
(2000) 07 MP CK 0068

In the Madhya Pradesh High Court

Case No : C.R. No. 1259 and 1260 of 2000 (J)

B.B. Verma and Co.

APPELLANT

Vs

The Chairman-cum-Managing Director South Eastern
Coalfields Ltd, and Others

RESPONDENT

Date of Decision : 27-07-2000

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 7

Citation : (2001) 2 MPJR 159

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Rohit Arya, for the Appellant; N.S. Kale, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Both the civil revisions being connected and common questions of law being involved, were heard analogously and are disposed of by this common order. For the sake of clarity and convenience, facts in Civil Revision No. 1259/2000 are herein adumbrated.

The Petitioner was awarded certain civil works consequent upon acceptance of his offer by the South Eastern Coalfields Limited ("SECL" for short). An agreement bearing No. 05/96-97 was executed between the parties. As disputes arose between the parties, the Petitioner raised certain claims before the General Manager, SECL, by letter dated 21st January, 1997. The said claims were refuted by the SECL. As claims were negated the Petitioner filed an application u/s 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") for appointment of an Arbitrator, it was pleaded before the learned District Judge that the agreement spells out an arbitration clause and, therefore, disputes and differences are to be referred to an Arbitrator. The Respondents/Defendants appeared before the Court below and filed an application under Order 7 Rule 11

of the CPC ("the CPC for short) for rejection of the plaint on the ground that there is no arbitration clause in the agreement and hence, the provisions enshrined u/s 11 of the Act are not attracted. The learned District Judge accepted the contentions raised by the functionaries of the SECL and allowed the application and rejected the petition filed by the Petitioner observing that it would be open to him to file a civil suit subject to the Law of Limitation. The said order is the cause of grievance of the present revisionist.

I have heard Mr. Rohit Arya, learned Counsel for the Petitioner and Mr. N.S. Kale, learned senior counsel for the Respondents, Mr. Arya has contended that the Court below has fallen into error in its appreciation of the factual matrix and the terms and conditions of the notice inviting tender. The learned Counsel has urged that when the claims were submitted before the owner and request was made to refer the same to an Arbitrator for adjudication, and the said facts were not disputed by the Respondents, it is to be deemed that there is an arbitration agreement existing between the parties, To substantiate the aforesaid submission the learned Counsel for the Petitioner has placed reliance on Section 7 of the Act.

Resisting the aforesaid submissions, Mr. Kale, learned senior counsel for the Respondents has canvassed that Clause 30 of the notice inviting tender cannot be interpreted to be an arbitration clause and hence, the finding recorded by the Court below is impeccable. It is further submitted by him that the provisions of Section 7 of the Act are not attracted to the obtaining factual matrix inasmuch as the Petitioner never asseverated in the notice that there is an arbitration agreement between the parties and, the, before, the question of denial did not arise and on the said foundation it cannot be construed that an arbitration agreement exists between the parties.

Before I proceed to advert to the respective submissions raised by the learned Counsel for the parties, it is worthwhile to mention that Mr. Arya while developing his submissions did not bank upon the contention on Clause 30 of the tender notice and only confined to the language employed u/s 7 of the Act. But as the Court below has dealt with the Clause 30 of the tender notice and in the revision-petition there has been mention of Clause 30, I feel it necessary to deal with the same. Clause 30 of the notice inviting tender reads as under -

Matters relating to any dispute or difference arising out of this tender and subsequent contracts awarded based on this tender shall be subject to the jurisdiction of District Court Bilaspur only.

On a scrutiny of the said clause, I am of the considered view that it only stipulates territorial jurisdiction of a particular Court for adjudication of disputes and differences and does not spell out an arbitration clause. In this context, I may profitably refer to a decision rendered in the case of M/s Ruby Construction v. State of Bihar and others, AIR 1993 Patna 14, wherein it has been held as under -

Clause 24 of the NIT reads as follows -

"24. In case of any dispute arising out of the contract, the matter shall be referred to the concerned court under whose jurisdiction the work is situated."

A plain reading of Clause 24 shows that the underlying object was to limit territorial jurisdiction of the Court in case of any dispute arising out of the contract between the parties. Although the expression "dispute arising out of the contract" and "shall be referred to the concerned court" occur in the aforesaid clause, there is nothing to suggest that the object of such reference to the concerned court was to get the dispute itself arbitrated by the Court. It is well known that cause of action in such cases arises at more than one place and in case of dispute, therefore, the suit can be filed at any such places. The object behind Clause 24 was to exclude the territorial jurisdiction of other courts except the one within whose territorial jurisdiction the work in question was located i.e. at Patna. In my opinion, therefore, Clause 24 of the NIT cannot be read as an arbitration agreement.

I am in respectful agreement with the aforesaid view. Thus, I am of the considered opinion that, Clause 30 of the tender notice does not indicate any intention between the parties to refer the disputes and differences for adjudication in an arbitral proceeding.

5, The thrust of argument of Mr. Arya is that the Petitioner by his letter dated 21.01.1997 requested for arbitration but the same was not controverted by the non-applicants. At this juncture, it is worthwhile to mention that copies of the notice and the reply thereof have been filed before this Court and Mr. Kale, learned senior counsel for the Respondents accepted them to be correct.

To appreciate the submission raised by Mr. Arya, learned Counsel for the Petitioner, it is apposite to refer to Section 7 of the Act. It reads as under -

Section 7 Arbitration Agreement - (1) In this part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in -

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other,

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

Mr. Arya has given immense emphasis on Clause (c) of Sub-Section 4 of the Act to substantiate his contention that there was assertion by the Petitioner and the same has not been denied by the Respondents.

In this context, it is apposite to refer to paragraph 16 of the notice sent by the Petitioner. It reads as under -

That my clients are due to receive the amounts claimed in the statement of claims attached hereto, which may kindly be paid within 30 days from the date of receipt of this notice sent with statement of claims, failing which my clients would be advised to move the matter before a court having jurisdiction to issue necessary direction to refer the matters to an arbitrator for adjudication of disputes and clients' claims and to publish the award by the Arbitrators.

I have perused the reply sent by the Respondents through their counsel. In the reply the Respondents have denied the justifiability of the claims. On a reading of the Para 16 of the statement of claim it does not transpire that there is allegation that there is existence of an agreement incorporating an arbitration clause. In absence of such an assertion the question of denial by the Respondents does not arise. It is to be borne in mind that an agreement providing an arbitration clause has to be strictly construed. In this context I may usefully refer to the decision rendered in the case of Wellington Associates Ltd. v. Kirti Mehta, 2000 CLC 1003 (SC) wherein it has been held as under -

The words in sub-clause (1) of S. 7, "means an agreement by the parties to submit to arbitration", in my opinion, postulate an agreement which necessarily or rather mandatorily requires the appointment of an arbitrator/arbitrators. Section 7 does not cover a case where the parties agree that they "may" go to a suit or that they "may" also go to arbitration.

The purpose of referring to the aforesaid decision is that an arbitration clause must clearly be spelt out or must be covered by the language of Section 7 of the Act. In the obtaining factual matrix the assertion made in the notice does not give rise to a situation to construe that there exists an arbitration agreement. Hence, I am not able to accept the submission of Mr. Rohit Arya, learned Counsel for the Petitioner.

In view of my foregoing analysis, both the civil revisions, being devoid of substance, are hereby dismissed without any order as to costs.