

P. Ramankutty Vs. the Superintending Engineer, National Highways, Gandhi Nagar, Adyar, Madras-20 and Another

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Court : Chennai

Decided On : Aug-26-1996

Reported in : 1998(2)CTC313

Judge : Jayasimha Babu, J.

Acts : [Arbitration Act, 1940](#) -- Sections 8(1)

Appeal No. : Application No.1922 of 1955

Appellant : P. Ramankutty

Respondent : The Superintending Engineer, National Highways, Gandhi Nagar, Adyar, Madras-20 and Another

Advocate for Def. : Additional Government Pleader (CS)

Advocate for Pet/Ap. : M/s. N.K. Kabir, Adv.

Disposition : Application dismissed

Judgement :

ORDER

1. The petitioner had entered into an agreement with the first respondent on 24.4.1991 for executing a work of strengthening the weak two lane road reach

from KM40/0-52/8 NH5- MC Road including providing of Hard shoulders. That agreement contains arbitration clause which reads as follows:

'The arbitrator for fulfilling the duties set forth in the arbitration clause of the standard Preliminary Specification shall be Superintending Engineer of Madurai CMH Circle.

Time shall be considered as of the essence of the agreement and the Contractor hereby agrees to commence the work as soon as agreement is accepted by competent authority as defined by the Madras Public Works Department Code. The site (or premises) is handed over to him as provided for in the said condition and agrees to complete the work within eighteen months from the date of such handing over the site (or premises) and to show progress as defined in the tabular statement 'rate of progress' below, subject nevertheless to the provisions for extensions of time contained in clause 59 of the Standard Preliminary Specification.'

There are no limitations stated in the preliminary specification or in the contract regarding the pecuniary jurisdiction of the arbitrator.

2. The petitioner invoked the arbitration clause and filed the claim before the arbitrator namely. The Superintending Engineer, National Highways, Madras-20. This application has been filed by the petitioner invoking Section 8(1)(b) of the Arbitration Act.

3. It is the case of the petitioner that the arbitrator namely the Superintending Engineer has no jurisdiction to deal with the claim as the claim of the petitioner exceeds Rs.50,00,000 and according to the G.O.Ms. No.1545 dated 26.7.1990, the jurisdiction of the arbitrator is limited to claim of Rs.2,00,000 and below.

4. Learned counsel for the petitioner contended that the common award passed by the arbitrator who has no jurisdiction is a nullity. The learned counsel referred to the case of Ganga Ram, A.I.R. 1982 Bom. 72. Learned single Judge of that Court in that case held that if an arbitration is not in writing, the arbitrator would have no jurisdiction and no amount to acquiescence on the part of the parties would

validate the proceeding. Counsel also referred certain passages from Russel on Arbitration 20th Edition, pages 136, 235 and 391 wherein it is stated as follows:

'It would appear that the word 'incapable' in Section 10(b) must refer to some incapacity arising after the date of the appointment, or not known to the parties at that date. It is submitted that the Court is not entitled to treat an arbitrator as incapable whom the parties rightly or wrongly have considered to be capable. The standard of capability must be the standard of the parties who selected the arbitrator, and having selected him they must take him for better or worse. The incapacity must be serious enough to put the arbitrator out of action completely as far as concerns the arbitration.'

Counsel also referred to the passage at page No.391 which runs as follows:-

'Disqualification of the arbitrator is a particular case of want of jurisdiction. But it would seem that if the arbitrator is disqualified the whole arbitration must be a nullity...'

It is also further stated therein that the appropriate remedy is by action of defence to an action.

5. In this case the arbitration agreement is set out in the contract. It is unambiguous. It specifies the arbitrator and there is no doubt as to who the arbitrator is. No monetary limits to his jurisdiction has been set out in that clause. The parties are bound by the terms of the contract. No liberty is reserved to the Government to alter this clause unilaterally. The contract also does not provide that the Government orders issued by the Government from time to time regarding the extent of the powers of various officers would get incorporated into the contract between the parties.

6. The argument of the learned counsel for the petitioner that the G.O.Ms. No.1545/P.W.D./dt. 26.7.1990 must be read into the contract is not supportable from any of the provisions of the contract. He also contended that the above G.O. must be read along with the contract. Despite the existence of that Government Order, the contract had been entered into between the parties in which no

limitation was placed on the pecuniary jurisdiction of the arbitrator in the agreement. The respondent as a contracting party is bound by the contract. The argument that the arbitrator had no pecuniary jurisdiction and that the award is therefore a nullity is without any basis.

7. The petitioner invoked the jurisdiction of the arbitrator and set the arbitration process in motion. The arbitrator has in proceeded with the arbitration and has made the award. The petitioner did not choose to participate in the arbitration proceedings. Learned counsel submitted that the arbitrator was in error proceeding with the arbitration during the pendency of this application. Merely filing an application under Section 8(1)(b) of the Act does not have the effect of staying the arbitration proceedings. The petitioner has not cared to appear before the arbitrator and the consequences of his default, cannot be avoided by this application.

8. There was no incapacity on the part of the appointed arbitrator to proceed with the arbitration. There is no merit in this application.

9. The application is dismissed. Application dismissed.