

Before S. S. Sodhi, J.

KRISHAN LAL,—Appellant.

versus

HARYANA STATE AGRICULTURAL MARKETING BOARD

AND ANOTHER,—Respondents.

First Appeal from Order No. 378 of 1985

March 12, 1986.

Arbitration Act (X of 1940)—Section 34—Appointment of an Arbitrator by designation—Said Arbitrator entering into the arbitration—Arbitrator ceasing to hold office—Award thereafter made by the Arbitrator—Said award—Whether without jurisdiction.

Held, that when the Arbitrator by designation relinquished charge of his post the said Arbitrator ceased to have jurisdiction to act as Arbitrator and consequently the award rendered by the Arbitrator when he no longer held the post is without jurisdiction.

(Para 8)

First Appeal from order of S. Jagroop Singh, P.C.S. Sub-Judge, 1st Class, Chandigarh, dated 27th February, 1985, succeeding the objection petition and setting aside the award dated 27th April, 1984, with costs.

Mr. Manohar Lal, Advocate, for the Appellant.

Mr. Jaswant Jain, Advocate, for respondent No. 1.

JUDGMENT

S. S. Sodhi, J.

(1) Where the appointment of an arbitrator is by designation, is the arbitrator so appointed divested of his jurisdiction to act as such on his ceasing to hold the post, whether by transfer, retirement, resignation or otherwise This is the point that falls for determination in this appeal.

(2) The matter raised here is essentially one of interpretation of the arbitration clause as it is open to the parties to provide that the arbitrator (appointed by virtue of the office he holds) must at all times, during the arbitration proceedings be one holding the particular post or that it would suffice if he held it at the time of the reference of the dispute to arbitration.

(3) The relevant arbitration clause governing the matter reads as under:—

“If any question, difference or objection whatsoever shall arise in any way connected with or arising out of this instrument the meaning or operation of any part thereof or the rights, duties or liabilities of either party, then save in so far as decision of any such matter is herein before provided for and has been so decided every such matter including whether its decision has been otherwise provided for and or whether it has been finally decided accordingly, or whether the contract should be terminated or has been rightly terminated and as regards the rights and obligations of the parties as the result of such termination shall be referred for arbitration to the SE, H.S.A.M.B. within 180 days of the date of final measurement and its decision shall be final and binding and where the matter involves a claim for or the payment or recovery or deduction of money, only the amount, if any, awarded in such arbitration shall be recoverable in respect of the matter so referred. If the matter is not referred to arbitration within the specified period, all the rights and claims under the contract shall be deemed to have been forfeited and absolutely barred.”

(4) The appointment of the arbitrator was thus by designation, namely; Superintending Engineer of the Haryana State Agricultural Marketing Board (hereinafter referred to as ‘the Board’). At the time of the reference of the present disputes to arbitration, the Superintending Engineer concerned was Shri D. P. Gupta. The impugned award by him in the case of the appellant Tara Chand is of April 17, 1984 and in the case of the other appellant-Krishan Lal of April 27, 1984. The record shows that while proceeding on leave, he relinquished charge of this post on January 16, 1984. Later, by the order exhibit P/6 of April 4, 1984, he was reverted to his parent

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department, though by the subsequent order exhibit P/7 of May 25, 1984, he was posted back as Superintending Engineer of the Board. The fact, however, remains that the impugned awards of April 17 and 27, 1984, were rendered by Shri D. P. Gupta, when he had ceased to hold the post of Superintending Engineer of the Board. The contention thus raised on behalf of the Board and which prevailed with the trial court being that on his relinquishing charge of the post of Superintending Engineer—Shri D. P. Gupta, was not competent to proceed with the arbitration and the impugned awards were, therefore, without jurisdiction.

(5) The point now canvassed by Mr. Manohar Lal, counsel for the appellants was that the words “shall be referred for arbitration to the Superintending Engineer of the Haryana State Agricultural Marketing Board”, in the relevant arbitration clause implied with the requirement of the arbitrator being the Superintending Engineer of the Board was confined to the time of the reference of the dispute to arbitration and not that the arbitration proceedings must thereafter too be handled only by one holding the said post. In other words, the time to look to the jurisdiction of the arbitrator to act as such, was when the matter is referred for arbitration and not any stage subsequent thereto.

