
(2009) 12 RAJ CK 0003
In the Rajasthan High Court

Durga Construction Company	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 15-12-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 9

Citation : (2010) 1 WLN 282

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. The petitioner has approached this Court u/s 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act of 1996) for appointment of the arbitrator as in spite of the notice by the petitioner to the respondent dated 09.11.2004 (Annex. 13) the respondents failed to appoint the arbitrator in terms of the clause of the arbitration which is clause No. 64 of the general conditions of the contract.

3. According to the petitioner in response to the invitation for tender, the petitioner submitted his offer. The petitioner was invited for negotiation which was concluded on 29.01.2004 and according to the petitioner during negotiation, the petitioner was advised to reduce the rates offered in respect of item No. NS-3 and in compliance, the petitioner reduced the rates against item No. NS-3 by Rs. 1 lakh approximately and the respondents agreed to the rates given. However, in acceptance letter No. WA488/2/1-I dated 10.02.2004 conveying the acceptance of the bid of the petitioner, the item No. NS-3 was totally deleted and that was not correct in view of the negotiation between and that was not correct in view of the negotiation between the parties. The total work was of Rs. 83,87,063.83/- and work was to be completed within 6 months. The petitioner objected to the deletion of the item No. NS-3 and submitted representations one

after another. The petitioner's grievance was not redressed and the petitioner was served with 7 days notice, which is dated 02.03.2004 directing the petitioner to start the works in 48 hours and ultimately when work was not started, his contract was terminated and now the work has already been given to third party. The petitioner, therefore, raised dispute and served a notice upon the respondents on 09.11.2004. Then, the petitioner approached this Court for appointment of the arbitrator, however, the petitioner also submitted an application u/s 9 of the Act of 1996 before the District Judge, Ajmer and tried to obtain the stay against the recovery of Rs. 27,65,630/- which was pending at the time of filing of the writ petition. However, in this petition, the relief is only for appointment of the arbitrator.

4. The respondents submitted that in view of the terms of the contract and as was made clear no fault can be found in the respondent in terminating the contract of the petitioner.

5. Learned Counsel for the petitioner submitted that though there was no formal agreement between the parties, but in view of the recent judgment of this Court delivered in PS Kuntal Contractor & Suppliers v. Jai Narayn Vyas University, Jodhpur and Anr. S.B. Civil Arbitration Application No. 30/2007, decided on 11.08.2009 (by me) even when there is no formal agreement executed between the parties even then it can be inferred from the circumstances referred in the said judgment and arbitrator can be appointed in terms of the general conditions.

6. It is not in dispute that petitioner gave his offer and there was negotiation and then acceptance letter was issued by the respondents themselves, copy of which is Annex. 1 dated 12.02.2004. The respondents not only accepted the contract but by subsequent communication asked the petitioner to complete the work and, thereafter, terminated the contract by exercising power under the terms of the contract, which is clear from the communication sent by the respondents themselves. Therefore, there was concluded contract between the parties and in the said contract there is a clause No. 64 providing for appointment of the arbitrator. The respondents failed to appoint the arbitrator and the petitioner was conveyed acceptance of his offer at Jodhpur vide Annex. 1, therefore, this Court has jurisdiction to appoint arbitrator.

7. Hence, this application for appointment of arbitrator is allowed and Sh. K.C. Sancheti, Retired Chief Engineer, PHED, A-328, Shastri Nagar, jodpur is appointed as arbitrator who may fix his arbitral fees in accordance with the Manual of Procedure for Alternative Dispute Resolution, 2009.