
(1998) 09 DEL CK 0059
In the Delhi High Court
Case No : A.A. No. 41 of 1996

Baleshwar Dass Raizada

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-09-1998

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (1998) 47 DRJ 493 : (1998) 120 PLR 52

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : S.L. Kohli, for the Appellant; Maninder Singh, for the Respondent

Judgement

M.K. Sharma, J.—This is a petition u/s 11 of the Arbitration and Conciliation Ordinance, 1996 filed by the petitioner praying for appointment of an impartial and independent arbitrator by the court to adjudicate upon and decide the disputes arising between the parties and as set out under paragraph "K" of the petition.

2. A contract agreement was entered into between the petitioner and the respondent No. 1 for providing external electrification work for multi storeyed building of respondent No. 1 at Kanpur (UP). It is stated in the application that the aforesaid work was to be executed at Kanpur (UP) and the same was awarded to the petitioner by the Chief Engineer, Lucknow at Delhi by a Regd.A.D. letter dated 22nd January,1996. It is also stated that in respect of the aforesaid contract agreement executed by the petitioner certain disputes, as enumerated under paragraph "K" of the petition, have arisen and, Therefore, the same are to be adjudicated upon and decided by the arbitrator in view of the arbitration agreement between the parties. However, since the respondents have failed to appoint an arbitrator in terms of the arbitration agreement in spite of expiry of more than 30 days, this court should appoint an impartial and independent arbitrator.

3. I find from the records that this court, on 24th May, 1996, without issuing any notice to the respondents, admitted the petition and accepted the contentions of the petitioner and appointed Mr. Justice C.L.Chaudhary (Retd.) as the sole arbitrator to decide and adjudicate upon the disputes raised by the petitioner. The learned arbitrator, however, by his letter dated 1st August, 1996 expressed his inability to take up the assignment as the arbitrator as he was holding an assignment as a Chairman, Board of Arbitration, Ministry of Labour, Government of India. On 11th August, 1997, counsel for the petitioner submitted that the petitioner has no objection in case the respondents, in terms of the arbitration Clause 17, appoint an arbitrator and refer the disputes between the parties to him.

4. Mr. Maninder Singh appearing for the Union of India submitted that in pursuance of the aforesaid statement of the petitioner, the respondents have appointed an arbitrator in terms of the arbitration Clause 17 and referred all the disputes arising between the parties to the said arbitrator for adjudication.

5. I am also informed by the counsel appearing for the parties that the parties have appeared before the aforesaid arbitrator appointed by the appointing authority under Clause 17 of the arbitration agreement and have filed their respective claims and counter-claims.

6. On 22nd May, 1998, this court recorded its prima facie opinion that this court does not have territorial jurisdiction to decide the present proceedings and accordingly an issue was framed as to whether this court has territorial jurisdiction or not.

7. I have also heard the counsel appearing for the petitioner as also counsel appearing for the respondents. Since the petitioner consented to appointment of an arbitrator by the respondents in terms of the arbitration Clause 17 and in view of the aforesaid concession made by the counsel for the petitioner, the respondents have appointed an arbitrator and referred all the disputes of the parties to the said arbitrator and also in view of the fact that the said arbitrator has already entered into the reference before whom the parties have filed their respective claims and counterclaims, in my considered opinion this petition has become infructuous and is accordingly disposed of.

8. Counsel for the petitioner submitted that the prima facie opinion recorded by this court that this court does not have territorial jurisdiction is erroneous. In my considered opinion, with the appointment of an arbitrator by the appointing authority and the arbitrator having entered into the reference and the parties having filed their respective claims and counter claims before the arbitrator, the objection with regard to the territorial jurisdiction does not call for any answer as the petition itself has become infructuous. With the aforesaid observations, the petition stands disposed of. No order as to costs.