REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 947 OF 2006

M/S. LADLI CONSTRUCTION CO. (P) LTD. Appellant (s)

VERSUS

PUNJAB POLICE HOUSING CORPN. LTD. & ORS. Respondent(s)

J U D M E N T

R.M. LODHA, J. :

This Appeal, by special leave, arises from the judgment and order dated November 25, 2002 passed by the Punjab & Haryana High Court.

2. The controversy arises in this way. A contract was entered into between the appellant – M/s Ladli Construction Co. (P) Ltd. (hereinafter referred to as 'the Contractor'), and the respondent Nos. 1 and 2, namely, Punjab Police Housing Corporation Limited and Executive Engineer (Civil), Punjab Police Housing Corporation Limited (hereinafter referred to as 'the Corporation') for construction of 240 houses Type II-A at Urban Estate, Ludhiana at an estimated cost of Rs. 273.84 Lakhs. The contract provided in Clause 2 that time was essence of the contract and the time allowed for carrying out work as entered in the tender shall be strictly observed by

Contractor. The Contractor could not maintain the time schedule and the progress of the work was not observed. The Contractor was directed to push up the progress of work but that also it failed to do. The Contractor was notified that if it failed to take any action to show requisite progress by 30th of April, 1991, action against it under Clause 3 of the agreement would be taken. Still there was no requisite progress in execution of the work by the Contractor. On May 8, 1991, the Corporation resorted to action under Clause 3 of the contract, rescinded the contract and adopted further course by giving unexecuted work to another contractor. The disputes, thus, having arisen between the parties, the Contractor moved the court of Sub Judge, First Class, Chandigarh, for appointment of the arbitrator in terms of Clause 25A of the contract.

3. On the application made by the Contractor for appointment of the arbitrator, the Sub Judge, on May 13, 1992, ordered that matter in dispute may be referred for arbitration as per Clause 25A of the agreement and, accordingly, as per the agreement and the statement of parties, the Sub Judge ordered the Chief Engineer of the Corporation to act as an arbitrator as provided under Clause 25A of the agreement. Both the parties were permitted to file claim and counter claim before the arbitrator.

4. In pursuance of the order dated May 13, 1992,

the Corporation lodged its claim against the Contractor on June 15, 1992. The arbitrator – Chief Engineer of the Corporation - called upon the Contractor to appear before him on June 25, 1992. Thereafter also the arbitrator called upon the Contractor to appear before him. The Contractor, however, did not appear before the arbitrator and instead sent a letter on June 29, 1992 intimating him that his appointment as arbitrator was not acceptable to it; it did not expect any justice and fair play from him and he must refrain from acting as an arbitrator in the case.

5. Thereafter, on July 24, 1992, the Contractor made an application before the Sub Judge, Chandigarh under Sections 5, 11 and 12 of the Arbitration Act, 1940 (for short, 'the 1940 Act') for removal of the arbitrator. The Contractor did not appear before the arbitrator. Consequently, the arbitrator proceeded with the arbitration *ex parte* and passed the award on August 18, 1992.

6. After filing of the award, the Contractor submitted objections under Section 30 of the 1940 Act alleging misconduct on the part of the arbitrator and also objected to the award being made rule of the court.

7. The Sub Judge heard the two applications together - (i) application made by the Contractor for removal of the arbitrator and objections under Section 30, and (ii) application for making the award rule of the court - and by a common order dated May 8, 1995 dismissed the

application made by the Contractor for removal of the arbitrator and made the award dated August 18, 1992 rule of the court and passed decree in terms thereof.

8. The Contractor challenged the common order dated May 8, 1995 passed by the Sub Judge, Chandigarh in appeal before the District Judge, Chandigarh. The District Judge dismissed the appeal on September 19, 1998.

9. Against these two concurrent judgments, the Contractor filed civil revision before the High Court which too was dismissed on November 25, 2002. As noted above, it is from this order that the present Appeal, by special leave, has arisen.

