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**State of Orissa and anr. Vs. Nilgiri Engineering Co-operative Societies and anr.**

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**SooperKanoon Citation : [sooperkanoon.com/527073](http://sooperkanoon.com/527073)**

**Court : Orissa**

**Decided On : Nov-19-1984**

**Reported in : AIR1985Ori170**

**Judge : D.P. Mohapatra, J.**

**Acts : [Arbitration Act, 1940](#) - Sections 12**

**Appeal No. : Civil Revn. No. 774 of 1981**

**Appellant : State of Orissa and anr.**

**Respondent : Nilgiri Engineering Co-operative Societies and anr.**

**Advocate for Def. : R.K. Rath, Adv.**

**Advocate for Pet/Ap. : Adv. General and ;Addl. Standing Counsel**

**Disposition : Revision partly allowed**

**Judgement :**

**ORDER**

**D.P. Mohapatra, J.**

1. This revision petition is directed against the order of Subordinate Judge, Bhubaneswar, allowing the application filed by the opposite party No. 1 for removal of the arbitrator, opposite party No. 2.

2. The opposite party No. 1 was entrusted with the work 'Widening the existing pavement of N. H. No. 5 from 203/0 to 109/0 kilometer' under Agreement No. 29F-2 of 1973-74. Disputes having arisen in course of the work, the said opposite party No. 1 moved the Chief Engineer, National High Way, petitioner No. 2, for appointment of an arbitrator as per the clause of the Agreement. Accordingly, the opposite party No. 2 was appointed as the sole arbitrator on 2-7-1976. The arbitrator entered upon the reference and proceeded with the matter to some extent. At a certain stage of the proceeding the opposite party No. 1 did not cooperate with the arbitrator resulting in a stalemate in the proceeding. This was followed by an application filed by the opposite party No. 1 Under Sections 5, 11 and 12 of the Arbitration Act for revocation of the authority of the arbitrator and to appoint another arbitrator in his place. By the impugned order the Court below revoked the authority of the opposite party No, 2 and appointed Sri C. Mohapatra, retired District Judge, in his place.

3. In course of argument, the learned Addl. Government Advocate appearing for the petitioners fairly concedes that in the facts and the circumstances of the case, he cannot successfully assail the decision of the Court below revoking the authority of the opposite party No. 2. He confines his challenge to the part of the impugned order appointing Sri C. Mohapatra as arbitrator. He submits that this has been done without giving an opportunity to the petitioners to submit a panel of names and without hearing them regarding the suitability or otherwise of Sri C. Mohapatra as arbitrator. The contention has substantial force.

4. A perusal of the impugned order shows that the Court below, while revoking the authority of the opposite party No. 2, has appointed Sri C. Mohapatra in his place by the same order. The order does not show that the parties were given any opportunity to submit panel of names for such appointment or that there was any hearing on the question of selection of an arbitrator to fill up the vacancy caused by the revocation of the authority of the opposite party No. 2.

The matter of selection of the arbitrator is as important as the question of making a reference and adjudication of the dispute. It is but meet and proper that the parties should be heard on this important aspect of selection of the arbitrator.

The basic concept of arbitration is that the person chosen to discharge the function of arbitrator should be one in whom both the parties repose their trust and faith and agree to accept his decision. This view finds support from a recent decision of this Court in a case reported in (1982) 54 Cut LT 214 : (AIR 1982 Orissa 277) (State of Orissa represented by the Executive Engineer, R. E. Division, Puri v. Gangaram Chhapolia).

In view of the position discussed above, the order of the Subordinate Judge appointing Sri C. Mohapatra as arbitrator is unsustainable and has to be vacated.

5. Viewed from another angle also, it has to be held that Sri C. Mohapatra cannot continue as arbitrator in the case.

Section 41A which has been introduced by amendment in the Arbitration Act reads as follows : --

'41-A(1) Notwithstanding anything contained in this Act or in any contract or any other instrument, but without prejudice to the provisions contained in Section 47, in all cases where the State Government, a local or other authority controlled by the State Government, a statutory corporation or a Government Company is a party to the dispute, all reference to arbitration shall be made to the Arbitration Tribunal'.

(2) the State Government shall constitute an Arbitration Tribunal consisting of the following members namely : --

(a) one member chosen from among the officers belonging to the Orissa Superior Judicial Service (Senior Branch).

From the aforesaid provision, it is clear that the disputes in the present case are to be referred to the Arbitration Tribunal, Orissa. Both the parties are in agreement on the position that the matter has to go before the Arbitration Tribunal, Orissa.

6. In the result, the Civil Revision is allowed in part and the order of the Court below appointing Sri C. Mohapatra as arbitrator is vacated. The Sub-ordinate Judge, Bhubaneswar will take appropriate steps in accordance with law to refer the matter to the Arbitration Tribunal, Orissa. There will be no order for costs for this proceeding.

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