

State of Himachal Pradesh Vs. Smt. Lila Devi and ors.

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Court : Himachal Pradesh

Decided On : Jul-02-1986

Reported in : AIR1987HP46

Judge : V.P. Gupta and; R.S. Thakur, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 14, 17, 30 and 33

Appeal No. : F.A.O. No. 21 of 1975

Appellant : State of Himachal Pradesh

Respondent : Smt. Lila Devi and ors.

Advocate for Def. : Chhabil Dass, Adv.

Advocate for Pet/Ap. : P.N. Nag, Adv.

Disposition : Appeal dismissed

Judgement :

V.G. Gupta, J.

1. Shri Roshan Lal predecessor in interest of the respondents, purchased lot No. 2/64-66 of Chopal Forest Division along with other lots of Chopal and Rajgarh forest divisions in an open auction held on 7-2-1964 at Nahan for an amount of Rs. 5,40,000/-.

2. An agreement (Ex. PX-1) regarding this sale of trees was entered into between Shri Roshan Lal and the Union of India. The agreement was signed by the Secretary (Forest) to the Himachal Pradesh Government Simla who also happened to be the Chief Conservator of Forests on behalf of Union of India. Clause 29 of the agreement provides that disputes between the parties were to be referred for arbitration to the Deputy Commissioner Sirmour district or should he be unable or unwilling to act, to such assistant as the said Deputy Commissioner shall appoint as sole arbitrator.

3. Disputes arose between the parties and Shri Roshan Lal (now deceased) vide letter dated 29-1-1971 addressed to the Secretary (Forests) Government of Himachal Pradesh, requested that the matter in dispute be referred to an arbitrator. He also requested that the matter being mainly technical relating to forest trees, should be referred to a technically qualified person because it may not be possible for the Deputy Commissioner to adjudicate upon such matters. He sent another letter dated 30-1-1971, to the Secretary (Forest) to the Government of Himachal Pradesh Simla, making a similar request. The Chief Conservator of Forests had written to the Secretary (Forest) to the Government of Himachal Pradesh seeking approval for change in the arbitrator named in the agreement as is evident from the letter dated 5-6-1971.

4. Shri Roshan Lal was informed through a letter dated 12-7-1971 by the Chief Conservator of Forests that Dr. M.P. Gupta Conservator of Forests Kulu would act as an arbitrator to adjudicate the disputes. In this manner Dr. M.P. Gupta was appointed as an arbitrator with the consent of the parties.

5. Dr. M.P. Gupta (hereinafter the arbitrator) entered upon the reference in 1971 and sent notices to the parties to file their claims. Shri Roshan Lal filed his claims before the arbitrator in Nov. 1971, and the appellant also filed a reply to the claim in Jan. 1972. The arbitrator after recording the evidence and after several hearings finally gave his award on 18-3-1974. The appellant feeling dissatisfied with the award filed objections under Ss. 30 and 33 of the Arbitration Act (hereinafter the Act) and claimed that the award be set aside on the ground of misconduct on the part of the arbitrator and the proceedings. This application was contested and

upon the pleadings of the parties the following issue was framed by a learned single Judge:

Whether the award is liable to be set aside on the grounds mentioned in the objection petition.

6. The parties produced evidence and finally a learned single Judge of this Court vide his judgment dated 9-1-1975 dismissed the application of the appellant and the award was made the rule of the Court.

7. Before the learned single Judge the appellant had also raised an objection that the arbitrator had no jurisdiction to enter upon the reference and to give his award, because according to the terms of the agreement, Deputy Commissioner Sirmour only could act as an arbitrator. This contention was not accepted by the learned single Judge and it was held that the appellant was estopped from raising this contention in the facts and circumstances of the case. On merits too the findings were given against the appellant by the learned single Judge.

8. Aggrieved from the judgment dated 9-1-1975 of the learned single Judge, the appellant has now filed the present appeal.

9. We have heard the learned counsel for the parties.

10. The only contention raised by the learned counsel for the appellant before us was that Dr. M.P. Gupta (Conservator of Forests, Kulu) could not act as an arbitrator because according to clause 29 of the agreement only the Deputy Commissioner, Sirmour could act as an arbitrator.

11. We have considered the contentions and have perused the records.

12. According to clause 29 of the agreement the disputes between the parties are to be referred for arbitration to the Deputy Commissioner, Sirmour district or should he be unable or unwilling to act, to such assistant as the said Deputy Commissioner shall appoint as sole arbitrator. This agreement is signed by the Secretary (Forest) to Punjab Government on behalf of the appellant, and Shri Roshan Lal (predecessor in interest of the respondents). The disputes arose and

Shri Roshan Lal (deceased) made an application to the appellant that some technical man be appointed as an arbitrator. The appellant accepted this prayer and the Chief Conservator of Forests Himachal Pradesh appointed Dr. M.P. Gupta as an arbitrator, Shri Roshan Lal also accepted him as an arbitrator.

