
(2010) 11 P&H CK 0583
In the Punjab And Haryana At Chandigarh
Case No : Arbitration Case No. 1 of 2009

Architectural Grids

APPELLANT

Vs

Improvement Trust, Ludhiana and Others

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6)
Town Improvement Rules, 1939 — Rule 94

Citation : (2010) 11 P&H CK 0583

Hon'ble Judges : Mukul Mudgal, C.J

Bench : Single Bench

Judgement

Mukul Mudgal, C.J.—This petition has been filed by the Petitioner u/s 11(6) of the Arbitration & Conciliation Act, 1996 (for short "the Act") for appointment of sole Arbitrator to adjudicate upon the dispute between the parties.

2. The arbitration Clause 10 contained in the agreement dated 20.6.2001 entered into between the parties reads as under:

That if in the event of any dispute between the parties on any provisions of the agreement, the matter will be referred to the Improvement Trust, Ludhiana, for appointing an arbitrator and the decision of the appointed Arbitrator shall be final and binding on the parties.

3. The brief facts of the case are that Respondent No. 1 prepared a scheme for setting up City Centre at Ludhiana. In September, 1999, applications were invited from the Architects by giving an advertisement in the Press to submit their designs/development schemes for the said City Centre, at their own costs and risks and that offer was open for all. The project cum development scheme submitted by the Petitioner, on presentation given by the Architects of the Petitioner company, was accepted by the Jury constituted by Respondent No. 1 for the said purpose. The Petitioner was even given first prize of Rs. 2 lacs by Respondent No. 1 for the design submitted by it. As per the case set up by the Petitioner, Respondent No. 1 further asked it to work upon the said design

development phase of the project and that the Petitioner besides working on the said development phase also actively participated and played an important role in explaining to the other authorities connected with the grant of sanction for change of land use for development of the city centre and for that purpose the Petitioner had made several site visits and also visited the office of the Chief Town Planner and other local body government offices to explain the scheme and design and with the efforts of the Petitioner, C.L.U. was granted to Respondent No. 1. It is alleged in the petition that with effect from 17.12.1999 onwards, Petitioner started working on the design, though no written contract was signed. Some of the drawings were submitted by the Petitioner on 28.6.2000 to Respondent No. 1 for obtaining approval from the Chief Town Planner and Local Government, Punjab. Ultimately, on 20.6.2001, a written agreement was signed and executed between the Petitioner and Respondent No. 1. The Petitioner continued working on the project and part running payments for the work done by the Petitioner were also averred to be made by Respondent No. 1 in September, 2001 and January, 2002. The Petitioner further averred in the petition that it submitted large models of the project to Respondent No. 1 besides the photographs etc. and the process of working on the project continued till 11.11.2005 on which date Respondent No. 1 wrote to the Petitioner to contact the Chairman of Improvement Trust in the first week of December, 2005 to fix a personal meeting to discuss the various issues and in the meantime not to make any correspondence. On 12.01.2006, Respondent No. 1 wrote a letter to the Petitioner informing that the project had been allotted to the "Today Homes & Infrastructure Pvt. Ltd." and therefore, the Trust did not need any of the services of the Petitioner and thus concluded the agreement.

On 13.6.2008, Petitioner issued a registered notice through its Advocate to Respondents detailing therein the expenditures incurred by it from time to time and prayed for reimbursement thereof and in case of dispute or denial of the liability for payment of the amount, made a request to nominate and appoint an independent Arbitrator in accordance with the provisions of the Arbitration Act, 1996 with mutual consent for decision. No reply to the said notice was given, hence another notice was served upon Respondents by the Petitioner on 23.6.2008 which also failed to yield any result. Hence the present petition u/s 11(6) of the Act for appointment of the Arbitrator.

4. Upon notice, the Respondents put in appearance. Respondent No. 1 filed its reply wherein it did not deny the execution of agreement dated 20.6.2001 and receipt of the letter dated 13.6.2008. However, Respondent No. 1 pleaded that agreement dated 20th June, 2001 could not be termed as a legal agreement executable under law because no prior approval of the Trust as envisaged under Rule 94 of the Town Improvement Rules, 1939, which prohibits that no contract or agreement as referred to in sub Rule 2 of Rules, 1994 unless executed as provided in the said provision is binding on the Trust, was obtained. Respondent No. 1 also placed reliance in this regard on a judgment of learned Single Judge of this Court in Arbitration Case No. 75 of 2007 decided on 8.10.2009 to plead that

no Arbitrator could be appointed.