10. We have heard Mr. Rajeev Sharma, learned counsel for the Contractor, and Dr. Balram Gupta, learned senior counsel for the respondent Nos. 1 and 2 – Corporation.

11. Mr. Rajeev Sharma, learned counsel for the Contractor, strenuously urged that the Contractor had reasonable apprehension of bias on the part of the arbitrator as the action of cancellation of contract was taken by the Executive Engineer at the behest of the arbitrator as he was the Chief Engineer of the Corporation. He referred to the inspection made by the Chief Engineer along with other Engineers of the Corporation on October 26, 1990 and the opinion formed by the Chief Engineer on the basis of the inspection that the work was not being carried out by the Contractor in accord with the time

schedule. He also referred to conduct of the arbitral proceedings by the arbitrator, particularly concluding the arbitration proceedings in a short span of about 49 days and that too when the Contractor's application for his removal was pending before the Court. In support of his submission that the arbitrator was biased against the Contractor, the learned counsel also referred to post arbitral conduct of the arbitrator in contesting the Appeal before this Court and filing counter affidavit in opposition to the Appeal.

12. Mr. Rajeev Sharma would highlight two aspects, viz., (i) the arbitration agreement was not placed before the arbitrator, yet he commenced and concluded the arbitral proceedings, and (ii) the award relating to unutilised amount of secured advance which was not claimed by the Corporation was passed, to indicate that the arbitrator was biased. In support of his submissions, the learned counsel relied upon a Constitution Bench judgment of this Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another[1] and a judgment of the House of Lords in Bristol Corporation Vs. John Aird & Co.[2]

13. Dr. Balram Gupta, learned senior counsel for the Corporation, supported the judgment of the High Court. He submitted that only two submissions were made before the

1 [1959] Supp. (1) SCR 319
2 [1911-13] All E.R. 1076

High Court which have been noted and considered and no other point was urged.

14. The arbitration clause in the agreement, i.e., Clause 25A, reads as follows :

> **"Clause 25A. Arbitration etc. - If any question, difference or objection whatsoever shall arise in any way connected with or arising out of this instrument of 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 is hereinbefore 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 results of such termination shall be referred for arbitration to the Chief Engineer of the Punjab Police Housing Corporation, Chandigarh or acting as such at the time of reference within 180 days or in six months from the payment of the final bill to the contractor or from the date registered notice is sent to the contractor to the effect that his final bill is ready for payment and his 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."**

15. The Contractor consciously agreed for the disputes between the parties to be referred for arbitration to the Chief Engineer of the Corporation. The Contractor, at the time of agreement, was in full knowledge of the fact that the Chief Engineer is under full control and supervision of all civil engineering affairs of the Corporation, yet it

agreed for resolution of disputes between the parties by him as an arbitrator. It is a fact that the Chief Engineer inspected the progress of the work given to the Contractor along with other engineers of the Corporation on October 26, 1990. In the course of inspection, the slow progress of the work was brought to the notice of the Contractor on that date. There was nothing unusual about it and, as a matter of fact, on the contract being terminated on May 8, 1991, it was the Contractor who made an application for appointment of arbitrator in terms of Clause 25A of the agreement as it was well aware that the inspection by the arbitrator did not disqualify him to be arbitrator. In the application for appointment of arbitrator, no allegation of any bias or hostility was made against the named arbitrator, i.e., Chief Engineer of the Corporation, rather the Contractor prayed for appointment of arbitrator in terms of the arbitration Clause 25A. When the application came up for consideration before the Sub Judge on May 13, 1992, the advocate appearing for the Contractor also submitted for appointment of the arbitrator as named in the agreement. Before the Court, no allegation was made that the contract was terminated at the instance or behest of the Chief Engineer. These facts clearly show that no case of bias on the part of the Chief Engineer was pleaded or pressed by the Contractor before the court in the proceedings for appointment of the arbitrator. There is

nothing to indicate that something happened after May 13, 1992 which prompted the Contractor to write to the arbitrator on June 29, 1992 that it had lost faith in him.