13. Dr. M.P. Gupta entered upon the arbitration in the end of 1971 and the parties appeared before him on several hearings. They also produced evidence before the arbitrator and finally the award was given on 18-3-1974. During the pendency of the arbitration proceedings the parties were also filing repeated applications in the Court seeking extension of time for making the award. The conduct of the parties thus from 1971 onwards till 1974 shows that the parties consented to the appointment of Dr. M.P. Gupta as an arbitrator by mutual consent. They also submitted to the jurisdiction of Dr. M.P. Gupta (arbitrator) and filed claims and counter-claims before him. They also produced evidence before the arbitrator and never raised any objection regarding his authority to arbitrate.

In the objection petition under Sections 30/33 of the Act, the appellant never raised the objection regarding jurisdiction of the arbitrator. The present appeal was also filed by the appellant through the Chief Conservator of Forests who in fact had appointed Dr. M.P. Gupta as an arbitrator. Thus the aforesaid facts and circumstances are sufficient to prove that the appellant himself had appointed Dr. M.P. Gupta as an arbitrator and had always been accepting him as an arbitrator till the announcement of the award. The appellant therefore is estopped from challenging the authority of the arbitrator by his own act, conduct and acquiescence. In taking this view we are supported by some authoritative pronouncements.

14. In (1975) 1 SCC 289 : (AIR 1975 SC 230) (N. Chellappan v. Secretary, Kerala State Electricity Board) it was held that :

'.....when the Board participated in the proceedings before the umpire without any demur to his jurisdiction and took the chance of an award in its favour, it cannot turn round and say that the umpire had no inherent jurisdiction and therefore its participation in the proceedings before the umpire is of no avail.'

15. In *Choudhri Murtaza Hossein v. Mussumat Bibi Bechunnissa*, (1875-76) 3 Ind App 209, 220 the Privy Council said :

'On the whole, therefore, their Lordships think that the appellant, having a clear knowledge of the circumstances on which he might have founded an objection to the arbitrators proceeding to make their award, did submit to the arbitration going on; that he allowed the arbitrators to deal with the case as it stood before them, taking his chance of the decision being more or less favourable to himself; and that it is too late for him after the award has been made, and on the application to file the award, to insist on this objection to the filing of the award.'

16. In AIR 1955 Punj 240 (*R. Prince and Co. v. Governor General in Council*), it is held that :

'Where a Government was a party to the reference and fully knew all the circumstances in which the umpire had been appointed and took part in the proceedings before the umpire without raising any objection as to any defect in his appointment at the first opportunity and allowed the award to be made without any protest, taking a chance of favourable decision, it must be held that the Government acquiesced in the appointment and waived the objection to any defect in the appointment. As such, the Government is estopped from raising an objection to such appointment as invalidating subsequent proceedings.'

17. In AIR 1961 Orissa 143 (*Union of India v. Chaudhary Radhanath Nanda*), it is again held as under :

'The general principle that where a Court has inherent lack of jurisdiction, mere consent of parties cannot confer jurisdiction, has no application to arbitration proceedings where the arbitrator is a person appointed by agreement between the parties. The principles of estoppel will generally apply where a party having consented to arbitration by a person and participated in the proceedings before him subsequently attempted to challenge the jurisdiction of the arbitrator. Thus where a party having submitted to the jurisdiction of the arbitrator subsequently challenges his jurisdiction on the ground that he did not possess the qualification required by the arbitration clause, it must be held that there was estoppel by

conduct and that it was not open to the party to contend that the arbitrator was not qualified under the terms of the agreement to arbitrate in the dispute.'

18. In AIR 1965 Cal 42, (New India Insurance Co. Ltd, v. Dalmia Iron and Steel Co. Ltd.), it has been held that:

'If a party allowed an arbitrator to proceed with the reference without objecting to his jurisdiction or competence, it would not be subsequently heard to say that the award should be set aside on the ground that the arbitrator was not competent to decide the dispute in question. If objection is to be taken, it must be taken at the earliest possible opportunity or at any rate, at an early stage of the proceedings. Failure to object at an early stage acts as an estoppel.'

19. Thus the contention of the appellant's counsel cannot be accepted in the facts and circumstances of the present case.

20. It may also be mentioned that the arbitrator was appointed by the Chief Conservator of Forests and the present appeal has also been filed on behalf of the appellant through the Chief Conservator of Forests.

21. As a result of the above discussion, we hold that the award is not liable to be set aside for want of jurisdiction on the part of the arbitrator and for the various reasons given in the judgment of the learned single Judge. We agree with the reasons.

22. No other point was urged before us.

23. The present appeal is accordingly dismissed with costs and the judgment dated 9-1-1975 passed by the learned single Judge is affirmed.