
(2014) 11 SHI CK 0054
In the High Court Of Himachal Pradesh
Case No : Arb. Case No. 57 of 2014

Ahluwalia Contracts (India) Ltd.

APPELLANT

Vs

HPSEB Limited

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6)

Citation : (2014) 11 SHI CK 0054

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : S.K. Maniktala and Ankush Dass, Advocate for the Appellant; J.S. Bhogal, Senior Advocate and Satish Sharma, Advocate for the Respondent

Judgement

Dharam Chand Chaudhary, J.—In this petition under Section 11(6) of the Arbitration and Conciliation Act, a prayer has been made for appointment of Arbitrator in terms of clause 4.41.1 of the contract agreement, Annexure P-4. The complaint is that the Chairman of the respondent-Company has not appointed the Arbitrator irrespective of the demand in this regard raised vide notice dated 4th August, 2014 (Annexure P-25) served upon the respondent-Company by the petitioner contractor.

2. In response to the petition on behalf of the respondent-Company, a question of maintainability on the ground that the arbitrator stands appointed well within the period of thirty days from the date of issuance of the notice vide order Annexure R-1 by the competent authority, has been raised. The petition therefore, has been sought to be dismissed on this score alone.

3. Mr. S.K. Maniktala Advocate assisted by Mr. Ankush Dass, Advocate has vigorously argued that the appointment of the arbitrator has not been made by the competent authority within thirty days from the date of issuance of notice Annexure P-25. Also that on the basis of order Annexure R-1, the Arbitrator has been appointed to resolve the dispute qua which no notice ever was served upon the petitioner-contractor. Mr. Maniktala, has further canvassed that the officer,

Chief Engineer (Generation) HPSEB Limited Sundernagar, is under the direct control of Director Technical, who has rejected the claims of the contractors sought to be referred for resolution to the Arbitrator. Mr. Maniktala, therefore, apprehends that the Arbitrator so appointed may not conduct the proceedings in a fair and impartial manner.

4. Mr. J.S. Bhogal, Senior Advocate, assisted by Mr. Satish Sharma, Advocate while reiterating the stand of the respondent-Company in reply to the petition has urged that the appointment has been made by the competent authority i.e. the Chairman strictly in accordance with the terms of contract agreement. Mr. Bhogal has fairly submitted that during the course of the proceedings by the Arbitrator, the claims as referred to in the notice Annexure P-25 certainly will be looked into by the arbitrator. Also that the recital in the order of appointment that "for non completion of the Turnkey Project by M/s. Ahluwalia Contracts (India) Ltd." should not be misconstrued to infer that the claims of the petitioner-contractor will not be entertained or looked into. It has further been canvassed that the respondent-Company has appointed the arbitrator and any grouse in this behalf of the petitioner-contractor can be taken care of under the provisions in the Arbitration and Conciliation Act by the Arbitrator so appointed.

5. On analyzing the submissions made on both prepared note dated 28.8.2011 with regard to the appointment of the arbitrator for perusal and order by the competent authority. Para 6 of the note reads as follows:

"The Firm's Advocate (Maniktala & Associates) vide letter No. SKM/Gen/14-2303/R dated 09.08.2014 (Annexure-A) has forwarded the copy of their letter No. SKM/Gen/14-2303 dated 04.08.2014 wherein the firm has issued notice and requested to appoint Arbitrator. The reply of notice is annexed as Annexure-B"

6. The CHDM has suggested the following for being appointed as Arbitrator:-

"The Chief Engineer (PCA), HPSEBL, Vidyut Bhawan, Shimla-04.

Or

The Chief Engineer (MM), HPSEBL, Vidyut Bhawan, Shimla-04.

Or

The Chief Engineer (SO & P), HPSEBL, Vidyut Bhawan, Shimla-04.

Or

The Chief Engineer (Gen.), HPSEBL, Sundernagar.

Or

The Chief Engineer (Comm.), HPSEBL, Shimla-04."

