

(2004) 05 PAT CK 0008
In the Patna High Court
Case No : Request Case No. 3 of 2004

Bihar State Ware Housing Corporation	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 05-05-2004

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 7, 7(3), 7(4)

Citation : (2004) 3 PLJR 165

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : Ganesh Pd. Singh, for the Appellant; Mahesh Prasad, for State, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Garg, J.—Heard learned Counsel for the parties.

2. The Petitioner, Bihar State Ware Housing Corporation has come to this Court u/s 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator to resolve the disputes which had arisen between the Petitioner and the Respondent No. 2. According to the Petitioner, in certain circulars Issued by the Bureau of Public Enterprises whenever a dispute arises between the Government owned Corporation/Corporations the matter will have to be referred to the arbitrator. According to him, though there is no written agreement between the Petitioner and the Respondent No. 2 but in light of those circulars, the matter will have to be referred to the arbitrator. On the other hand learned Counsel for the State submits that in the present matter no arbitrator can be appointed under the provisions of the Act because there is no written agreement between the parties (emphasis supplied). Referring to Section 7 of the Act, it is submitted that there must be an agreement between the parties only then the matter can be referred to arbitration. Taking an exception to the argument learned Counsel for the Petitioner submits that an arbitration agreement has to be In writing, If it contains or meets the requirements under Clauses (a), (b) or

(c) of Sub-section (4) of Section 7 of the Act. According to him a circular issued by the State Govt. Bureau of Public Enterprises would always form part of the agreement therefore the arbitrator has to be appointed.

3. For proper appreciation of the dispute between the parties, the scheme of the Act is to be appreciated. From the statement of objects and reasons it would appear that present is an act to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards and to define the law relating to conciliation, and for matters connected therewith or incidental thereto. Section 7 of the Act which is being interpreted by the parties to suit their own causes reads as under:

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.

(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.

4. Sub-section (3) mandates that an arbitration agreement shall be in writing. Sub-section (4) says that an arbitration agreement is in writing if it is contained in different documents signed by the parties, exchange of the letters etc. and exchange of statements of claim and defence in which existence of the agreement is alleged by one party :and not denied by the other. The submission of the learned Counsel for the Petitioner that if Clauses (a), (b) or (c) are satisfied then only it is required to be in writing otherwise not. In the opinion of this Court, the argument is misconceived. Sub-section (3) clearly mandates that an arbitration agreement shall be in writing. Now what can be the nature of the writing has been given in Sub-section (4). According to Sub-section (4) "writing" would mean a document signed by the parties and or an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement. Similarly an arbitration agreement shall be deemed to be in writing, if it is contained in an exchange of statements of claim and defence in

which the existence of the agreement is alleged by one party and not by the other. A fair understanding of Clauses (a), (b) and (c) would make It clear that a document has to be in writing, It may be signed by both the parties. It may be in form of exchange of letters etc. so that the record of the agreement is kept. For Clause (b), there may not be a document or an agreement which is signed by both the parties but there has to be some writing. According to Clause (c), if one party asserts existence of an arbitration agreement and the other party does not deny then the Court would presume that there is an agreement in writing. Clause (c) In fact goes with the law of pleadings. When a party asserts a fact and the other party does not controvert it then there is a presumption of the correctness of the statement made by the first party. In either of the contingencies referred to in Clause (a), (b) and (c), there is a writing and Sub-section (4) goes in accord with Sub-section (3) of Section 7 of the Act. A party cannot be allowed to say that though he has not signed a document, there is no exchange of letters etc., they have asserted the agreement in some claim which has not been denied by the other party, despite that the matter be referred to the arbitrator. The submission made by the learned Counsel for the Petitioner are based on a foundation which is yet to be founded.

5. The petition is dismissed.

6. Rejection of this application certainly would not create a bar against the Petitioner, if he has any other legal remedies available to him.