

(2018) 09 J&K CK 0062

In the Jammu And Kashmir High Court

Case No : Arbitration Application No. 11 Of 2016

Balwant Singh And Sons @APPELLANT@Hash Union Of India And Others

Date of Decision : 25-09-2018

Acts Referred:

Jammu & Kashmir Arbitration Act, 1945 — Section 20

Citation : (2018) 09 J&K CK 0062

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : R.K.Gupta, Ritesh Mahajan, R.S.Jamwal

Judgement

1. This is an application filed by the petitioner under Section 20 of the Jammu & Kashmir Arbitration Act, 1945 .A.D. (hereinafter referred to as the Act of 1945) for reference of the disputes that have arisen between the parties to an independent arbitrator to be appointed by the Court.

2. The petitioner claims that pursuant to the tender submitted by it in respect to the NIT issued by respondent No.3 for execution of Contract for PROVN. OF OTM FOR 166 MH AT JAMMU, the bid of the petitioner was found to be the lowest and it was allotted the aforesaid contract. Clause 70 of the Contract agreement provides for resolution of the disputes that may arise out of and in connection with the contract in question through arbitration. The petitioner claims that it executed almost 90% of the contract work as per the schedule and also executed some additional/extra works as per the verbal directions of the respondents. It is submitted that the completion of the work was delayed due to the late allotment of work of airconditioning which was to be executed by some other contractor. Execution of balance 10% work which got delayed, was due to the aforesaid reason, as the same could have been executed only after the job of airconditioning in the building in respect of which the contract had been allotted to the petitioner-firm was executed first. It is alleged that because of this reason the execution of the balance work got delayed by more than three and half years.

3. The petitioner claims that after completion of the contract work, the building was handed over to the respondents to their satisfaction. The final bill submitted

by the petitioner was processed and a sum of Rs.2.85 lac was made on 31.03.1993 i.e. after two years of the completion of the contract work, that too after making illegal deductions of huge amount from the final bill. It is further claimed by the petitioner that the aforesaid amount, though, did not represent the true amount payable to the petitioner, yet was accepted under constrained circumstances by the petitioner under protest. The petitioner requested the respondent No.2 for appointing an arbitrator in terms of Clause 70 of the general terms and conditions of the contract but respondent No.2 did not appoint the arbitrator. Reference in this regard is invited to the communication of respondent No.3 addressed to respondent No.2 bearing No.85669/529/E8 in which it has been conceded that the claims put forth by the petitioner, except claim No.1, are arbitrable and that the matter can be referred to arbitration. It is in these circumstances, the petitioner claims that it has been forced to invoke the jurisdiction of this Court vested under Section 20 of the Act of 1945 for appointment an independent arbitrator.

4. Mr. R.S.Jamwal, learned counsel appearing for the respondents, has, however, opposed the application for appointment of the arbitrator on the ground that the petitioner after receiving the payment of final bill as full and final settlement is not entitled to invoke the arbitration, in that, there is no subsisting dispute between the parties which can be adjudicated upon by the arbitrator. He also submits that the claims projected by the petitioner are barred by limitation.

5. Having heard learned counsel for the parties, I am of the view that the disputes raised by the petitioner are required to be resolved through the means of arbitration in view of Clause-70 of the general terms and conditions of the Contract Agreement IAFW-2249. All pleas like that the claims are barred by limitation or that after having accepted the payment of last bill as full and final settlement, no dispute subsists, can very well be raised by the respondents before the Arbitrator.

6. Accordingly, this application is allowed and with the consent of learned counsel for the parties, Sh. A.S.Wazir, Retd. Chief Engineer, H.No.313, Sector-1, Channi Himmat, Jammu is appointed as independent arbitrator to adjudicate upon the disputes that have arisen between the parties with respect to the contract awarded to the petitioner by respondent No.3 i.e. PROVN. OF OTM FOR 166 MH AT JAMMU. The arbitrator shall enter reference and decide the claims/counter claims of the parties in accordance with the provisions of the Act of 1945. The arbitrator shall also be at liberty to fix his fee keeping in view the quantum of claims and the nature of disputes to be adjudicated upon in the proceedings. Registry to convey this order to the learned Arbitrator.