5. The Petitioner filed replication to the reply wherein it is stated that in Hon"ble Supreme Court in SLP (Civil) No. 10550 of 2008, bearing caption "Ludhiana Improvement Trust V. Today Homes" Respondent No. 1 had admitted that Ludhiana Improvement Trust entered into an agreement with the Petitioner. For the sake of reference, the averments made in that SLP are reproduced as under

20.6.2001. The LIT enters into an agreement with an Architect firm M/s Arkitektural Grids, as the design (for the proposed LCC) presented by the said firm, having five basic elements viz. Functional, social, economic, environmental and aesthetic and included the construction of mall(s), multiplexes, auditoriums, libraries, information & technology centre, hotel and basement parking etc. was accepted by the LIT.

6. Mr. Ashish Chopra, appearing for Respondent No. 1 urged that since there was no approval given by the competent authority on the day when agreement dated 20.6.2001 was executed or Petitioner was asked by the then Chairman to carry out work even prior to execution of the said agreement and the Petitioner cannot seek indulgence of this Court to enforce the arbitration clause because that agreement had no force in the eyes of law being against the provisions of the Punjab Town Improvement Trust Rules, 1939 as Rule 94 specifically prohibits the enforcement of such agreements. He further contended that the entire project having fallen a victim of connivance and fraud, the agreement had in any case become unenforceable, and in this regard he placed a reliance on the judgment dated 8.10.2009 passed by this Court in Arbitration Case No. 76 of 2007 (supra). To further substantiate the argument that the view taken in Arbitration Case No. 76 of 2007 decided on 8.10.2009 (supra) that no case for referring the matter to the Arbitrator in the present case is made out, he has placed reliance upon judgment of Hon"ble Supreme Court in case S.B.P. & Company V. Patel Engineering Ltd. 2005(8) S.C.C. 618, wherein the Hon"ble Supreme Court has laid down as under

(i) The power exercised by the Chief Justice of the High Court or the Chief Justice of India u/s 11(6) of the Act is not an administrative power. It is a judicial power.

(ii) The power u/s 11(6) of the Act, in its entirety, could be delegated, by the Chief Justice of the High Court only to another Judge of that Court and by the Chief Justice of India to another Judge of the Supreme Court.

(iii) In case of designation of a Judge of the High Court or of the Supreme Court, the power that is exercised by the designated Judge would be that of the Chief Justice as conferred by the statute.

(iv) The Chief Justice or the designated Judge will have the right to decide the preliminary aspects as indicated in the earlier part of this judgment. These will be his own jurisdiction to entertain the request, the existence of a valid arbitration agreement, the existence or otherwise of a live claim, the existence of

the condition for the exercise of his power and on the qualifications of the arbitrator or arbitrators. The Chief Justice or the designated Judge would be entitled to seek the opinion of an institution in the matter of nominating an arbitrator qualified in terms of Section 11(8) of the Act if the need arises but the order appointing the arbitrator could only be that of the Chief Justice or the designated Judge. xx xx xx emphasis supplied. xxx xxxx xxxx

In the light of the aforesaid guidelines laid down by the Hon"ble Supreme Court, he contended that before referring the matter, it is to be decided whether the agreement between the parties was a valid agreement or not.

7. On the other hand, Mr. Kela, learned Counsel appearing for the Petitioner rebutted the aforesaid arguments on the ground that the plea raised by Mr. Chopra is not tenable because the Trust had given post dated approval for entering into the argument dated 20.6.2001 as the said agreement was duly ratified by the Trust vide resolution No. 146 dated 10.7.2001 which fact has been kept concealed from this Court. These facts were only elucidated with great difficulty upon this Court permitting the serving of interrogatories upon the Respondent. He further argued that there was no connivance or fraud on the part of the Petitioner and infact the Vigilance enquiry was conducted on the complaint made by the Petitioner which resulted into lodging of FIR No. 5 dated 23.3.2007.

