
(2014) 08 MP CK 0145

In the Madhya Pradesh High Court

Case No : Arbitration Case Nos. 17, 18, 20, 22/2012 and 01/2013

Anant Electricals

APPELLANT

Vs

Bharat Sanchar Nigam Limited

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

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

Citation : (2015) 5 ARBLR 66 : (2014) 4 MPHT 374 : (2014) 4 MPLJ 177

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Harish Dixit, Advocate for the Appellant; Pawan Dwivedi and Rajendra Bhargava, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—Since these applications preferred u/s 11(6) of the Arbitration and Conciliation Act, 1996 (Act) are arising out of same facts and circumstances, on the joint request of parties, the applications are analogously heard and decided by this common order.

Facts are taken from AC. No. 17/2012.

2. The applicant entered into an agreement dated 24.1.2009 with the non-applicant for "Operation and Comprehensive maintenance of Electro-Mechanical Services for USOF Sites under Cluster No. 37 District Shivpuri, No. of Sites-32". The agreement is placed on record as Annexure A-1. Shri Harish Dixit and Shri Pawan Dwivedi, learned counsel for the applicants submit that Clause 25 of General Conditions of Contract in Electrical Work provides for settlement of disputes and arbitration. The work of operation and maintenance was due for completion on 6.3.2010 and 26.5.2010 respectively. However, the applicant was required to work upto 31.8.2012. The timely payment on running bills of monthly maintenance, payments of top overhauling and major overhauling of the DG sets and certain other payments including payment of labour etc. were not made. The

applicant's demand raised through letter dated 20.6.2011 went in vain. This followed by notice under Clause 25 of the Contract but this also could not fetch any result. The non-applicant's letter dated 23.7.2011 (Annexure A-4) was duly replied by the applicant on 1.8.2012. The Executive Engineer did not give any decision on the notice dated 18.7.2011 (Annexure A-3). Thereafter, the applicant submitted his claim to Superintending Engineer (Electrical) by letter dated 24.8.2011 (Annexure A-6). Lastly, a notice dated 21.3.2012 (Annexure A-7) was issued but none could materialize.

3. The learned counsel for the applicant submits that the necessary requirements as per agreement were fulfilled and there is inaction on the part of non-applicant and, therefore, Arbitrator be directed to be appointed. On the strength of M/s. Dharmendra Singh Vs. Bharat Sanchar Nigam Ltd., it is contended that even if there is any procedural flaw as per Clause 25 of the agreement, such flaw will not defeat this application.

4. Per contra, Shri Rajendra Bhargava, learned counsel for the non-applicant relied on certain paragraphs of the return to submit that this application is liable to be dismissed. It is submitted that the applicants have not followed the requirement flowing from sub-Clause (i) to (vi) of Clause 25 of the Contract. In absence of following the procedure, the present application is not maintainable. It is further submitted that as per Clause (6) which deals with "Currency of Contract/Operation of Agreement", it is clear that separate letter of intent (LOI) will be issued for each site and for each site separate agreements shall be framed by E.E.(E) concerned. All questions and disputes concerning the work shall be in reference to individual agreements only and will be adjudicated as per Clause 25 for individual agreements without co-relation with other individual agreements.

5. During the course of arguments, on a specific question from the Bench, Shri Rajendra Bhargava replied that the stand of non-applicant is that as per Clause-6 aforesaid, the applicants were required to file separate applications related with individual agreements. The non-applicants, in turn, may appoint a single Arbitrator to adjudicate all the individual agreements. In other words, the stand of Shri Bhargava is that the applicants are required to file separate applications seeking appointment of Arbitrator and it is open to the non-applicants to appoint a single Arbitrator to adjudicate all the disputes. Shri Rajendra Bhargava further submits that the individual agreements so executed contains all terms and conditions of Master Agreement.

6. Shri Harish Dixit in his rejoinder submissions drew the attention of this Court on para 2 of the rejoinder. In tabular form running in six pages, the applicant has described the manner in which requirement of Clause 25 is complied with by the applicants. No other point is pressed by the learned counsel for the parties.

7. I have heard the learned counsel for the parties and perused the record.

8. The first objection of non-applicant is regarding non following the procedure as

envisaged in Clause (i) to (vi) of Clause 25 of the Contract. In the rejoinder, the applicant in explicit manner described as to how the said requirement was fulfilled/satisfied. The non-applicant has not chosen to file any additional return to rebut the correctness of the averments of the said tabular chart mentioned in the rejoinder. A plain reading of the tabular chart makes it clear that applicant has fulfilled the requirement of Clause 25 of the Agreement. This Court in M/S. Dharmendra Singh (supra) dealt with the same Clause 25 with regard to the same employer (BSNL). In para 8 this Court opined that from perusal of Clause 25 of the agreement, it is evident that recourse to conciliation is not mandatory. In absence of any rebuttal of the averments of para 2 of rejoinder, I find no justification to accept the contention of non-applicant that the procedure mentioned in Clause 25 is not followed. Thus, on this ground, the application cannot be disallowed.

9. The second aspect is whether the applicants are required to file individual/separate application for appointment of Arbitrator with regard to individual agreements. Para 4 of the reply makes it clear that it is not in dispute that the "Master Agreement" was entered into between the applicants and BSNL. In addition, individual agreements were also entered into. The "Master Agreement" contains the entire work of 32 sites. Even if separate agreements are entered into site/project wise, the question is whether single application is maintainable.

10. In Gas Authority of India Ltd. and Another Vs. Ketu Construction (I) Ltd. and Others, the Apex Court opined as under:-

"There is neither any such clause in the agreement nor is there any requirement in law that for each of the contracts (A), (B), (C) and (D) a separate panel ought to have been sent. The same panel could very well be utilized for resolving the disputes arising out of the four contracts. In fact, as suggested on behalf of the appellant, it would have been more convenient, time saving and economical to have the same person as arbitrator in resolving the disputes between the parties with regard to all the contracts. The view to the contrary taken by the Division Bench of the High Court is clearly erroneous in law".

11. In Delta Mechcons (India) Ltd. Vs. Marubeni Corporation, the Apex Court opined as under:-

"I do not see much merit in the contention of learned Senior Counsel for the respondent that there should have been four separate applications for appointment of the presiding arbitrators since four subcontracts were involved. Even assuming that the contention has merit, I reject it as being too technical".

12. In the light of these judgments, suffice it to say that the objection of the non-applicant is too technical in nature. The Apex Court has reversed the similar argument in the aforesaid matters. Thus, this contention of the non-applicant is rejected on the anvil of principles laid down in the aforesaid judgments. Section 11(6) of the Act makes it clear that when the procedure mentioned in the agreement agreed upon by the parties is not fulfilled by a party, application can

be filed for appointment of Arbitrator. In the aforesaid factual backdrop, it is clear that the appointment procedure agreed upon by the parties is not fulfilled by the non-applicant. Thus, Section 11(6) needs to be invoked.

13. In *M/S. Dharmendra Singh (supra)*, this Court considered the similar Clause 25 of the agreement and directed the non-applicant therein to appoint Arbitrator within 30 days. Following the same course, I deem it proper to direct the non-applicant to appoint Arbitrator within 30 days from the date of communication of this order.

14. Applications are allowed. No cost.

15. Registry is directed to keep a true copy of the order in connected petitions decided today by this common order.