
(2006) 01 AHC CK 0086

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 38805 of 2003

Bansal Febwell Industries

APPELLANT

Vs

Betwa River Board and The Executive Engineer, Power House
Civil Construction Division I

RESPONDENT

Date of Decision : 24-01-2006

Acts Referred:

Arbitration Act, 1940 — Section 20

Citation : (2006) 3 AWC 2346

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : K.K. Dubey, for the Appellant; B.N. Singh, S.S.C., V.N. Singh, S.F.A. Naqvi and K.C. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J

1. In pursuance of a Contract of Fabrication, which was given to the petitioner by the respondent-Betwa River Board, certain dispute arose and the petitioner invoked the arbitration clause of the agreement. Since the arbitrator was not appointed by the respondent-Betwa River Board, the petitioner filed Suit No. 21 of 1996 u/s 20 of the Arbitration Act, 1940 praying that a reference be made to the Arbitrator in accordance with the terms of the agreement. The said suit was dismissed by the learned trial Judge vide order dated 16.8.1999. The appeal filed by the petitioner against the said order has also been dismissed by the learned District Judge, Jhansi on 27.5.2003. Aggrieved by the said orders the petitioner has filed this writ petition. A further prayer has been made for a direction in the nature of mandamus commanding the respondents to refer the dispute to the arbitrator in pursuance of the agreement.

2. I have heard Sri K.K. Dubey, learned Counsel appearing for the petitioner as well as Sri S.F.A. Naqvi, learned Counsel appearing for the respondents. Counter

and rejoinder affidavits have been exchanged and with the consent of learned Counsel for the parties, this writ petition is being disposed of finally at the admission stage itself.

3. The courts below have considered the dispute which has been raised by the petitioner and held that the said dispute is not maintainable on merits. Learned Counsel for the respondents has submitted that the procedure for settlement of dispute has been given in Clause 52 of the agreement itself and as such, without having followed the said procedure the petitioner could not have invoked the provisions of Clause 53, which is with regard to the appointment of arbitrator. As such it has been submitted that the writ petition is liable to be dismissed on this ground alone.

4. Having heard learned Counsel for the parties and considering the acts and circumstances of this case, I am of the view that this writ petition deserves to be allowed. The learned courts below were not right in entering into the merits of the dispute. Once the respondents in its written statement (specially in paragraph 21) had themselves admitted and there was a dispute between the parties with regard to the rate at which the payment for additional work was to be made, it was not proper for the courts below to have entered into the merits of the dispute, as the suit, was only for appointment of an arbitrator u/s 20 of the Arbitration Act and not for deciding the claim on merits. The submission of Sri S.F.A. Naqvi, learned Counsel for the respondents, that the petitioner should have first exhausted the remedy provided under Clause 52 of the agreement with regard to settlement of dispute, also does not have much force. Clause 53 of the agreement is independent of other clauses of the agreement. Clause 52 provides for settlement of disputes but does not bar an aggrieved party from invoking the arbitration clause without going through the procedure of Clause 52 for settlement of his dispute. As such, in my view, the Clause 52 will not come the way of the petitioner for invoking the provisions of Clause 53 and demanding reference to an arbitrator for deciding the dispute raised by them.

5. For the foregoing reasons, the impugned orders dated 16.8.1999 and 27.5.2003 passed by the Civil Judge (S.D.), Jhansi and Additional District Judge, Jhansi deserve to be quashed.

6. Accordingly, this writ petition succeeds and is allowed. The impugned orders dated 16.8.1999 and 27.5.2003 passed by the Civil Judge (S.D.), Jhansi and Additional District Judge, Jhansi are quashed. The trial court is directed to pass appropriate orders with regard to the appointment, of an arbitrator in terms of Clause 53 of the agreement. No order as to costs.