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UNION OF INDIA AND ANR.

v.

M/S. SOHAN LAL PUGLIA

NOVEMBER 19, 2003

B

[V.N. KHARE, CJ., S.B. SINHA AND DR. AR. LAKSHMANAN, JJ.]

Arbitration Act, 1940:

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S.20(4)—Contract—Arbitration clause of the agreement providing for parties to appoint Gazetted Officers as arbitrators—Contractor invoking arbitration clause of the agreement—Department not appointing any arbitrator—Contractor filing an application u/s.20 before District Judge, who appointed two retired District Judges as arbitrators—Department contending that when it did not refuse to appoint arbitrator, application u/ s.20 was not maintainable—Held, District Judge ought to have directed the parties to appoint arbitrators in terms of arbitration agreement—Parties directed to appoint arbitrators in consonance with the arbitration clause contained in the contract.

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G. Ramachandra Reddy and Co. v. Chief Engineer, Madras Zone, Military Engineering Service, [1994] 5 SCC 142, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5377 of 1998.

From the Judgment and Order dated 15.1.98 of the Rajasthan High Court in S.B.C.R.P. No. 751 of 1997.

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Y.P. Mahajan and Ms. Sushma Suri for the Appellant.

Bijan Kumar Ghosh for the Respondents.

The following Order of the Court was delivered :

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The parties herein entered into a contract on or about 2.9.93 relating to construction of supply of 50 mm gauge stone ballast machine crushed for permanent way in stocks along with the Crack and in station yard etc. Disputes and differences having been arose between the parties, the respondent invoked the arbitration clause contained tin the said agreement.

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As the appellants herein did not appoint an Arbitrator in terms thereof, an application was filed by the respondent herein under Section 20 of the Arbitration Act, 1940 and by reason of an order dated 7.4.97, the District and Sessions Judge, Jaipur City, Jaipur, appointed two retired District Judges as Arbitrators. The appellants herein filed a revision petition thereagainst and by reason of the impugned judgment dated 15.1.98, the same was dismissed.

The core question which was raised before the High Court for consideration was as to when the appellants had not refused to appoint an Arbitrator, under Section 20 of the Act the petition was not maintainable. The High Court having regard to the decision of this Court in *G. Ramachandra Reddy and Co. v. Chief Engineer, Madras Zone, Military Engineering Service*, reported in [1994] 5 SCC 142 negated the said contention.

Mr. H.L. Agrawal, learned senior counsel appearing for the appellants, however, submitted that the District Judge, Jaipur City while making appointment ought to have taken into consideration the terms contained in the Arbitration clause as also sub-section (4) of Section 20 of the Arbitration and in terms whereof the parties in a case involving the dispute of more than Rs. five lacs were to appoint Gazetted officers. Sub-section (4) of Section 20 of the Arbitration Act, 1940 reads as under:

“20(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed by the parties, whether in the agreement or otherwise, or, where the parties cannot agree upon an arbitrator, to an arbitrator appointed by the Court”

In view of said provision, we are of the opinion that the learned District Judge ought to have directed the parties to appoint Arbitrators in terms of the Arbitration agreement. This aspect of the matter has not been considered by the High Court.

We, therefore, in modification of the order passed by the District Judge, direct the parties to appoint Arbitrators in consonance with the arbitration clause contained in the contract.

The appeal is allowed to the aforementioned extent.

Learned counsel appearing for the appellants stated that within a period of one month from this date, the Arbitrator shall be named and intimation

A thereof shall be given to the respondent. Consequently, the respondent herein is directed to appoint an Arbitrator within the aforementioned period and intimate thereabout to the appellants. We hope that the learned Arbitrators would given an Award within a period of four months from the date of entering into the Reference keeping in view the fact that the matter is pending for a long time. The fees of the Arbitrators will be fixed by the Arbitrators themselves.

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R.P.

Appeal allowed.