
(1997) 05 DEL CK 0020
In the Delhi High Court
Case No : Suit No. 532 of 1993

Airtech Pvt. Ltd.

APPELLANT

Vs

New Delhi Municipal Committee and others

RESPONDENT

Date of Decision : 06-05-1997

Acts Referred:

Citation : (1997) 4 AD 44 : (1997) 2 ARBLR 162 : (1997) 67 DLT 582 : (1997) 42 DRJ 110

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : Sh. D. Mishra, for the Appellant; Sh. H. Ahmadi, for the Respondent

Judgement

Anil Dev Singh, J.—The parties entered into an agreement whereby the petitioner was required, to undertake work for fabrication and erection of 5 numbers refuse compactors of 14 cum capacity each to be mounted on Ashok Leyland Chassis. Disputes arose between the parties and notice was given by the petitioner to the respondent for appointment of an Arbitrator in terms of Clause 11 of the agreement. The respondent vide its letter dated 21st April, 1994, rejected the request of the petitioner for appointment of an Arbitrator. This letter reads as follows :

"M/s. Airtech (P) Ltd., 20/7, Site 4,

Sahibabad Ind. Area, Ghaziabad-201010.

Subject : Supply of 5 Nos. Refuse Compactors on Ashok Leyland Chassis.

Sir,

Kindly refer to your letter No. 7644 dated 25-2-1994, it is to inform that your request for appoint of Arbitrator has been considered and rejected by the Administrator, N.D.M.C.

Thanking you,

Yours faithfully,

Sd/-

(Mr. D. N. Kashyap)

Transport Controller

2. Since the petitioner did not succeed in getting an Arbitrator appointed by the Administrator, NDMC, it has filed the instant petition u/s 20 of the Arbitration Act.

3. Notice of this application was given to the respondent. Reply was fled to the applications. Subsequently, the petitioner amended the petition, but no reply was filed by the respondent despite opportunity. Learned Counsel appearing for the petitioner pointed out that as far back as 25th February, 1995, it called upon the Administrator, NDMC for appointment of an Arbitrator, but the request was refused. In the circumstances, he submits that this court should appoint an independent Arbitrator. Learned Counsel relied upon the decision of the Supreme Court in *Nandyal Coop. Spinning Mills Ltd. Vs. K.V. Mohan Rao, , G. Ramachandra Reddy & Co. v. Chief Engineer, Madras Zone* AIR 1994(5) SC 142 1994(2) Arb. LR 61, *Military Engineering Service* AIR 1994(5) SC 142 1994(2) Arb. LR 61. On the other hand learned counsel appearing for the respondent submitted that the petitioner while giving notice requiring the respondent to appoint an arbitrator did not enumerate its claims and, Therefore, he cannot ask this court to appoint an arbitrator instead of seeking a direction to the respondent to make the appointment of an arbitrator in terms of the agreement, In support of his submission he relied upon the decision of the Orissa High Court in *Niranjan Swain Vs. State of Orissa and Others*, .

4. I have considered the submission of learned counsel for the parties. There is ample authority for the proposition that in case the authority designated in the arbitration clause does not appoint an Arbitrator despite a request in this regard from the opposite contracting party, the court will be entitled to appoint an independent arbitrator in a petition moved by that party u/s 20 of the Arbitration Act. In *Nandyal Coop. Spinning Mills* (supra) the Supreme Court in the regard held as follows :

"It would thus be clear that if no Arbitrator had been appointed in terms of the contract within 15 days from the date of receipt of the notice, the administrative head of the appellant had abdicated himself of the power to appoint Arbitrator under the contract".

5. Again in *V. Reddy's* case (supra), the Supreme Court ok the same view and held as follows :

"Thus when the notice was given to the opposite contracting party to appoint are Arbitrator in terms of the contract and if no action has been taken, it must be deemed that he neglected to act upon the contract. When no agreement was

reached, even in the court between the parties, the court gets jurisdiction and power to appoint an Arbitrator. Even if Section 8(a) per se does not apply, notice was an intimation to the opposite contracting party to act upon the terms of the contract and his/its non-ailment entails the forfeiture of the power to appoint an Arbitrator in terms of the contract and gives right to the other party to invoke the Court's jurisdiction u/s 20. In the instant case, the respondent did not appoint an Arbitrator, after the notice was received."

6. Thus, it is evident that this court has jurisdiction to appoint an Arbitrator where the designated authority fails to or is unwilling to appoint an Arbitrator after the receipt of a notice from the opposite contracting party for appointment of the Arbitrator in terms of the arbitration agreement. The plea of the learned Counsel for the respondent that the petitioner failed to enumerate the dispute in the notice and as such his request for appointment of an Arbitrator by this court should not be acceded to, is mis-conceived. Letter dated 21st April, 1994 of the Transport Controller reveals that the Administrator simply rejected the request of the petitioner for appointment of an Arbitrator without assigning any reason. In this letter the petitioner was not asked to enumerate the claims. Therefore, it appears that the refusal of the Administrator to appoint an Arbitrator did not result from the petitioner's failure to enumerate the claims in its application for appointment of an Arbitrator. In any event, the petitioner has enumerated its claim in para 45 of the instant petition. It is not disputed that the respondent had received a copy of the petition as also the amended petition. After the receipt of the said copy there was no justification for the Administrator, N.D.M.C., for not appointing an Arbitrator. Since the Administrator, N.D.M.C., failed to appoint an Arbitrator, Therefore, this court has, u/s 20(4) of the Arbitration Act, acquired the power and jurisdiction to appoint an Arbitrator. The decision of the Orissa High Court, cited by learned counsel for the respondent is of no avail as the facts of that case are entirely different from the facts of the case in hand.

7. In view of the aforesaid discussion the application of the petitioner succeeds and Mr. Justice D. R. Khanna, a retired Judge of this court, it appointed as an Arbitrator for adjudication and determination of the claims of the petitioner. It would be open to the respondent to submit its claims or counter-claims before the Arbitrator. It would be open to the Arbitrator to determine whether the claims which have been enumerated in para 45 of the petition, had been resolved or settled at any point of time. The Arbitrator will fix his own fee and enter upon reference and make and publish his Award within the period prescribed under the Act.

8. The matter is disposed of.

9. Matter disposed of.