

SH. BHUPINDER SINGH BINDRA

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v.

UNION OF INDIA AND ANR.

JULY 28, 1995

[K. RAMASWAMY AND K.S. PARIPOORNAN, JJ.]

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*Arbitration Act, 1940: Sections 5, 8, 11 and 29:*

*Arbitrator—Appointment of a designated Officer chosen by parties—Power of Court to revoke—Held Court can interpose and interdict the appointment only for a sufficient cause—Arbitrator—Entering duties immediately—No allegation of misconduct—Contractor consenting to adjournments and dragging the case—Revoking the appointment of such an arbitrator and appointment of independent arbitrator Held illegal.*

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In a contract between the appellant and the respondents one of the clause expressly provided for the appointment of a designated officer as an arbitrator. Dispute having arisen between the parties the named officer was appointed as arbitrator and he entered upon his duties immediately. However, the appellant impugned the arbitrator's appointment on the ground that he had considerably delayed the making of the award. The senior judge appointed an independent arbitrator to adjudicate the dispute. The High Court set aside the order of the senior judge by holding that there was no allegation of misconduct against the arbitrator and that the appellant himself had consented for adjournments and dragged on the case for a considerable time and therefore it cannot be said that there were any laches on the part of the arbitrator in giving the award. Hence this appeal.

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Dismissing the appeal, this Court

**HELD :** 1. When the parties, under the clauses of the contract, have specifically chosen a named authority and not any other arbitrator, without the consent of the parties, court has no jurisdiction to interpose into the contract and appoint an arbitrator under section 8 or any other provision under the Act. It is not in the power of the party at his own will or pleasure to revoke the authority of the arbitrator appointed with his consent. There must be just and sufficient cause for revocation. There is

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A no general power for the Court to appoint an arbitrator unless the case falls within the relevant provisions of the Act nor will the court make an appointment where the arbitration agreement provides a method by which appointment is to be made. [420-C, 419-C]

B 2. Revocation of arbitrator's authority is exactly equivalent to removal which would be done on specified grounds like misconduct or omission to enter upon duties within time etc. Both parties by consent may revoke the authority of the arbitrator but that is not the case herein. In the circumstances of the case, it cannot be said that there are any laches on the part of the arbitrator in giving the award. The High Court was, therefore, clearly right in setting aside the order of the senior Judge appointing an independent arbitrator to adjudicate the dispute. [419-D-E; 420-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.7370 of 1995.

D From the Judgment and Order dated 19.4.1991 of the Punjab and Haryana High Court in C.R.No. 516 of 1991.

Ms. Madhu Tewatia and Ranbir Yadav for the Appellants. .

Ms. Kamini Jaiswal for the Respondent.

E The following Order of the Court was delivered :

Leave granted.

F We have heard both the counsel. The only question in this case is whether the Civil Court, while exercising the power under ss.5, 8, 11 and 29 of the Arbitration Act, 1940 (for short, 'the Act') would be justified in revoking the appointment of an arbitrator appointed in terms of clause 25A of the contract. Clause 25-A reads thus :

G "Clause 25-A : -If question, difference or objections whatsoever shall arise in any way connected with or arising out of this instruments or the meaning or operation of any part thereof, the rights, duties or liabilities of other party, then save in so far as the decision of any such matter is herein before provided and has been so decided every such matter including whether it has been finally decided accordingly, or whether the contract should be terminated

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or has been rightly terminated and regards the rights and obligations of the parties as the result of such termination shall be referred for arbitration to the Superintending Engineer, Planning Circle, Chandigarh, or acting as such at the time of reference within 180 days viz., six months from the date of making final payment to the contractor.....".

It is settled law that court cannot interpose and interdict the appointment of an arbitrator, whom the parties have chosen under the terms of the contract unless legal misconduct of the arbitrator, fraud, disqualification etc. is pleaded and proved. It is not in the power of the party at his own will or pleasure to revoke the authority of the arbitrator appointed with his consent. There must be just and sufficient cause for revocation. There is no general power for the court to appoint an arbitrator unless the case falls within the relevant provisions of the Act nor will the court make an appointment where the arbitration agreement provides a method by which appointment is to be made, Clause 25A expressly provides appointment in the named officer by designation who was appointed to terms thereof and had entered upon the duties immediately. Revocation of arbitrator's authority is exactly equivalent to removal which would be done on specified grounds like misconduct or omission to enter upon duties within time etc. Both parties by consent may revoke the authority of the arbitrator but that is not the case herein. The contract clearly indicates that the Superintending Engineer, Planning Circle, Chandigarh or any one acting as such at the time of reference within 180 days, i.e. six months from the date of making final payment of the contractor is the designated officer chosen voluntarily by the parties. It was impugned in the O.P. filed in the court of the Senior Judge that the officer had delayed for considerable period in making the award and that, therefore, it necessitated the appellant to invoke the jurisdiction of the civil court under the Act.

The High Court of Punjab and Haryana in the impugned order in Civil Rev. no. 516/91 has pointed out that the contractor had consented for adjournments and that there was no allegation of misconduct of the arbitrator in adjudicating the dispute. On the other hand, the High Court recorded that :

".....the Arbitrator was proceeding with the task of an arbitration in right earnest, inspite of the fact that the Contractor was not

A cooperating in this behalf. On the transfer of Shri R.K. Aggarwal, Superintending Engineer, the work of arbitration had been taken up by his successor Shri Puran Jeet Singh, Superintending Engineer."

B Thus it was held that the Arbitrator was willing to proceed with and that the appellant was not cooperating in conducting the proceedings. Therefore, having consented for adjournments and dragged on the case for a considerable time, it is no longer open to contend that the arbitrator neglected to make the award. Under those circumstances, it cannot be said that there are any laches on the part of the arbitrator in giving the award.

C When the parties, under the clauses of the contract, have specifically chosen a named authority and not any other arbitrator, without the consent of the parties, court has no jurisdiction to interpose into the contract and appoint an arbitrator under s.8 or any other provision under the Act. The High Court, therefore, was clearly right in setting aside the order of the Senior Judge appointing an independent arbitrator to adjudicate the dispute.

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E Since the matters are pending for a long time, the arbitrator is directed to adjudicate upon the dispute and give his award within six months from the date of the receipt of this order. It is needless to mention that in case the appellant does not cooperate in the disposal of the application, the time limit prescribed by us would not deter the arbitrator to decide the dispute according to law. The appeal is accordingly dismissed. No costs.

T.N.A.

Appeal dismissed.