7. The papers were routed through proper channels i.e. right from the Assistant Executive Engineer upto the Chairman of the respondent-Corporation on

28.8.2014 itself. The Chief Engineer (P & M) in his note at Sl. No. 11 has given the following proposal for appointment of Arbitrator:-

"May appoint by designation, Chief Engineer (Generation) as Arbitrator and concerned ASE/Sr. Xen (Designs) o/o S.E. (Designs) E.S. Hamirpur as presenting officer in the matter please."

8. The papers were further routed to the Chairman of the respondent-Company through the Managing Director and the Chairman has approved the proposal reproduced supra. This has resulted in issuance of office order Annexure R-1, dated 30.8.2014.

9. The original record amply demonstrates that the appointment of Arbitrator vide Annexure R-1 has approval of the Chairman. Merely that the order Annexure R-1 has been signed by Chief Engineer (P & M), Shimla should not be taken to infer that it is the Chief Engineer, who has appointed the Arbitrator. The Arbitrator rather has been appointed by a competent authority i.e. Chairman well within thirty days from the date of issuance of the notice Annexure P-25 by the petitioner-contractor.

10. It cannot also be said that the Arbitrator so appointed will not adjudicate the claims of the petitioner-contractor detailed in the notice Annexure P-25 for the reasons that the notice was placed before the authorities at the time of submission of papers for appointment of arbitrator. The arbitrator has, therefore, been appointed after taking into consideration the notice and the claims laid therein by the petitioner-contractor. It is for this reason that the copy of the order of appointment of arbitrator has been endorsed to the petitioner-contractor through Shri S.K. Maniktala, Advocate as it is he who issued the notice to the respondent-Company on behalf of the petitioner-contractor.

11. The words in the order "for non completion of the Turnkey Project by M/s. Ahluwalia Contracts (India) Ltd." denote to the name of the work awarded to the petitioner-contractor and non completion thereof and should not be made to understand that the Arbitrator has not been appointed consequent upon the issuance of notice by the petitioner-contractor and rather on the request of respondent-Company without serving the petitioner-contractor with a notice in this behalf. There should be no doubt qua the adjudication of the claims of the petitioner-contractor raised in the legal notice Annexure P-25 by the Arbitrator, of course taking into consideration the counter claims, if any, of the respondent-Company also. Mr. Bhogal, therefore, is absolutely justified in claiming that the petition is not maintainable in view of the appointment of the arbitrator made by the competent authority well within the time prescribed therefor. The petitioner-contractor, if aggrieved, in any manner whatsoever, by such appointment is at liberty to set into motion the machinery provided under the Arbitration and Conciliation Act itself.

12. If coming to the apprehension of Mr. Maniktala that the fair and impartial proceedings are not expected from the arbitrator so appointed, irrespective of

this Court has held that this petition is not maintainable, it would not be improper to conclude that such apprehension is not well founded particularly when the agreement to which the petitioner-contractor is one of the parties provides for appointment of an arbitrator atleast in the rank of Chief Engineer by the Chairman of the respondent-Company. This also deals with other grounds of the petitioner-contractor that the Arbitrator has not been appointed by name but by designation for the reasons that in the agreement there is no requirement of appointment of the Arbitrator by name.

13. The fairness and impartiality of the Arbitrator cannot be doubted at this stage and in the event of an instance of partiality and biasness comes to the notice of the petitioner-contractor; he will be at liberty to resort to the remedy in this regard available to him in accordance with the provisions contained under the Act. The apex Court in para 39 of the judgment rendered in Indian Oil Corporation Ltd. and Others Vs. Raja Transport (P) Ltd., no doubt has observed that the Government/Statutory authorities have to reconsider their policy of appointment of employee Arbitrator in deference to the specific provisions of the new Act reiterating the need for independence and impartiality in the arbitration proceedings, however, at the same time it has further been observed by the apex Court in the judgment supra that the independence or impartiality of an Arbitrator, a Senior Officer, should not be doubted in the absence of any specific evidence.

14. In view of what has been said hereinabove, the petition is dismissed. Pending application(s), if any, shall also stand disposed of.