

(Part-heard)

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

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5352 OF 2002

M/S. KLASSIC CONSTRUCTION (PVT.) LTD.

Appellant (s)

VERSUS

M/S. ARMY WELFARE HOUSING ORGANISATION

Respondent(s)

(With office report)

Date: 25/05/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE Dr. JUSTICE AR. LAKSHMANAN

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s) Mr. P.N. Kumar, Adv.

Mr. Anurag Kumar, Adv.

Mr. Rishi Kesh,Adv.

For Respondent(s)

Mr. Arvind Kumar Tewari,Adv.

UPON hearing counsel the Court made the following

O R D E R

passed by Civil appeal is disposed of in terms of signed order. The interim order

this court stands vacated.

ra)

(Pardeep Kumar)

(Phoolan Wati Aro

Court Master

Court Master

[Reportable signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPAL NO. 5352 OF 2002

M/S. KLASSIC CONSTRUCTION PVT. LTD.

...APPELLANT(S)

VERSUS

M/S. ARMY WELFARE HOUSING ORGANISATION ...RESPONDENT(S)

O R D E R

Heard Mr. P.N. Kumar, learned counsel for the appellant and Mr. Arvind Kumar Tewari, learned counsel for the respondent. The appellant before us is a contractor. The respondent is the Army Welfare Housing Organisation represented by its Chairman/Managing Director.

Both the appellant and respondent entered into an agreement on 8.5.1990 by which the contract was awarded to the appellant for executing certain construction works. Clause 131 of the contract deals with the arbitration which reads as under:

"131. If any dispute arises and persists between the contractor and Employer, the same shall be referred to the Sole Arbitrator to be appointed by the Chairman, Army Welfare Housing Organisation, whose award shall be final and binding on both parties. The Arbitrator shall submit his award within four months of his entering on the reference. This period may be extended by the Arbitrator with the consent of both the parties."

On 17.5.2006, after hearing both the parties, we passed a detailed order directing the Army Welfare Housing Organisation to submit a panel of three names to this Court with a copy to the learned counsel for appellant in the form of an affidavit. Pursuant to the said directions, an affidavit dated 22.5.2006 on behalf of respondent has been filed before us. A copy of the said affidavit has also been served on the counsel for the appellant. The affidavit reads thus:

"An affidavit on behalf of the Respondent of the compliance of orders/directions dated 17.05.2006 of this Hon'ble Court.

I, Col. A.K. Opal, Secretary Army Welfare Housing Organisation, a society registered under the Society Registration Act XXI of 1860 having its registered office at South Hutments, Kashmir House, Rajaji Marg, New Delhi 110011 do hereby solemnly affirm on oath and state as follows:

That I am the secretary of the respondent society in the aforesaid case. I am conversant with the facts and circumstances of the case, as such competent to affirm

this affidavit.

1. I say that after hearing the counsels of the parties in the aforesaid case this Hon'ble Court vide it's order dated 17.05.2006 was pleased to direct the Ex-Officio Chairman of the Army Welfare Housing Organisation/ respondent herein, to nominate a panel of three names out of which this Hon'ble Court may appoint one such nominee as a sole arbitrator to adjudicate the disputes between the parties herein.

2. I say that in compliance to the order(s) / direction(s) dated 17.05.2006 of this Hon'ble Court, Ex-Officio Chairman of the Army Welfare Housing Organisation / respondent herein, has been pleased to comply with the directions of this Hon'ble Court and has nominated a panel of the following three engineer officers:

a. Brig. Anil Wasan, age 53 years, Deputy Director General (Navy & Defence Production), Officer shall superannuate from present appointment on 31 July 2008.

b. Brig AK Jairath, age 52 years, Deputy Director General (Policy Planning and Coordination). As a sole arbitrator has adjudicated 06 cases. Tenure of the officer in the present appointment is till November 2008. Officer superannuates in 2011.

c. Mr. Satish Chandar, age 49 years, Joint Director General (Contracts). Officer's tenure in present appointment is till Aug 2009. Officer superannuation in January 2017. As a sole arbitrator has adjudicated 40 cases.

3. I say that none of the aforesaid three officers are in any

way involved in the management of the respondent

herein.

In the premise, it is most respectfully prayed that this

Hon'ble Court be pleased to:

- a. Order/direct one of the aforesaid three named officers as a sole arbitrator to adjudicate the disputes between the parties herein and publish a speaking award;
- b. Order/direct the sole arbitrator to adjudicate the disputes between the parties herein from the stage from where the erstwhile sole arbitrator(s) could not proceed with the adjudication of the disputes between the parties pursuant to the orders dated 25.01.2002 of this Hon'ble Court;
- c. Order/direct the parties to amend their respective claims and counter claims, if they so desire, as already filed before the erstwhile sole arbitrator (s);
- d. Any other order(s)/direction(s) in the circumstances of the case as may be deemed fit and appropriate by this Hon'ble Court."

We gave option to the counsel for the appellant to select one

name among the three from the panel. Learned counsel for the

appellant suggests the name of Mr. Satish Chandar, who is now

working as Joint Director General (Contracts) as the sole Arbitrator.

Learned counsel for the respondent has no objection in nominating

Mr. Satish Chandar as the sole Arbitrator. Accordingly, we, by

consent of both the parties, nominate Mr. Satish Chandar as the sole

Arbitrator. The parties will inform Mr. Satish Chandar that he has been appointed as a sole Arbitrator to adjudicate upon the disputes between the parties. Both parties are at liberty to file any additional documents before the said sole Arbitrator. The sole Arbitrator shall adjudicate the disputes between the parties and pass a speaking award. The sole Arbitrator shall adjudicate the disputes between the parties from the stage from where the erstwhile sole Arbitrator could not proceed with the adjudication of disputes between the parties pursuant to the order, passed by this Court on 25.1.2002. Parties are at liberty to amend their respective claims and counter-claims, if they

so desire. The parties are at liberty to approach the sole Arbitrator for any further direction. The sole Arbitrator is directed to complete the arbitration proceedings within six months from the date of entering upon the reference.

The sole Arbitrator shall enter upon the reference on or before 15.6.2006. Additional documents, if any, shall be filed within four weeks from the date of entering upon the reference. The Civil Appeal is disposed of accordingly. A copy of this order shall also be forwarded to the sole Arbitrator Mr. Satish Chandar c/o Engineering in Chief Branch, Army Welfare Housing Organisation, South Hutments, Kashmir House, Rajaji Marg, New Delhi 110011.

The interim order passed by this Court stands vacated. The sole Arbitrator shall submit his award to this Court.

..J.

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(Dr. AR. Lakshmanan)

..J.

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(Lokeshwar Singh Panta)

New Delhi;

May 25, 2006.