(6) As a precedent, reference was made to the judgment of this Court in *Union of India v. Messrs K. D. Mehta Manohar Singh and Company*, (1). In this case the arbitration clause provided that differences and disputes between the parties “shall be referred to the General Manager for the time being of the North-western Railway — — —”. It was held that the words “for the time being” must be construed to refer to the person who held the post of General Manager when the dispute was referred to him for arbitration and it was not necessary that he should also be the General Manager at the time of the Award. In holding so, the Court followed the earlier judgment of the High Court of Orissa in *Union of India v. Ch. Radhanath Nanda*, (2) where it is observed:—

“The question whether the words “shall be referred to the arbitration of the Superintending Engineer of the Circle for the time being” in the arbitration clause of the agreement

(1) 1965 P.L.R. 166.

(2) A.I.R. 1961 Orissa 143.

should be construed to mean that the Arbitrator must be the Superintending Engineer of the Circle concerned not only on the date on which reference was actually made to him, but must also continue to be so until the date of his passing the award, depends on a construction of the expression 'for the time being' in that clause.

Thus where parties to the contract knew fully well that officers of the Union Government were liable to transfers to distant parts of India at short notice, they were also aware that the arbitration proceeding may take some time and thus with full knowledge of all these facts the parties omitted to make any provision in the agreement as to what should be done in the event of the Superintending Engineer of the Circle for the time being to whom the reference was originally made being transferred elsewhere and being succeeded by another officer it must be held that the words "for the time being" in that clause refer only to the date on which the reference was made to the Arbitrator, and cannot be extended to include the date on which the actual decision was given by the Arbitrator. In other words, if on the date of reference the Arbitrator was the Superintending Engineer of the Circle within whose jurisdiction the work in question was completed, he may dispose of the reference even though, he may be transferred elsewhere prior to his giving his decision."

(7) It will be seen that the arbitration clause in the present case is not in the same terms as in either *Messrs K. D. Mehta Manohar Singh and Company* or *Ch. Raahanath Manda's cases*, (supra). Conspicuous by their absence are the words 'for the time being' or other expression to this effect with reference to the Superintending Engineer of the Board to whom the dispute is to be referred for arbitration. What clinches the matter is the earlier judgment of this Court in *Daulat Ram Rala Ram v. State of Punjab* (3), where the arbitration clause provided "in the matter of dispute the case shall be referred to the Superintending Engineer of the Circle", whose order shall be final. It was held that as the nomination of the arbitrator was not by name, but by virtue of his office, on the transfer

(3) A.I.R. 1958, Pb. 19.

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or retirement of the Superintending Engineer, entitled to act, his successor is to take his place as arbitrator. This was later followed in *Bachna Ram Sawan Ram v. The State of Punjab* (4), where similar view was taken.

(8) Such being the clear position in law, there can be no escape from the conclusion that once Shri D. P. Gupta had relinquished charge of his post as Superintending Engineer of the Board, he ceased to have jurisdiction to act as arbitrator in the matter and consequently the awards rendered by him, when he no longer held the post, were rightly held by the trial court to be without jurisdiction. There is thus no merit in this appeal and it is accordingly hereby dismissed with costs.

H.S.B.

Before: R. N. Mittal, J.

ORIENTAL BANK OF COMMERCE,—Appellant

versus

LAJWANTI CHEMICALS AND OTHERS,—Respondents

Regular First Appeal (without number) of 1985

March 14, 1986.

Constitution of India, 1950—Article 227—Scope of—Court fees Act (VII of 1870)—Refund of Court fee—When can be ordered—Code of Civil Procedure (V of 1908)—Order 34—Money advanced on the basis of mortgage—Simple money decree passed by Sub-Judge—Appeal maintainable in the Court of District Judge but filed in the High Court—Such appeal—Whether can be treated as a petition under Article 227—High Court acting under Article 227—Whether can rectify the mistake in the decree and pass a decree in terms of Order 34—Court fee correctly paid on memorandum of appeal under the provisions of the Court Fees Act—Whether can be ordered to be refunded by the Court under its inherent powers.

Held, that Article 227 of the Constitution of India, 1950, confers powers of superintendence on the High Court over all the courts

(4) A.I.R. 1962 Pb. 85.