
(2006) 07 P&H CK 0222
In the Punjab And Haryana At Chandigarh

Baba Rangi Ram Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-07-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 12

Citation : (2006) 4 ARBLR 333

Hon'ble Judges : Harjit Singh Bedi, Acting C.J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

Harjit Singh Bedi, A.C.J.—This application has been filed u/s 11 of the Arbitration and Conciliation Act, 1996 (for short "the Act") requesting this court to appoint an arbitrator to settle the dispute between the parties inter se.

2. It has been pointed out by Mr. Raman Mahajan during the course of arguments that one Mr. R.B. Singh had been appointed as arbitrator on 19.08.2002 in terms of the contract and he retired from service on 30.11.2003, on which one Mr. Satish Chander was appointed as arbitrator on 18.02.2004 and he retired on 30.07.2004 and as of now one Mr. P. Tulsi Ram has been appointed as the arbitrator on 18.08.2004 and as the respondents had not appointed the arbitrator within a reasonable time, this application had been filed before this court to appoint one in terms of Section 11 of the Act. It has also been pleaded that after the retirement of Mr. R.B. Singh, the petitioner had moved the present application u/s 11 of the Act and in that eventuality it was not open to the respondents during the pendency thereof to appoint any arbitrator.

3. The issues raised by Mr. Mahajan have been strongly controverted by the learned Counsel for the respondents. It has been pointed out that the arbitrator had been appointed in accordance with condition No. 70 of the contract which provided that if an arbitrator resigned his appointment or vacated his office or was unable or unwilling to act due to any reason whatsoever, it was for the

respondents to make a fresh appointment.

4. I have heard learned Counsel for the parties and have gone through the record.

5. Condition No. 70 is reproduced as under:

All disputes between the parties to the contract (other than those for which the decision of the CWE or any other person is by the contract expressed to be final and binding) shall after written notice by either party to the contract or the other of them, be referred to the sole arbitration of the Engineer Officer to be appointed by the authority mentioned in the tender documents.

Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the works or termination or determination of the contract under condition Nos. 55, 56 and 57 hereof.

Provided that in the event of abandonment of the works or cancellation of the contract under condition Nos. 52, 53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalised by the government to get the works completed by or through any other contractor or contractors or agency or agencies.

Provided always that the commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the government's right of recovery from the contractor as provided in condition No. 67 hereof.

If the arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new arbitrator to act in his place.

The arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleadings in defence.

The arbitrator may proceed with the arbitration ex parte, if either party, in spite of a notice from the arbitrator fails to take part in the proceedings.

The arbitrator may, from time to time with the consent of the parties, enlarge the time up to but not exceeding one year from the date of his entering on the reference, for making and publishing the award.

The arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual item of dispute.

The venue of arbitration shall be such place or places as may be fixed by the arbitrator in his sole discretion.

The award of the arbitrator shall be final and binding on both the parties to the contract.

6. A perusal of the clause reveals that in case the arbitrator vacates his office, the authority for appointing another one vests in the respondents. Concededly, after retirement of Mr. R.B. Singh, Mr. Satish Chander and thereafter Mr. P. Tulsi Ram had been appointed arbitrators. Mr. Mahajan has, however, argued that as an inordinate delay had occurred in the appointment of the subsequent arbitrators, it was only this court which could do so u/s 11 of the Act. There is no merit in this plea. Condition No. 70 does not provide for any time limit. Moreover, in the light of the facts already given above, there was hardly a month's delay in the retirement of an arbitrator and the appointment of another one.

7. Mr. Mahajan has finally argued that the petitioner had no confidence in Mr. P. Tulsi Ram as he had been involved in the settlement of the contract inter se the parties on the administrative side. I am of the opinion, however, that such a challenge can be made before the arbitrator u/s 12 of the Act.

8. Accordingly, this application is dismissed.