8. After hearing the arguments of learned Counsel for the parties, I am of the view that the arguments raised by Mr. Chopra are not tenable. It is worthwhile to notice here that while filing the reply to the main petition, Respondent No. 1 did not disclose that the agreement dated 20.6.2001 had got ex post facto approval vide resolution No. 146 dated 10.7.2001. This is a clear concealment of a material fact from the Court. This fact emerged on the record only when Mr. Kela, appearing for the Petitioner filed an application for serving interrogatories on the Respondents and in reply to those interrogatories, Respondent No. 1 blissfully tried to cover up a concealment by saying that the resolution No. 146 dated 10.7.2001 seems to have escaped the notice of officer who had filed the reply. The explanation furnished by Respondent No. 1 in reply to the interrogatories is totally vague because the reply was filed by a very responsible authority of the Trust. In such a serious matter, where a particular agreement is the basis of a dispute, to plead that ratification of that agreement by way of a post dated resolution escaped the knowledge which is the foundation of the lis is shrouded in suspicion. I am of the considered view that Respondent No. 1 has been economical with the truth by concealing the material fact that the agreement dated 20.6.2001 was not approved by the Trust. In so far as the second limb of the argument raised by Mr. Chopra that this matter is also covered by the judgment dated 8.10.2009 of this Court in Arbitration Case No. 76 of 2007 (supra), is concerned, as in that case agreement was dated 24.5.2005 which was never ratified or approved prior or post by the competent authorities but was annulled by the Government on 27.5.2010 whereas in this case the agreement was ratified by the competent authorities on 10.7.2001. Further more, this Court

cannot lose sight of the fact that Respondent No. 1 in its own pleadings in Hon''ble Supreme Court in S.L.P.(Civil) 10550 of 2008 averred on oath that it had entered into an agreement with the Petitioner. Respondent No. 1 cannot now disown the effect of such a solemn affirmation before the Hon''ble Supreme Court. Even otherwise also, while exercising powers u/s 11(6) of the Act, the Court has to see the existence of agreement on the day of dispute. In this case, it is not in dispute that the agreement dated 20.6.2001 was ratified on 10.7.2001 by the competent authority. There is no denial of this fact. A lot of work was got done by Respondent No. 1 from the Petitioner and even Petitioner was decorated with a prize money of Rs. 2 lacs for the efficiency shown in the work. In SBP case (supra), the Hon''ble Supreme Court while discussing the powers of Chief Justice u/s 11 of the Act has laid down as under:

It is necessary to indicate that he can also decide the question whether the claim was a dead one; or a long barred claim that was sought to be resurrected and whether the parties have concluded the transaction by recording satisfaction of their mutual rights and obligations or by receiving the final payment without objection. It may not be possible at that stage, to decide whether a live claim made, is one which comes within the purview of the arbitration clause. It will be appropriate to leave that question to be decided by the arbitral tribunal on taking evidence, along with the merits of the claims involved in the arbitration. The Chief Justice has to decide whether the applicant has satisfied the conditions for appointing an arbitrator u/s 11(6) of the Act. For the purpose of taking a decision on these aspects, the Chief Justice can either proceed on the basis of affidavits and the documents produced or take such evidence or get such evidence recorded, as may be necessary. We think that adoption of this procedure in the context of the Act would best serve the purpose sought to be achieved by the Act of expediting the process of arbitration, without too many approaches to the court at various stages of the proceedings before the Arbitral tribunal.

Thus, I am satisfied that a valid arbitration agreement existed between the parties.

9. In these circumstances, I allow this petition and appoint Shri R.S. Suri, a Senior Advocate, as an Arbitrator to adjudicate upon the dispute between the parties. In the meanwhile, the parties will exchange the statements of claim and response thereof. The statement of claim be supplied to counsel for the Respondents within four weeks and response to the statement of claim shall be supplied to the counsel for the Petitioner within four weeks thereafter. The parties shall appear before the Arbitrator on 01.02.2011 at 4.00 P.M. or on an agreed date convenient to the parties but not later than a fortnight from the date of exchange of pleadings as directed aforesaid. The Arbitrator shall make an endeavour to dispose of the reference not later than six months from the date of first appearance of the parties. The Arbitrator shall fix his own fees. Since Respondent No. 1 was less than fair, this Court was inclined to award the costs but Mr. Chopra eventually persuaded the Court not to do so.

With these directions, this petition stands disposed of.