

(2007) 02 P&H CK 0068
In the Punjab And Haryana At Chandigarh

Brij Bhan Gupta

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 14-02-2007

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2007) 2 ARBLR 47

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Viney Mittal, J.—On a request made by the learned Counsel for the petitioner, at the outset, the present petition is treated to be filed under Article 227 of the Constitution of India.

2. The petitioner before this Court is a contractor. The contractor was awarded a contract for execution of work relating to trenching and laying of underground cables and connected jobs in secondary switching area, Ambala Cantt.

3. It appears that there were some differences and disputes between the parties. The aforesaid disputes were referred to an arbitrator by Chief General Manager in terms of Condition No. 29 of the tender notice and Condition No. 25 of the agreement between the parties. Shri R.N. Garg, Telecom District Manager, Faridabad was appointed as a sole arbitrator. The arbitrator rendered his award dated March 28, 1992.

4. In the proceedings for making the award as a rule of the court, certain objections were raised by Union of India and the department. However, all the objections were overruled by the Trial Judge and consequently vide judgment dated August 30, 1997, the award was ordered to be made the rule of the court.

5. The department took up the matter in appeal.

6. In the course of appeal, all the objections were reiterated by the department.

The learned appellate court on an interpretation of Clause 25 of the agreement between the parties held that very appointment of arbitrator was void ab initio, inasmuch as, the Chief General Manager, Telecommunication was not competent to order the appointment of the arbitrator. The appellate court has also opined on the merits of the controversy with regard to the claim made by the contractor and held that the arbitrator had committed a grave error in awarding Rs. 2,82,188 to the contractor under Claim No. 2. Consequently, the appeal filed by the department was allowed and the judgment and decree of the trial court were set aside and the award was also set aside.

7. It is in these circumstances that the contractor has approached this Court through the present petition.

8. Shri Naresh Markanda, the learned Counsel appearing for the petitioner has at the outset referred to Clause 29 of the notice inviting tenders and has contended that as per the aforesaid clause, the Chief General Manager, Telecommunication was a competent authority to appoint the arbitrator.

9. Shri Markanda has also referred to the communications dated August 26, 1991/September 5, 1991 whereby the arbitrator was appointed in terms of the aforesaid Clause 29. On that basis, the learned Counsel has argued that the reliance placed by the appellate court on Clause 25 of the agreement between the parties was wholly misplaced and in fact the arbitrator had been appointed under Clause 29 of the terms and conditions of the notice inviting tenders.

10. On the other hand, Shri Kamal Sehgal, the learned Counsel appearing for the respondent department has defended the order passed by the appellate court. Shri Sehgal has contended that once the parties had entered into a formal agreement, then the various clauses of the notice inviting tenders had lost their relevance.

11. After taking into consideration the rival contentions of the learned Counsel for the parties, I find that the appellate court while deciding the controversy between the parties has not adverted to Clause 29 of the terms and conditions of the notice inviting tenders. Whether Clause 29 was still operative and binding between the parties after an agreement had been entered between them is a matter which requires consideration. However, the appellate court has not adverted to that aspect of the matter.

12. Of course, the appellate court has also chosen to go into the merits of the controversy but since the appellate court has not adverted to an important aspect of the matter with regard to the jurisdiction and authority of the Chief General Manager, Telecommunication to appoint an arbitrator, therefore, it would not be appropriate to comment upon the said matter, at this stage.

13. Consequently, the present revision petition is allowed. The order dated October 10, 1998 passed by the Additional District Judge, Ambala is set aside. The matter is remanded back to the learned Additional District Judge, Ambala for

a fresh decision of the appeal filed by the Union of India and the department. The said appeal is restored back to its original number. It is further directed that while deciding the controversy afresh between the parties, the appellate court shall not be influenced by any observation made on the merits of the controversy by the appellate court in its earlier order dated October 10, 1998.

14. The parties are directed to appear before the learned Additional District Judge, Ambala on April 3, 2007.

15. A copy of the order be given dasti on payment of usual charges.