

M/S. KLASSIC CONSTRUCTION (PVT.) LTD.

A

v.

M/S. ARMY WELFARE HOUSING ORGANISATION

MAY 25, 2006

[DR. AR. LAKSHMANAN AND LOKESHWAR SINGH PANTA, JJ.]

B

Arbitration :

Appointment of arbitrator—Adjudication of dispute from the stage left by earlier arbitrator—Construction contract—Arbitration clause providing for reference of dispute to sole arbitrator to be appointed by Chairman, Army Welfare Housing Organisation—In appeal before Supreme Court, on Court's direction Housing Organisation submitted a panel of three names—With consent of parties Court appointing one of them as sole arbitrator—Parties at liberty to amend their claims and counter claims and file additional documents before sole arbitrator who shall adjudicate the dispute from the stage left by erstwhile sole arbitrator and pass a speaking award and submit the same to this Court.

C

D

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5352 of 2002.

From the Judgment and Order dated 2.8.2001 of the High Court of Delhi at New Delhi in FAO(OS) No. 328/2001.

E

P.N. Kumar, Anurag Kumar and Rishi Kesh for the Appellant.

Arvind Kumar Tewari for the Respondent.

The following Order of the Court was delivered :

F

O R D E R

Heard Mr. P.N. Kumar, learned counsel for the appellant and Mr. Arvind Kumar Tewari, learned counsel for the respondent. The appellant before us is a contractor. The respondent is the Army Welfare Housing Organisation represented by its Chairman/Managing Director.

G

Both the appellant and respondent entered into an agreement on 8.5.1990 by which the contract was awarded to the appellant for executing certain

A construction works. Clause 131 of the contract deals with the arbitration which reads as under:

“131. If any dispute arises and persists between the contractor and Employer, the same shall be referred to the Sole Arbitrator to be appointed by the Chairman, Army Welfare Housing Organisation,

B whose award shall be final and binding on both parties. The Arbitrator shall submit his award within four months of his entering on the reference. This period may be extended by the Arbitrator with the consent of both the parties.”

C On 17.5.2006, after hearing both the parties, we passed a detailed order directing the Army Welfare Housing Organisation to submit a Panel of three names to this Court with a copy to the learned counsel for appellant in the form of an affidavit. Pursuant to the said directions, an affidavit dated 22.5.2006 on behalf of respondent has been filed before us. A copy of the said affidavit has also been served on the counsel for the appellant. The

D affidavit reads thus:

“An affidavit on behalf of the Respondent of the compliance of orders/ directions dated 17.05.2006 of this Hon’ble Court.

E I, Col. A.K. Opal, Secretary Army Welfare Housing Organisation, a society registered under the Society Registration Act XXI of 1860 having it’s registered office at South Hutmens, Kashmir House, Rajaji Marg, New Delhi 110011 do hereby solemnly affirm on oath and state as follows:

F That I am the secretary of the respondent society in the aforesaid case. I am conversant with the facts and circumstances of the case, as such competent to affirm this affidavit.

G 1. I say that after hearing the counsels of the parties in the aforesaid case this Hon’ble Court vide it’s order dated 17.05.2006 was pleased to direct the Ex-Officio Chairman of the Army Welfare Housing Organisation/respondent herein, to nominate a panel of three names out of which this Hon’ble Court may appoint one such nominee as a sole arbitrator to adjudicate the disputes between the parties herein.

H 2. I say that in compliance to the order(s) / direction(s) dated 17.05.2006 of this Hon’ble Court, Ex-Officio Chairman of the

Army Welfare Housing Organisation / respondent herein, has A
been pleased to comply with the directions of this Hon'ble Court
and has nominated a panel of the following three engineer officers:

a. Brig. Anil Wasan, age 53 years, Deputy Director General (Navy & B
Defence Production), Officer shall superannuate from present
appointment on 31 July 2008.

b. Brig AK Jairath, age 52 years, Deputy Director General (Policy B
Planning and Coordination). As a sole arbitrator has adjudicated 06
cases. Tenure of the officer in the present appointment is till November
2008. Officer superannuates in 2011.

c. Mr. Satish Chandar, age 49 years, Joint Director General (Contracts). C
Officer's tenure in present appointment is till Aug 2009. Officer
superannuation in January 2017. As a sole arbitrator has adjudicated
40 cases.

3. I say that none of the aforesaid three officers are in any way D
involved in the management of the respondent herein.

In the premise, it is most respectfully prayed that this Hon'ble
Court be pleased to:

- a. Order/direct one of the aforesaid three named officers as a sole E
arbitrator to adjudicate the disputes between the parties herein and publish a speaking award;
- b. Order/direct the sole arbitrator to adjudicate the disputes between F
the parties herein from the stage from where the erstwhile sole arbitrator(s) could not proceed with the adjudication of the disputes between the parties pursuant to the orders dated 25.01.2002 of this Hon'ble Court;
- c. Order/direct the parties to amend their respective claims and G
counter claims, if they so desire, as already filed before the erstwhile sole arbitrator(s);
- d. Any other order(s)/direction(s) in the circumstances of the case
as may be deemed fit and appropriate by this Hon'ble Court.”

We gave option to the counsel for the appellant to select one name
among the three from the panel. Learned counsel for the appellant suggests
the name of Mr. Satish Chandar, who is now working as Joint Director H

- A General (Contracts) as the sole Arbitrator. Learned counsel for the respondent has no objection in nominating Mr. Satish Chandar as the sole Arbitrator. Accordingly, we, by consent of both the parties, nominate Mr. Satish Chandar as the sole Arbitrator. The parties will inform Mr. Satish Chandar that he has been appointed as a sole Arbitrator to adjudicate upon the disputes between the parties.
- B Both parties are at liberty to file any additional documents before the said sole Arbitrator. The sole Arbitrator shall adjudicate the disputes between the parties and pass a speaking award. The sole Arbitrator shall adjudicate the disputes between the parties from the stage from where the erstwhile sole Arbitrator could not proceed with the adjudication of disputes between the parties pursuant to the order, passed by this Court on 25.1.2002.
- C Parties are at liberty to amend their respective claims and counter-claims, if they so desire. The parties are at liberty to approach the sole Arbitrator for any further direction. The sole Arbitrator is directed to complete the arbitration proceedings within six months from the date of entering upon the reference.

The sole Arbitrator shall enter upon the reference on or before 15.6.2006.

- D Additional documents, if any, shall be filed within four weeks from the date of entering upon the reference. The Civil Appeal is disposed of accordingly. A copy of this order shall also be forwarded to the sole Arbitrator Mr. Satish Chandar c/o Engineering in Chief Branch, Army Welfare Housing Organisation, South Hutmants, Kashmir House, Rajaji Marg, New Delhi 110011.

The interim order passed by this Court stands vacated. The sole Arbitrator shall submit his award to this Court.

R.P.

Appeal disposed of.