this regard could not be assailed at all.

The Arbitration clause in the contract between the parties ran as follows :—

“All disputes or differences arising between the parties or their representatives and the Controller of Rationing Delhi at any time hereafter and of whatever nature arising out of or in respect of the contract shall be referred for arbitration to the Chief Commissioner/Director of Storage, Ministry of Food, Government of India, and his decision shall be final and binding.”

The post of Director of Storage, Ministry of Food, Government of India was abolished and no person holding that post was available for arbitration for the purpose of the arbitration clause aforesaid. The Chief Commissioner, however, was available but he refused to act. That led the respondent company to apply to the court under Section 8 of the Act for appointment of another Arbitrator. The argument put forward on behalf of the appellant is that when there was a named Arbitrator even though he was named by office, it was not open to the court to supply the vacancy in his place under Section 8(1)(b) of the Act. We did not find any substance in this argument. The court had no power to supply the vacancy under Section 8(1)(b) only if the arbitration agreement did show that the parties did not intend to supply the vacancy. If no such intention could be culled out from the arbitration clause, the court could supply the vacancy. There is a direct decision of this Court in *M/s. Prabhat General Agencies etc. v. Union of India & Another.*⁽¹⁾

Mr. R. B. Datar, counsel for the appellant placed the reliance upon the Full Bench Decision of Madras High Court in *Badam Satayanarayanamurthi v. Badam Venkataramanamurthi & Ors.*⁽²⁾, in support of his submission that no other Arbitrator could be appointed by the court under Section 8 of the Act when the Arbitrator named in the agreement refused to act. In our opinion while considering the provisions of Section 8(1)(b) of the Act, that decision is of no help to the appellant. The full Bench decision was given with reference to the corresponding provisions of

(1) [1971] 2 S.C.R. 564.

(2) A.I.R. 1948 Madras 312.

- A** law contained in Schedule II of Code of Civil Procedure, 1908 in paragraph 5 whereof the crucial words occurring in Section 8(1)(b) of the Act were not there. The words in Section 8(1)(b) are these : "and arbitration agreement does not show that it was intended that the vacancy should not be supplied."
- B** For the reasons stated above, we hold that there is no merit in either of the two appeals. They are accordingly dismissed with costs which we quantify at Rs. 1500/-.

S.R.

Appeals dismissed.