

(1994) 01 DEL CK 0011
In the Delhi High Court
Case No : Suit No. 781 of 1992

Ahluwalia Contracts (India) Ltd.

APPELLANT

Vs

I.F.S. Co-operative Group Housing Society Ltd.

RESPONDENT

Date of Decision : 10-01-1994

Acts Referred:

Citation : (1994) 1 AD 228 : (1994) 1 ARBLR 186 : (1994) 53 DLT 247

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : J.R. Midha, K.S. Sidhu and Maldeep Sidhu, for the Appellant;

Judgement

Sat Pal, J.

(1) This is a petition filed by

(2) Mr. Midha, the leader Counsel appearing on behalf of the Contractor drew my attention to the arbitration clause and submitted that since the Society has admitted the fact of the existence of the dispute between the parties, the disputes mentioned in the petition should be referred to arbitration in terms of the arbitration clause. Dealing with the submissions made in the reply filed on behalf of the Society that there was no agreement enforceable by law between the parties for referring the dispute to arbitration, the leader Counsel submitted that the Society cannot refuse to refer the dispute to arbitration in terms of the law laid down by the Supreme Court in Union of India (UOI) Vs. Prafulla Kumar Sanyal, and by a Full Bench of this Court in Ved Prakash Mittal Vs. Union of India and Others, .

(3) Dr. Sidhu, the learned Counsel appearing on behalf of the Society, however, submitted that in the present case as per the terms of the arbitration clause one of the parties to the contract ;(,". the Society has the caption to make a reference to the arbitration or not to make a reference and if the Society opts not to make a reference, then the dispute cannot be ruffed to arbitration at all. He further submitted that in the case of Ved Prakash Mital (supra) decided by

a Full Bench of this Court the option to refer the dispute or not to refer the dispute was not with one of the parties to the contract but was with the Chief Engineer and since the Chief Engineer was not a party to the contract, the decision in the case of Ved Prakash Mital (supra) was distinguishable from the facts of the present case. He further submitted that on the same ground the decision of the Supreme Court in the case of Prafulla Kumar Sanyal (supra) was distinguishable from the facts of the present case. In this connection he also referred to a Division Bench judgment of this Court in Union of India v. Bharat Engineering Corporation, (1977) 2 Del 57 and a decision of this Court in the case of P.C. Aggarwal Vs. K.N. Khosia etc., and also referred to Russel on the Law of Arbitration (20th Edition). I may also point out here that the leader Counsel for the Society did not advance any other reason except mentioned hereinabove to justify refusal of the Society to refer the disputes.

(4) I have given my though full consideration to the submissions made by the learned Counsel for the parties and have also perused the record. Before dealing with the rival contentions urged on behalf of the parties it will be relevant to reproduce the arbitration clause which reads as under:-

"57.ARBITRATION, Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, designs, drawing and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right matter or thing whatsoever, in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or those conditions or otherwise concerning the works or the execution or 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 person appointed by the Society. It will be no objection to any such appointment that the arbitrator so appointed is an Officer/Employee of the Society and that he had to deal with the matters to which the contract relates and that in the course of his duties as such Officer/Employee he had expressed views on all or any of the matters in dispute or difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, the Society at the time of such transfer, vacation of office or inability to act, shall appoint another person to act as arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the stages at which it was left by his predecessor. It is also a term of this contract that no person other than a person appointed by the Society should act as arbitrator and, if for any reason that is not possible, the matter is not to be referred to arbitration at all. In all cases where the amount of the claim in dispute is Rs.50,000.00 (Rupees Fifty thousand only) and above, the arbitrator shall give reasons for the award. Subject as aforesaid the provisions of the Arbitration Act, 1940, or any statutory modification or re/enactment thereof and the rules made there under and for the time; being in force shall apply to the arbitration proceeding under the clause. It is a term of the contract that the party invoking

arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each such dispute. The arbitrator may, from time to time with the consent of the parties enlarge the time, for making and publishing the awards."

(5) From the arbitration clause mentioned hereinabove the learned Counsel for the Society has relied on the following portion;-

"IT is also a term of this contract that no person other than a person appointed by the Society should act as arbitrator and, if for any reason that is not possible, the matter is not to be referred to arbitration at all."

(6) The relevant portion from the arbitration clause which was the subject matter before the Full Bench in the case of Ved Prakash (supra) is also reproduced herein below:-

"IT is also a term of this contract that no person other than a person appointed by such Chief Engineer or the Administrative Head of the C.P.W.D., as aforesaid should act as arbitrator and if for any reason that is not possible, the matter is not to be referred to arbitration at all."

(7) From the arbitration clause in the present case and in the case of Ved Prakash (supra) I do not find any material difference. Whereas in the case of Ved Prakash (supra) the contract was between the Union of India and the Contractor and the Chief Engineer, who was the Administrative Head of the Department of the Union of India, was given the option to refer the dispute to arbitration or not to refer the disputes to arbitration, in the present case the option has been given to the Society itself, who is a party to the contract. In my opinion it makes no difference whether such an option has been given to one of the parties to the contract or to an officer of one of the parties to the contract. I am, Therefore, of the view that the present case is fully covered by the decision of the Full Bench in the case of Ved Prakash (supra) and as such the dispute raised by the petitioner has to be referred to arbitration in terms of the arbitration clause.

(8) As the matter is fully covered by a decision of Full Bench of this Court, the judgments relied upon by the learned Counsel for the Society in the cases of Bharat Engineering Corporation (supra) and P.C. Aggarwal (supra), which were rendered by Division Bench of this Court, are of no assistance to the respondent Society. Besides the said judgments relied upon by the learned Counsel for the Society, are not direct on the point involved in this case. In view of the above discussion the petition is allowed and I direct the respondent Society to refer the disputes mentioned in the petition to arbitration in terms of the Arbitration Clause 57 within two months from the date of this order. The parties are, however, left to bear their own costs.