

(1980) 04 CAL CK 0032
In the Calcutta High Court
Case No : Matter No. 1290 of 1979

Budhlani Engineers (P) Limited

APPELLANT

Vs

Calcutta Metropolitan Development Authority

RESPONDENT

Date of Decision : 25-04-1980

Acts Referred:

Arbitration Act, 1940 — Section 20, 8, 8(1), 8(2)

Citation : AIR 1980 Cal 359 : (1981) 1 CALLT 39 : (1981) 1 CompLJ 17

Hon'ble Judges : Salil Kumar Roy Chowdhury, J

Bench : Single Bench

Advocate : Dipak Kumar Basu, for the Appellant; H.K. Saharay, for the Respondent

Judgement

Salil Kumar Roy Chowdhury, J.—This is an application under Sections 8 and 33 of the Arbitration Act, 1940. It is admitted that all the requirements u/s 8 of the Arbitration Act, 1940, have not been complied with. Therefore, the present application u/s 8 is not maintainable but only the existence, validity and effect of the arbitration agreement be determined by this Court in this application.

2. The facts of the present case are not in dispute as agreed to between Mr. Dipak Kumar Basu, appearing for the petitioner, and Dr. H. K. Saharay, appearing for the Respondent, that originally the petitioner entered into a contract for executing engineering work for C. M. P. O. and subsequently in 1974 C.M.P.O. ceased to exist and the same was taken over by C.M.D.A. and the petitioner completed his work under C.M.D.A. who made payments of running bills of the petitioner. Disputes having arisen for non-payment of the petitioner's bills, the petitioner is now desirous of referring the matter to arbitration.

3. The only question which has arisen Is whether the arbitration agreement which was in the original agreement between the petitioner and the C. M. P. O. or the arbitration agreement which is at present existing in respect of the contract with C.M.D.A. is applicable to the present case. In short, the scope, effect and existence of the arbitration agreement to be determined by this Court in this

application.

4. After hearing both the parties, in my view, it appears that the original arbitration clause in the agreement between the petitioner and the C.M.P.O. is the arbitration agreement which should be given effect to between the parties. There is no dispute that it was by law the said contract was assigned or devolved on C.M.D.A. and in fact. Given effect to by the petitioner and C.M.D.A. Therefore, it is a case of assignment under the law of the original contract which contained an arbitration clause between the petitioner and the C.M.P.O. It is now clear that in the said original arbitration clause the Chief Engineer was the appointed Arbitrator and if he was unwilling and unable to act, he was to nominate an Arbitrator for adjudicating the disputes between the parties. It is also an admitted position that there is no post of Chief Engineer in C.M.D.A. but at the same time it cannot be said that the arbitration clause contained any intention not to appoint any Arbitrator or fill up the vacancy. Therefore, the arbitration agreement contained in the original contract between the petitioner and the C.M.P.O. is now enforceable and as there is no Chief Engineer the Court has the right to appoint an Arbitrator if the petitioner takes appropriate proceedings either u/s 8 or 20 of the Arbitration Act, 1940, as may be advised. The said proposition would be clear from the decisions in *Union of India (UOI) Vs. Chaman Lal Loona*, , *The Gujarat Electricity Board Vs. The Ahmedabad Electricity Co. Ltd. and Others*, , *The Union of India (UOI) Vs. Shri Om Prakash*, , *K.C. Chatterjee Vs. The Durgapur Projects Ltd.*, , *Gopal Vs. The State of Uttar Pradesh*, and *Calcutta Metropolitan Development Authority Vs. K.C. Anand and Co.*, . Therefore, in my view, the said arbitration agreement between the petitioner and the C.M.P.O. is the arbitration clause which is enforceable, existing and valid between the parties and both the parties; are bound by the said arbitration clause which by assignment both by agreement and law is the only arbitration clause which can be given effect to between the parties.

5. In the result I am making the following order :

6. It is determined that the arbitration agreement contained in the conditions of contract being tender No. 6 of 1971-72 between the petitioner and the C.M.P.O. in whose place and stead C.M.D.A. has been substituted is the arbitration clause governing the contract and is enforceable but as there is no Chief Engineer of C.M.D.A. the petitioner can only enforce the said arbitration agreement by taking steps in terms of Section 8(1)(b) of the Arbitration Act after complying with the requirements of serving notice and applying before the Court u/s 8(2).

7. There will be no order as to costs in this application.