
(2011) 02 SHI CK 0090
In the High Court Of Himachal Pradesh
Case No : Arbitration Case No. 30 of 2010

Balak Ram Koundal

APPELLANT

Vs

Italian Thai Development Public Co. Ltd.

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

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

Citation : (2011) 1 ShimLC 585

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Surjit Singh, J.—By an agreement dated 23.5.2005, copy Annexure C-1, work of construction of a road, was assigned to the Petitioner by the Respondent, who is setting up a hydro electric power project in District Mandi of the State. Agreement Ex.C-1 provides for settlement of disputes, if any, arising between the parties, in connection with the construction of said road, vide Clause 22. The dispute, as per arbitration clause, is to be settled in accordance with the provisions of Arbitration and Conciliation Act, 1996 (hereafter referred to as Act), as amended from time to time.

2. Petitioner executed the work and submitted final bill, dated 28.8.2006 to the Respondent. Respondent rejected the bill on 31.8.2006, vide Annexure R-1. Petitioner then wrote to Kol Dam authorities, for appointment of arbitrator, on 12.9.2006. As a matter of fact, it was not the Kol Dam authorities which were required to be approached for appointment of arbitrator, but the Respondent. So, another letter, dated 1.10.2008, Annexure C-3 was addressed to the Respondent, requiring it to concur in the appointment of one of the three persons, named in the notice, as arbitrator. There has not been any response from the Respondent. Hence, the present petition u/s 11(6) of the Act.

3. In the reply, it is stated that this Court does not have the jurisdiction, because

of the provision in the agreement, that the Courts at Delhi alone will have the jurisdiction. Also, it is alleged that the claim is time barred.

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

5. During the course of arguments, learned Counsel, representing the Respondent, admits that no cause of action has arisen within the territorial jurisdiction of Delhi Courts and also, the parties do not reside within the jurisdiction of those Courts. That means, territorial jurisdiction vests in the Courts in H.P., where the agreement was executed and also the work was executed.

6. Therefore, the clause in the agreement, vesting jurisdiction in the Courts at Delhi, cannot come to the rescue of the Respondent in denying the jurisdiction of this Court.

7. As regards the second objection, there is a judgment by the Apex Court, i.e. Anil Kumar Vs. B.S. Neelkanta and Others, which says that where a question is raised in proceedings, u/s 11 of the Act, whether a dispute is live and surviving and it cannot be decided in a summary manner by the Chief Justice or his designate, right course is that it is dealt with by the arbitrator.

8. In the present case, though the dispute arose in August, 2006 and this Court has been approached in 2010, by means of the present petition, u/s 11 of the Act, learned Counsel for the Petitioner submits that the reason for delay is that earlier, under some wrong advice, Petitioner, instead of approaching the Respondent, approached the Kol Dam authorities, for appointment of arbitrator and, therefore, relevant date for determining whether the dispute is live and surviving, is the date of issue of notice to the Respondent, i.e. 1.10.2008, and not the date when the claim was rejected in August, 2006 by the Respondent. Such a question requires a finding of fact, after recording evidence and, therefore, it cannot be decided summarily, in these proceedings.

9. As a result of above discussion, petition is allowed and Shri S.K. Sharda, Retired Chief Engineer, Man House, Shankli, Shimla is appointed as arbitrator. His fee, including ministerial expenses, is fixed at Rs. 55,000/-. In case any outstation journey is performed by the arbitrator in connection with the adjudication of the matter, he shall be paid traveling expenses and boarding and lodging charges at outstation, in addition to the aforesaid fee. Fee and traveling expenses, including boarding and lodging charges, if any, shall initially be paid by the Petitioner. However, ultimate liability for the same shall be determined by the arbitrator himself, while giving his award.