

Ajay Kumar Vs. Addl. District Judge/Special Judge, (E.C. Act) and ors.

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Court : Allahabad

Decided On : May-08-2003

Reported in : 2003(3)ARBLR563(All)

Judge : R.K. Agrawal, J.

Acts : [Arbitration Act, 1940](#) - Sections 20

Appeal No. : C.M.W.P. No. 17594 of 1999

Appellant : Ajay Kumar

Respondent : Addl. District Judge/Special Judge, (E.C. Act) and ors.

Advocate for Pet/Ap. : Ajay Rajendra, Adv.

Disposition : Petition allowed

Judgement :

R.K. Agrawal, J.

1. The petitioner was Awarded a contract by the Executive Engineer, Rural Engineering Services, Vikas Bhawan, Lucknow, on behalf of the Governor of Uttar Pradesh, for execution of civil work on 27.06.1991. Some disputes arose between the parties. The petitioner requested the Chief Engineer to refer the matter to an Arbitrator. The Chief Engineer did not appoint any Arbitrator. Whereupon the

petitioner filed an application under Section 20 of the Arbitration Act, before the Civil Judge, Meerut for appointment of an Arbitrator, which application was allowed vide judgment and order dated 19.03.1997. However, in the appeal filed by the respondents, the learned Additional District Judge/Special Judge (E.C. Act), Meerut vide judgment and order dated 21.01.1999 while allowing the appeal had set aside the order passed by the trial Court on the ground that no dispute exists and further the trial Court was not justified in appointing an Arbitrator and at best it could have asked to the Chief Engineer to appoint an Arbitrator under the terms of the agreement.

2. Heard Sri Ajay Rajendra, learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents.

3. Learned counsel for the petitioner submitted that the Court below was not justified in entering into the merit of the dispute, as that was to be decided by the Arbitrator. He further submitted that if the Court below have found that the trial Court could not have appointed the Arbitrator, it could have directed the Chief Engineer to appoint the Arbitrator under the terms of the agreement.

4. The learned Standing Counsel on the other hand did not dispute the proposition that the Appellate Court was not justified in holding that no dispute exists. However, he submitted that under the terms of the agreement only the Chief Engineer was empowered to appoint the Arbitrator and therefore, the order does not call for any interference.

5. Having heard the learned counsel for the parties, I find that some dispute arose between the parties as a result of the contract Awarded to the petitioner. What was the merit of the dispute, that could have been gone into only by the Arbitrator and not by the Court below in the proceedings for appointment of an Arbitrator. Thus, the Court below was not justified in going into the merit of the case and holding that there was no dispute.

6. So far as the terms and conditions of the agreement in question is concerned, I find that under the agreement, the Chief Engineer is authorized to appoint the Arbitrator. The Court below ought to have directed the Chief Engineer, who has to

decide the dispute.

7. In view of the foregoing discussions, the order dated 21.01.1999, passed by the respondent No. 1 cannot be sustained and is hereby set aside. The writ petition is allowed with a direction to the respondent No. 2 to appoint the Arbitrator in terms of the general conditions of the agreement within six weeks from the date of production of the certified copy of this order before him.

8. With the aforesaid observations, the writ petition succeeds and is allowed.

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