

CASE NO.:
Appeal (civil) 1896 of 2008

PETITIONER:
State of Rajasthan

RESPONDENT:
M/s. Chiesel & Hammer Const. Company

DATE OF JUDGMENT: 10/03/2008

BENCH:
ASHOK BHAN & DALVEER BHANDARI

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO.1896 OF 2008
[Arising out of S.L.P.(C)No.20906 of 2006]
W I T H
C.A.NO.1897 OF 2008
[Arising out of S.L.P.(C)No.3081 of 2007]

Delay condoned.

Leave granted.

State of Rajasthan has filed the present appeals. A notice inviting tender was issued for construction of Ghar Ganga Aquaduct of RMC of Chhapi Project from RP 7225 to 7915 M. Certain time frame was given for completion of the work. Respondent submitted its tender which was accepted and an agreement was entered into between the State Government and the respondent. Since the progress of the work was very slow, the State Govt. issued several notices requesting the contractor to execute the contract in terms of the Agreement. In the year 2001, the contractor is alleged to have abandoned the work. It is also alleged that in spite of a number of notices the respondent-contractor did not re-start the work and instead filed Writ Petition No.482 of 2002 before the High Court for

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appointment of an arbitrator. A learned Single Judge of the High Court dismissed the writ petition by holding that the High Court is not empowered to issue any direction regarding appointment of arbitrator in view of Section 11(6) of the Arbitration & Conciliation Act, 1996 ('the Act'). However, it was clarified that the petitioner was free to move an application before the Standing Committee constituted under Clause 23 of the Agreement for redressal of his grievances. It was also made clear that if he did not want to approach the said Committee, he can move an application under Section 11(6) of the Act before the Chief Justice of the High Court for appointment of an arbitrator.

Respondent filed an application under Section 9 of the Act before the District Judge, Jhalawar. It also filed an application under Section 11(6) of the Act before the High Court for appointment of an arbitrator. Objections were filed by the appellant-State before the High Court which were rejected by order dated 20th November 2003 and the learned Single Judge directed the parties to furnish the names of the persons who could be appointed as arbitrators. The appellant filed an application for modification of the order dated 20th November 2003 which was dismissed by an order dated 09th February 2005. Both these orders are under challenge and are subject-matter of Civil Appeal No.1897 of 2008.

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Learned Single Judge, by order dated 13th July 2006, appointed Shri Bhagwan Das Gupta, retired Chief Engineer, Irrigation Department, Kota, Rajasthan as the sole arbitrator to decide the dispute. This order is also under challenge and is subject-matter of Civil Appeal No.1896 of 2008.

Counsel appearing for State of Rajasthan has relied on Clause 23 of the aforementioned Agreement to contend that the dispute between the parties could have been resolved by referring the dispute to the Empowered Standing Committee under the said clause. Clause 23 of the Agreement is in the following terms :

"Clause 23 : If any question, difference or objection whatsoever shall, arise in any way in connection with or arising out of this instrument or the meaning of operation of any part thereof or the rights, duties or liabilities of either party, then save in so far as the decision of any such matter as herein before provided for and been so decided, every such matter constituting a total claim of Rs.50,000/- or above, whether its decision has been otherwise provided for and whether it has been finally decided accordingly, or whether the contract should be terminated or has been rightly terminated and as regards the rights or obligations of the parties as the result of such termination shall be referred for decision to the empowered standing committee which would consist of the following :-

- (i) Administrative Secretary concerned;
- (ii) Finance Secretary or his nominee not below the rank of Deputy Secretary;
- (iii) Law Secretary or his nominee and not below the rank of Joint L.R.
- (iv) Chief Engineer-cum-Addl. Secretary of the concerned Department;
- (v) Chief Engineer concerned (Member-Secretary)

The Engineer-in-Charge on receipt of application along with prescribed fee (the fee would be two percent of the amount in dispute not exceeding Rupees One Lakh)

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from the contractor shall refer the disputes to the committee within a period of one month from the date of receipt of application."

Counsel also contends that the High Court has erred in appointing an arbitrator when the dispute could have been resolved under the said clause. Further contends that the High Court has not even recorded any reasons therefor.

Counsel for the respondent, without entering into the controversy, states that the matter be now referred to the Empowered Standing Committee for resolution of the simmering dispute between the parties.

Accordingly, we set aside the order of the High Court appointing Shri B.D. Sharma as the sole arbitrator and instead refer the matter to the Empowered Standing Committee constituted by the State of Rajasthan as per Clause 23 of the Agreement for resolving the dispute between the parties. Since the dispute between the parties is pending since 1998, we direct the Empowered Standing Committee to resolve the dispute within a period of six months of the production of a certified copy of this order at its end. Consequently, orders dated 20th November 2003 and 09th February 2005 are also set aside.

The appeals are allowed accordingly. No costs.