

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 4076 OF 2004

KARNATAKA NEERAVARI NIGAM LTD. ... APPELLANT(S)

VERSUS

M/S B.T. PATIL & SONS & ORS. ...RESPONDENT(S)

O R D E R

Heard learned counsel for the appellant and learned senior counsel for the respondents.

The appellant has questioned the correctness of the Order dated 19.12.2003 passed in Review Petition No. 869 of 2002 by the Karnataka High Court and prayed to set aside the same, urging various legal contentions.

Having regard to the peculiar facts and circumstances of the case, particularly the submission made on behalf of the State of Karnataka, representing Irrigation Department, through Deputy Commissioner, Belgaum, respondent No. 2 herein, who was the appellant in the Regular First Appeal filed before the High Court, that Clause 30 of the Agreement is arbitration clause, therefore, requested the High Court to set aside the decree and the dispute between the parties may be referred to the arbitration by

appointing an arbitrator, acceding to the said submission, the High Court has set aside the decree passed in favour of the respondents and referred the matter to the arbitrator, namely, Sri M.S. Ramanathan, Retired Chief Engineer, Brindavan. Subsequently, the appellant came on record as a successor in interest of the Irrigation Department as it has been incorporated under the Companies Act. The said Irrigation Department which was under the Karnataka State Government transferred by virtue of the incorporation of the appellant-corporation. The corporation filed an application to review the order referring the dispute to an arbitrator and appointing an arbitrator. That review petition was dismissed by the High Court vide Order dated 7.02.2003. That order was challenged before this Court. This Court vide its Order dated 31.10.2003, after elaborately referring to the rival legal contentions, set aside the order of the High Court passed in the review petition and remanded the matter to the High Court for its reconsideration.

The Karnataka High Court has passed the impugned order rejecting all the contentions urged on behalf of the appellant affirming the order of appointment of the arbitrator by the High Court of Karnataka. The

correctness of the same is challenged in this appeal, urging various legal contentions.

There is no need for us to advert to the legal contentions in this order having regard to the facts narrated above and submission made by learned counsel for the appellant.

Mr. Naveen R. Nath, learned counsel appearing on behalf of the appellant, submits on instructions received from the appellant that, having regard to the undisputed fact that its predecessor, Irrigation Department of Karnataka, State of Karnataka, made a concession before the High Court and got the matter referred to for the arbitration by appointment of a named arbitrator, though in the impugned order liberty was given to raise the issue with regard to the jurisdiction of the arbitral tribunal, the appellant will not avail such liberty reserved in the order and further submits, on instructions from the officers concerned, that the appellant having regard to the peculiar facts more so the time spent on this litigation before the arbitrator and before this Court and the appellant had the benefit of interim stay, it would be just and proper for this Court that the matter be referred to the arbitrator to arbitrate the

dispute. The challenge made in this regard in the review petition and the order of rejection will not be pressed in these proceedings at this stage. Since the arbitrator appointed is no more, therefore, he made a submission that having regard to the nature of the claim made by the respondents, a retired High Court Judge may be appointed. His submission is placed on record.

Having regard to the submission made on behalf of the learned counsel for the appellant, we are not inclined to interfere with the impugned order challenged in this appeal. We appoint Mr. Justice Mohd. Anwar, Retired Judge of Karnataka High Court as an arbitrator to arbitrate the dispute between the parties from the stage, at which the proceedings are left out by the previous arbitrator. Needless to mention that if the arbitrator feels that any special technical assistance is required, he can avail the same by appointing a suitable Engineer in this regard. The expenses of the arbitration proceedings will be borne by the parties.

It is needless to mention that having regard to the fact that the suit was filed in the year 1988, the matter is being litigated by the parties for more than

two decades, it would be just and proper for this Court to make an observation that the arbitrator, who is appointed by this Court, shall expedite the hearing and dispose of the matter not later than six months from the date of receipt/production of a copy of this order. The Arbitrator is at liberty to fix his terms and conditions with regard to Arbitration and incidental charges.

With the abovesaid observations and directions, this appeal is disposed of. The Registry is directed to communicate this order to the Arbitrator, whose residential address shall be furnished by either of the counsel of the parties.

.....J.
(V. GOPALA GOWDA)

.....J.
(C. NAGAPPAN)

NEW DELHI,
OCTOBER 16, 2014

ITEM NO.101

COURT NO.12

SECTION IVA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 4076/2004

KARNATAKA NEERAVARI NIGAM LTD.

Appellant(s)

VERSUS

M/S. B.T. PATIL & SONS & ORS.
(With office report)

Respondent(s)

Date : 16/10/2014 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE C. NAGAPPAN

For Appellant(s) Mr. Naveen R. Nath, Adv.
Mr. Darpan K.M., Adv.
Ms. Lalit Mohini Bhat, Adv.

For Respondent(s) Mr. B.P. Patil, Sr. Adv.
Mr. Amit Sharma, Adv.
Mr. Dipesh Sinha, Adv.
Mr. Kunal Cheema, Adv.

Mr. Anupam Lal Das, Adv.

Mr. V.N. Raghupathy, Adv.
Mr. Lagnesh Mishra, Adv.
Mr. Parikshit P. Angadi, Adv.
Mr. Sanjay R. Hegde, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is disposed of in terms of the signed order. The Registry is directed to communicate this order to the Arbitrator, whose residential address shall be furnished by either of the counsel of the parties.

(S. K. RAKHEJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)