

State of Orissa Vs. Rama Chandra Sahu and anr.

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Court : Orissa

Decided On : Dec-01-1984

Reported in : AIR1985Ori73; 1985(I)OLR32

Judge : K.P. Mohapatra, J.

Acts : [Arbitration Act, 1940](#) - Sections 41A; Orissa Arbitration (Amendment) Act, 1983

Appeal No. : Civil Revn. No. 101 of 1982

Appellant : State of Orissa

Respondent : Rama Chandra Sahu and anr.

Advocate for Def. : B.K. Nayak, Adv. (for No. 1)

Advocate for Pet/Ap. : N.C. Panigrahi, Addl. Govt. Adv.

Disposition : Petition allowed

Judgement :

ORDER

K.P. Mohapatra, J.

1. This civil revision is directed against the order passed by the learned Subordinate Judge, Cuttack removing an Arbitrator and appointing a new one in his place.

2. The facts in brief are that opposite party No. 1 a Contractor, had entered into Agreement No. 32- F2 of 1977-78 with the State of Orissa-for the construction work described in the said agreement There was an arbitration clause in the said agreement in case of dispute between the parties. Opposite party No. 1 raised a dispute against the State of Orissa and, according to the arbitration clause in the agreement, opposite party No. 2, a Superintending Engineer was appointed as the Arbitrator. Opposite party No. 1 entertained some grievances against opposite party No. 2 and made an application under Sections 3, 11 and 12 of the Arbitration Act for removal of opposite party No. 2 on the ground of laches, negligence and misconduct Me alleged that opposite party No. 2 was appointed as Arbitrator on 9-4-80. He did not enter upon the arbitration and committed inordinate delay without any reasonable cause and therebycommitted gross act of misconduct which disentitled him to act as the Arbitrator. Therefore, his authority to act as such should' be revoked and in his place another Arbitrator should be appointed.

3. The learned Subordinate Judge after hearing both parties came to hold that opposite party No. 2 acted with laches and negligence and thereby committed gross act of misconduct for not entering upon the arbitration for a long time. Such conduct on his part gave rise to reasonable suspicion in the mind of opposite party No. 1 that the Arbitrator had bias against him Therefore, he considered it to be a fit case for removal of opposite party No. 2 as Arbitrator and having directed such removal, appointed Shri J. N. Patnaik, a retired District Judge, as the Arbitrator. This order is challenged in this Court.

4. Mr. N. C. Panigrahi, learned Additional Government Advocate, urged that in view of the provisions contained in Section 41A as amended by the Orissa Act No. 3 of 1983 the dispute between the petitioner and opposite party No. .1 shall have to be referred to the Arbitration Tribunal because, in view of the aforesaid provisions no private person can act as Arbitrator. In order to appreciate his contention, Section 41-A so far as it is relevant is extracted below :--

'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 & 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.

x - x x x

(7) All arbitration proceedings relating to a dispute of the nature specified in Sub-section (1) which are pending before any arbitrator on the date of commencement of the Arbitration (Orissa Amendment) Act, 1982 and in which no award has been made by the said date, shall stand transferred to and disposed of by the Arbitration Tribunal'

From the aforesaid provisions it is abundantly clear that the dispute between the petitioner and opposite party No. 1 now pending must have to be statutorily referred to the Arbitration Tribunal This being the position of law, the dispute between the parties cannot be entered upon either by opposite party No. 2 or by Shri J. N. Patnaik appointed as such by the learned Subordinate Judge. A similar view was taken by D. P. Mohapatra, J. in Civil Revn. No. 774 of 1981, State of Orissa v. Ws. Nilgiri Engineering Co-operative Society.

5. In the result, the Civil Revision is allowed and the impugned order is set aside. The learned Subordinate Judge will now take appropriate steps in accordance with law and refer the dispute to the Arbitration Tribunal, Orissa for adjudication. There shall be no order as to costs.