

(2012) 08 P&H CK 0166
In the Punjab And Haryana At Chandigarh
Case No : Arbitration Case No. 107 of 2010

Arch Consultancy Services (P) Ltd.	Vs	APPELLANT
The Commissioner, Municipal Corporation, Amritsar		RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(6), 11(8)

Citation : (2012) 08 P&H CK 0166

Hon'ble Judges : Jasbir Singh, Acting C.J.

Bench : Single Bench

Advocate : S.K. Mahajan, for the Appellant; Sandeep Khunger, for the Respondent

Final Decision : Allowed

Judgement

Jasbir Singh, Acting Chief Justice

1. This order will dispose of Arbitration Case Nos. 107 and 108 both of the year 2010, involving similar facts. The petitioner has invoked the jurisdiction of this Court u/s 11 of the Arbitration and Conciliation Act, 1996 (in short, the Act) for appointment of an Arbitrator to settle the dispute/ differences which have arisen between the parties out of a contract agreement dated 12.1.2006.
2. In Arbitration case No. 108, as per record, on the above date, a consultancy services contract was given to the petitioner by the respondent for scrutiny of the bids/ proof checking of design and drawing work, tender documents etc. The petitioner was to supervise the work to ensure that the work is going on strictly as per specifications and terms and conditions of the contract agreement for construction of elevated road proposal I (G.T. Road Ram Talai to Golden Temple).
3. Similarly in Arbitration Case No. 107 of 2010, contract for consultancy services was granted in favour of the petitioner vide agreement of the even date for proposal No. II (G.T. Road from Maqbool Pura Chowk to Bhandari bridge).

4. As per record, dispute arose between the parties regarding settlement of dues. The petitioner sent a demand to the respondent on 11.2.2010 u/s 11(6) of the Act with a request that matter be referred to an Arbitrator for settlement. When no action was taken on representation sent by the petitioner, within the stipulated time, this petition was filed.

5. Upon notice, reply has been filed. Existence of the contract agreement between the parties and settlement of disputes by an Arbitrator is not controverted. It is further stated that on receipt of request the respondent also has decided to settle the dispute through an Arbitrator. It was so communicated to the petitioner vide letter dated 21.4.2011. It is stated that in view of above act of the respondent, this petition has become infructuous.

Heard counsel for the parties.

Settlement of dispute through an Arbitrator is not in dispute.

6. It is stated by counsel for the petitioner that appointment of an Arbitrator during pendency of this petition in this Court is not justified and will have no force whatsoever and the same is null and void. A prayer has been made to appoint an independent Arbitrator.

7. To the contrary, counsel for the respondent, by placing reliance upon a judgment of the Hon"ble Supreme Court in Indian Oil Corporation Ltd. & others v. M/s Raja Transport (P) Ltd., 2009 (4) R.C.R. (Civil) 705, argued that as per terms and conditions of the contract agreement dated 12.1.2006 named Arbitrator therein has been asked to take up the matter to settle the dispute between the parties, in view of that there is no necessity to appoint an independent Arbitrator.

8. It is not in dispute that to refer the matter to an Arbitrator, a representation (Annexure P2) was sent by the petitioner on 10.2.2010. No action was taken by the respondent, which forced the petitioner to file a petition u/s 11(6) of the Act before this Court, in which, notice of motion was issued on 9.8.2010. It appears that on receipt of above notice, the matter was taken up by the respondent and vide letter dated 21.4.2011, it was communicated to the petitioner that let the matter be resolved through arbitration and the petitioner was directed to file its claim statement within seven days from the date of receipt of that communication.

9. It is contended by counsel for the petitioner that when the respondent has failed to appoint an Arbitrator on receipt of a representation within a reasonable time, the respondent cannot appoint the Arbitrator when this Court is seized of the matter.

10. The contention raised appears to be correct. It has been so said by the Hon"ble Supreme Court in Union of India v. M/s Bharat Battery Manufacturing Co. (P) Ltd., 2007 (3) Simla LJ 1443, wherein it was observed as under:-

9. We are unable to countenance with the submission of the learned counsel for the appellant. Section 11(8) of the Act could have come to the aid of the appellant had the appellant appointed the arbitrator within 30 days from the date of receipt of request to do so from the respondent or the extended time as the case may be. In the present case, as noticed above, Section 11(6) petition was filed on 30.3.2006 by the respondent. The appellant stated to have appointed one Dr. Gita Rawat on 15.5.2006, i.e. after Section 11(6) petition was filed by the respondent on 30.3.2006, which is not permissible in law. In other words, the appellants are stopped from making an appointment of the arbitrator in terms of Clause 24 of the agreement after Section 11(6) petition is filed by the respondent. Once Section 11(6) petition is filed before the Court, seeking appointment of an arbitrator, the power to appoint an arbitrator in terms of arbitration clause of the agreement ceases.

11. In view of ratio of the aforesaid judgment, appointment of an Arbitrator by the respondent after filing of these petitions is not proper and justified. The appointment was made after invocation of the jurisdiction of this Court, by the petitioner which cannot be allowed. Reliance of the respondent on a judgment of the Supreme Court in M/s Raja Transport (P) Ltd.'s case (supra) is not justified. Facts of that case are altogether different. In view of facts mentioned above, both these petitions are allowed, Mr. Justice N.K. Sodhi (former Chief Justice), resident of House No. 36, Sector 4, Chandigarh, is appointed as an Arbitrator. Learned Arbitrator shall fix his fee separately, in both the cases, in terms of Punjab and Haryana High Court (Arbitrator's Panel and Fee) Rules, 2011.