

**(2001) 12 DEL CK 0084**  
**In the Delhi High Court**  
**Case No : CW No. 7256 of 2001**

|                                    |    |            |
|------------------------------------|----|------------|
| Advanced Ocean Systems (P) Limited | Vs | APPELLANT  |
| Delhi Jal Board and Another        |    | RESPONDENT |

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**Date of Decision :** 13-12-2001

**Acts Referred:**

Arbitration Act, 1940 — Section 9  
Arbitration and Conciliation Act, 1996 — Section 36, 9  
Constitution of India, 1950 — Article 226

**Citation :** (2001) 12 DEL CK 0084

**Hon'ble Judges :** Mukul Mudgal, J

**Bench :** Single Bench

**Advocate :** R. Venkataramani and S. Arvinth, for the Appellant; Gita Mittal, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Mukul Mudgal, J.—This writ petition prays the following relief:

i) grant a writ of mandamus or any other appropriate writ or order restraining the respondents their men, agents or assigns from in any manner interfering with the petitioner retrieving their equipment from the site namely wireless centre and also carry out the necessary activities of distancing in order to preserve the site from causing any irreversible environmental damage.

2. The petitioner who is a contractor had entered into contract with the Respondent No. 1, Delhi Jal Board, for the restoration/rehabilitation of settled portion of 2200mm dia Ring Road Trunk Sewer near Gurudwara Damdama Sahib wireless centre and zoo. The relevant arbitration clause in the Contract reads as follows:

"Clause - 25 Arbitration Clause

1. Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, designs ,drawings and instruction

hereinbefore mentioned and as to the quality of workmanship or materials used on the work or as to any other question claim right matter of thing whatsoever, in any way arising out of or relating to the contract, designs, drawings specifications estimates, instructions order or these conditions or otherwise concerning the work or the execution or the execution or the execution of failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof, shall be referred to the sole arbitration of the CEO Delhi Jal Board or any person nominated by the CEO in his behalf. The award of the arbitration shall be final conclusive and binding on all parties to this contract".

3. The learned senior counsel for the petitioner Shri R.Venkataramani has relied on Clause 25(4) of the Arbitration to contend that only such dispute can be referred as are though fit by the CEO of Delhi Jal Board. The case of the petitioner is that since the property of the petitioner has been sought to be blocked by the respondent and such an action is totally without authority of law, a writ petition is maintainable. He further contends that public body is not entitled to act arbitrarily and indeed lawlessly in its dealings with a private body such as a petitioner. He further submits that in view of this stark arbitrariness of the impugned action he has approached the writ court.

4. Section 9 of the Arbitration and Conciliation Act,1996 (hereinafter referred to as the Act) reads as under:

"9. Interim measures, etc. by court. -- A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a court :--

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters ,namely:-

(a) the preservation, interim custody or sale of any goods which are the subject matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration ;

(c) the detention, preservation or inspection of any property or thing which is the subject matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made ,or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment or a receiver;

(e) such other interim measure of protection as may appear to the court to be

just and convenient,

and the Court shall have the same power formaking orders as it has for the purpose of, and in relation to, any proceedings before it.

5. Learned senior counsel for the petitioner does not dispute that the measures sought by the writ petition may fall within the sweep of Clause (e) of Section 9 of the Act. It is further submitted that the action of the respondent is so arbitrary and the situation so emergent that the petitioner was compelled to come to this Court under Article 226 of the Constitution. Learned senior counsel for the petitioner has further submitted that a request for the appointment of an arbitrator was made and the arbitrator has not yet been appointed.

6. I am prima facie of the view that the prayers sought to be raised in the writ petition would fall within the ambit of Clause 25 (1) i.e. arbitration particularly when the relevant portion of the said arbitration clause is very widely worded as under:

"as to the quality of workmanship or materials used on the work as to any other question claim right matter of thing whatsoever, in any way arising out of or relating to the contract, designs, drawings specifications estimates, instructions order or these conditions or otherwise concerning the work or the execution or the execution or the execution of failure of execute the same whether arising during the progress of the work or after the completion or abandonment thereof, shall be referred to the sole arbitration of the CEO Delhi Jal Board or any person nominated by the CEO in his behalf".

7. In Sundram Finance case the Hon'ble Supreme Court has held that orders u/s 9 can be sought in advance of the appointment of the arbitrator provided there is a direction to appoint an arbitrator within a specified time. I am thus satisfied that the order/protection, if any, that the petitioner may be entitled to, can only be sought u/s 9 of the Arbitration Act in appropriate proceedings. In this view of the matter, the writ petition is not maintainable and is accordingly dismissed in limine. *dusty*.