HARI DUTT BHARDWAJ

v.

HARYANA STATE AGRICULTURE MARKETING BOARD, PUNCHKULA & ANR.

MAY 1, 1989

[R.S. PATHAK, CJ. AND S. NATARAJAN, J]

Arbitration Act, 1940: Sections 14 and 30—Award—Whether arbitrator had jurisdiction—Dispute referred to Superintending Engineer Agricultural Marketing Board—A State Government officer on deputation to the Board—Award made when arbitrator was on transfer to parent department—State Government ordering continuance on deputation—Salary paid by Marketing Board—Held arbitrator had jurisdiction to make award.

The respondent—Marketing Board, entered into a contract with the appellant for the construction of their office building. The agreement stipulated that the Superintending Engineer of the Marketing Board would be appointed as the sole Arbitrator in case of a dispute.

A dispute arose in regard to the completion of the construction, and it was decided to refer the matter to arbitration. On 11th March, 1983 the respondent appointed Shri Gupta, Superintending Engineer of the Marketing Board as Arbitrator. While the Arbitrator was seized of the dispute, the Chairman of the Marketing Board purported to revert him to his parent department.

On 6th April, 1984, the Arbitrator made his award which was in favour of the appellant. On 2nd May, 1984 the appellant applied to the Sub-Judge for making the award a rule of the Court. In the meanwhile, on 24th May, 1984, the State Government passed an order confirming that Shri Gupta continued in the post as Superintending Engineer. On 28th February, 1985, the Marketing Board passed a resolution giving effect to the said direction of the Government and extending the deputation tenure of Shri Gupta to 3rd September, 1985. On 30th July 1985, the Trial Court made the award a rule of the Court.

In the appeal to the High Court it was urged that on 6th April, 1984 the date on which the Arbitrator made his Award, the Arbitrator had lost jurisdiction since he had been transfered on 4th April, 1984 from the post of Superintending Engineer of the Marketing Board to his

A **parent department in the State Government. The High Court accepted this plea and reversed the order of the Trial Court and set aside the Award.**

In the appeal by the contractor to this Court, the question was; whether the Arbitrator, Shri Gupta had jurisdiction to make the award B **on 6th April, 1984 or had lost jurisdiction because of the order dated 4th April, 1984 reverting him to his parent department.**

Allowing the appeal,

HELD: 1. Shri Gupta was on deputation with the Marketing C **Board up to September 4, 1984. He was prematurely required by the Chairman of the Marketing Board by order dated 4th April, 1984 to revert to his parent department. The State Government, however, ordered on 24th May, 1984 that Shri Gupta would continue on deputation with the Board. In fact, Shri Gupta did not even resume a post in his parent department. [852A-B]**

D

2. The necessary consequences of the order of the State Government continuing Shri Gupta on deputation with the Marketing Board was to nullify the order dated 4th April, 1984 passed by the Chairman purporting to revert him to his parent department. It is clear from the records that Shri Gupta was paid his salary by the Marketing Board for E **the entire month of April 1984, a circumstance which establishes that he was continuing with the Board when he made the Award. Shri Gupta must, therefore, be deemed to have enjoyed jurisdiction as Arbitrator on 6th April, 1984 when he made the Award. The deputation of Shri Gupta with the Marketing Board did never terminate. [852B-D]**

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2591 of 1989.

From the Judgment and Order dated 12.3.1986 of the Punjab and Haryana High Court in F.A.O. No. 986 of 1985.

G Rajinder Sachar, E.S. Agarwala, H.D. Bhardwaj, J.S. Manhas and R.K. Kapoor for the Appellant.

Dr. Y.S. Chitale, K.B. Rohatgi and Baldev Atreya for the Respondents.

H The Judgment of the Court was delivered by

PATHAK, CJ. Special leave granted.

This appeal by special leave is directed against the order of the High Court of Punjab and Haryana setting aside an arbitration award.

The Haryana State Agricultural Marketing Board (referred to shortly as the "Marketing Board") entered into a contract with the appellant for the construction of their office building at Panchkula near Chandigarh. It was stipulated that the work would be completed within six months. It was also stipulated that in case of a dispute between the parties, the Superintending Engineer of the Marketing Board would be appointed as sole Arbitrator.

A dispute arose between the parties in regard to completion of the construction, and it was decided to refer the matter to arbitration. On 11 March, 1983 the respondent appointed Shri D.P. Gupta, Superintending Engineer of the Marketing Board as Arbitrator. While the Arbitrator was seized of the dispute between the parties, the Chairman of the Marketing Board purported to revert him to his parent Department. On 6 April, 1984 the Arbitrator made his Award. Under the Award the appellant was held entitled to Rs.55,242.66 with interest. On 2 May, 1984 the appellant applied before the learned Subordinate Judge, 1st Class, Chandigarh, for making the Award a rule of the Court.

Meanwhile, on 24 May, 1984 the State Government passed an order confirming that Shri D.P. Gupta continued in his post as Superintending Engineer of the Marketing Board. On 28 February, 1985 the Marketing Board passed a resolution, giving effect to the direction of the Government extending the deputation tenure of Shri D.P. Gupta to 3 September, 1985. On 30 July 1985 the Trial Court made the Award a rule of the Court. In appeal to the High Court, it was urged that on 6 April, 1984, the date on which the Arbitrator made his award, the Arbitrator had lost jurisdiction since he had been transferred out on 4 April, 1984 from the post of Superintending Engineer of the Marketing Board to his parent Department in the Haryana Government. The High Court accepted the plea and reversed the order of the Trial Court and set aside the Award.

The sole question before us is whether the Arbitrator, Shri D.P. Gupta, had jurisdiction to make the Award on 6 April, 1984 or had lost jurisdiction because of the order dated 4 April, 1984 reverting him to his parent Department. The material before us shows that Shri D.P.

A Gupta was on deputation with the Marketing Board up to September 4, 1984 and that he was prematurely required by the Chairman of the Marketing Board by order dated 4 April, 1984 to revert to his parent Department. The State Government, however, ordered on 24 May, 1984 that Shri D.P. Gupta would continue on deputation with the
B Board, and it is not disputed that Shri Gupta rejoined the Board. He did not in fact ever resume a post in his parent Department. The necessary consequence of the order of the State Government continuing him on deputation with the Marketing Board was to nullify the order dated 4 April, 1984 passed by the Chairman purporting to revert Shri Gupta to his parent Department. It appears from the record that Shri Gupta was paid his salary by the Marketing Board for the entire
C month of April 1984, a circumstances which establishes that the Board itself considered him as continuing on deputation when he made the Award. That being so, he must be deemed to have enjoyed jurisdiction as Arbitrator on 6 April, 1984 when he made the Award. The deputation of Shri Gupta with the Marketing Board did never terminate.

D In the result the appeal is allowed, the judgment and order of the High Court are set aside and the judgment and decree of the Trial Court are restored. No Order as to costs.

N.V.K. Appeal allowed.