16. It is pertinent to notice that on May 13, 1992 while referring the disputes between the parties for arbitration as per Clause 25A of the agreement, the Contractor as well as the Corporation were permitted to file claim and counter claim before the arbitrator. The Corporation filed its claim against the Contractor on June 15, 1992. Upon receipt of the claim by the Corporation, the arbitrator called upon the Contractor to appear before him on June 25, 1992. The Contractor did not appear and instead sent a letter to the arbitrator on June 29, 1992 intimating him that his appointment as arbitrator was not acceptable. No steps were taken by the Contractor for removal of the arbitrator immediately. The application for removal of the arbitrator was made almost after 26 days. Although the Contractor prayed before the Sub Judge for stay of the proceedings before the arbitrator but it was not successful in getting any such order on July 24, 1992, or on the subsequent dates, namely, July 30, 1992, August 3, 1992 and August 6, 1992 from the court. In the absence of any stay order from the court and non-appearance by the Contractor, the arbitrator was left with no choice but to proceed *ex parte* and conclude the arbitral proceedings. Merely because the award came to be passed on August 18, 1992,

i.e., a day before the next date fixed before the Sub Judge, it cannot be said that the arbitrator concluded the proceedings hastily or he was biased.

17. The two aspects highlighted by Mr. Rajeev Sharma, learned counsel for the Contractor, regarding (i) non-availability of the agreement before the arbitrator, and (ii) the award of return of unutilised amount of secured advance by him, as grounds of bias have no merit at all.

18. The order dated May 13, 1992 passed by the Sub Judge shows that photocopy of the arbitration agreement was produced before the court. AW-1, who was examined by the Corporation, in his deposition before the arbitrator, has stated that photocopy of the agreement was tendered to the arbitrator. Merely because copy of the agreement was not found by the District Judge in the record of the arbitral proceedings, it cannot be assumed that copy of the agreement between the parties was not placed for consideration before the arbitrator.

19. The arbitrator in his award has awarded interest in the sum of Rs. 1,40,150/- upto December 31, 1991 on the amount of secured advance paid to the Contractor for the period the amount remained unutilised although the Corporation had claimed the interest on that count in the sum of Rs. 1,69,878/-. With regard to award of unutilised amount of secured advance, the arbitrator observed in the award that the exact amount of award will depend upon the

actual unutilised amount of secured advance till realisation. On ascertaining the total amount of unutilised secured advance, it was found to be Rs. 9,63,635.25/-.

20. The District Judge in the appeal preferred by the Contractor in challenging the judgment and decree held in para 21 of the judgment thus :-

> **"....In it unutilised advance of Public Health items as per statement at page 243 of the arbitrator file is Rs. 5,85,423.75ps. The statement of this witness dated 14.8.1992 with statement of interest and principal of the unutilised secured advance of building component is at pages 283-289 of the arbitration file in which unutilised secured advance of building component is mentioned as Rs. 3,73,211.50ps. So the total unutilised secured advance on both the counts comes to Rs. 9,63,635.25ps. The maxim is,*"Certum est quod, certum reddi potest"*. (certain is that which can be made certain). Now, from the perusal of the record of the total unutilised secured advance can be ascertained as Rs. 9,63,635.25ps. Similarly, from the record, the principal amount of the secured advance can also be calculated and on it, interest on the amount of the secured advance paid to the appellant for the period the amount remain unutilised could be calculated. The appellant has not been able to point out that the calculation of this amount as Rs. 1,40,150/- upto 31.12.1991 was wrong or incorrect. Therefore, it would be naïve to contend that the award was vague, evasive or non-committal."**

21. The above finding of the District Judge, Chandigarh, was not challenged by the Contractor before the High Court as is apparent from the impugned order. Thus, there is no merit, at all, in the submission of the learned counsel for the Contractor that the arbitrator awarded unutilised

secured advance for which there was no claim. In any case, this hardly leads to any inference of bias of the arbitrator.

22. In Gullapalli Nageswara Rao and Others (supra) this Court restated the principle of natural justice that the authority empowered to decide the dispute must be one without bias towards one side or the other in the dispute. There can hardly be any doubt about this fundamental principle of natural justice. The question is – Whether on facts, the Contractor has been able to establish that the arbitrator was biased against it ? None of the circumstances pointed out by the Contractor leads to any inference that the arbitrator had any bias, personal or otherwise. No doubt, bias may be found in variety of situations and each case, where bias of adjudicator is alleged, has to be seen in the context of its own facts but a fanciful apprehension of bias is not enough.

23. The observations of the Lord Atkinson in Bristol Corporation (supra), relied upon by the learned counsel for the Contractor, instead of supporting his argument, go fully against the Contractor. In Bristol Corporation (supra) Lord Atkinson stated thus :

> **"...If a contractor chooses to enter into a contract binding him to submit any disputes which arise between him and the engineer of the persons with whom he contracts to that engineer to arbitrate on, then he must be held to his**

> **contract; whether it be wise or unwise, prudent or the contrary, he stipulated that a person who is the servant of the persons with whom he contracted shall be the judge to decide upon matters upon which, necessarily, that engineer or arbitrator has himself formed an opinion. But though the contractor is bound by that contract, still he has a right to demand that, notwithstanding those pre-formed views of the engineer, that gentleman should listen to argument, and should determine the matters submitted to him as fairly as he can, as an honest man; and if it be shown in fact that there is any reasonable prospect that he will be so biased as not to decide fairly upon those matters, then the contractor is allowed to escape from his bargain, and to have the matters in dispute tried by one of the ordinary tribunals of the land. But he has more than that right. If, without any fault of his own, the engineer has put himself in such a position that it is not fitting, or decorous, or proper that he should act as arbitrator in any one or more of those disputes, the contractor has the right of appealing to a court of law to exercise the discretion which s. 4 of the Arbitration Act vests in them....”**

24. The above observations exposit the legal position that a contractor is bound by the contract if he has agreed to submit the disputes to the engineer for arbitration although he has to deal with such engineer under the contract. It needs no emphasis that once the dispute is referred to such arbitrator, the arbitrator has to act fairly and objectively and the proceedings must meet the requirements of principles of natural justice.

25. Insofar as the facts of the present case are concerned, the Contractor moved the court for appointment of the Chief Engineer as arbitrator and then chose not to appear before him. What was the intervening event after

the arbitrator was appointed at his instance that prompted him to ask the arbitrator to recuse is not stated by the Contractor. The Contractor was not successful in getting any final or interim order in the proceedings initiated by it for removal of the arbitrator. The award passed by the arbitrator also does not show that he misconducted in any manner in the proceedings. He gave full opportunity to the Contractor to appear and put forth its case but the Contractor failed to avail of that opportunity.

26. There is no justifiable circumstance on record that enables the Contractor to escape from the bargain that it made under the contract and have the disputes resolved through the process other than agreed.

27. In The Secretary to the Government, Transport Deptt., Madras Vs. Munuswamy Mudaliar and Others[3], this Court stated :-

> **"11... When the parties entered into the contract, the parties knew the terms of the contract including arbitration clause. The parties knew the scheme and the fact that the Chief Engineer is superior and the Superintending Engineer is subordinate to the Chief Engineer of the particular circle. In spite of that the parties agreed and entered into arbitration and indeed submitted to the jurisdiction of the Superintending Engineer at that time to begin with, who, however, could not complete the arbitration because he was transferred and succeeded by a successor. In those circumstances on the facts stated no bias can reasonably be apprehended and made a ground for removal of a named arbitrator. In our opinion this cannot be, at all, a good or valid legal ground. Unless**

3 AIR 1988 SC 2232

there is allegation against the named arbitrator either against his honesty or capacity or malafide or interest in the subject-matter or reasonable apprehension of the bias, a named and agreed arbitrator cannot and should not be removed in exercise of a discretion vested in the Courts under S. 5 of the Act.

12. Reasonable apprehension of bias in the mind of a reasonable man can be a ground for removal of the arbitrator. A predisposition to decide for or against one party, without proper regard to the true merits of the disputes is bias. There must be reasonable apprehension of that predisposition. The reasonable apprehension must be based on cogent materials. See the observations of Mustill and Boyd, Commercial Arbitration, 1982 Edition, page 214. Halsbury's Laws of England, Fourth Edition, Volume 2, para 551, page 282 describe that the test for bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias.

13. This Court in International Airport Authority of India v. K.D.Bali, (1988) 2 JT 1 : (AIR 1988 SC 1099) held that there must be reasonable evidence to satisfy that there was a real likelihood of bias. Vague suspicions of whimsical, capricious and unreasonable people should not be made the standard to regulate normal human conduct. In this country in numerous contracts with the Government, clauses requiring the Superintending Engineer or some official of the Govt. to be the arbitrator are there. It cannot be said that the Superintending Engineer, as such, cannot be entrusted with the work of arbitration and that an apprehension, simpliciter in the mind of the contractor without any tangible ground, would be a justification for removal. No other ground for the alleged apprehension was indicated in the pleadings before the learned Judge or the decision of the learned Judge. There was, in our opinion, no ground for removal of the arbitrator. Mere imagination of a ground cannot be an excuse for apprehending bias in the mind of the chosen arbitrator."

28. In S. Rajan Vs. State of Kerala and another[4], this Court stated :-

> **"12....Thus, this is a case where the agreement itself specifies and names the arbitrator. It is the Superintending Engineer, Buildings and Roads Circle, Trivandrum. In such a situation, it was obligatory upon the learned Subordinate Judge, in case he was satisfied that the dispute ought to be referred to the arbitrator, to refer the dispute to the arbitrator specified in the agreement. It was not open to him to ignore the said clause of the agreement and to appoint another person as an arbitrator. Only if the arbitrator specified and named in the agreement refuses or fails to act the Court does get the jurisdiction to appoint another person or persons as the arbitrator. This is the clear purport of Sub-section (4). It says that the reference shall be to the arbitrator appointed by the parties..."**

29. Where parties enter into a contract knowing the role, authority or power of the Chief Engineer in the affairs relating to the contract but nevertheless agree for him to be arbitrator and name him in the agreement to adjudicate the dispute/s between the parties, then they stand bound by it unless a good or valid legal ground is made out for his exclusion.

30. Except raising the vague and general objections that the arbitrator was biased and had predisposition to decide against the Contractor, no materials, much less cogent materials, have been placed by the Contractor to show bias of the arbitrator. No sufficient reason appears on record as to why the arbitrator should not have proceeded with the

4 AIR 1992 SC 1918

arbitral proceedings. The test of reasonable apprehension of bias in the mind of a reasonable man is not satisfied in the factual situation.

31. We may now deal with the submission of the learned counsel for the Contractor that bias on the part of the arbitrator is also reflected from the fact that he has contested the present Appeal and filed the affidavit in opposition. What would have the arbitrator done when he has been personally impleaded as respondent in the Appeal and the allegations of bias have been made against him. He was left with no choice but to rebut the allegations by filing his affidavit. The arbitrator did what any other person in his place would have done in the circumstances.

32. The view taken by the High Court does not suffer from any infirmity justifying interference by us in our jurisdiction in appeal under Article 136 of the Constitution of India.

33. Civil Appeal is dismissed with no order as to costs.

.....J.
(R.M. LODHA)

NEW DELHI **.....J.**
FEBRUARY 23, 2012 **(H.L. GOKHALE)**