
(2005) 02 DEL CK 0195

In the Delhi High Court

Case No : Arbitration Petition No. 260 of 2004

Everest Enterprises

APPELLANT

Vs

Airports Authority of India

RESPONDENT

Date of Decision : 16-02-2005

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(6)

Citation : (2005) 2 ARBLR 314

Hon'ble Judges : T.S. Thakur, J

Bench : Single Bench

Advocate : Anil K. Seth, for the Appellant; S.K. Chandwani, for the Respondent

Judgement

T.S. Thakur, J.—The petitioner was allotted an annual rate contract for repair and maintenance of civil works at Lucknow Airport for the year 2003-2004. Clause 57 of the general conditions of contract applicable to the said works envisages adjudication of the disputes between the parties by way of arbitration. Disputes having arisen, the petitioner appears to have addressed letters dated 19th May, 2004 and 31st May, 2004 to the Regional Executive Director, Airports Authority of India and Executive Director, Airports Authority of India respectively, seeking a reference of the same to arbitration in terms of Clause 57 (supra). The receipt of the said letters by the authority concerned notwithstanding, no arbitrator was nominated for adjudication of the matters in controversy forcing the petitioner to file the present petition u/s 11 of the Arbitration and Conciliation Act, 1996.

2. Mr. Chandwani has, in response to the notice issued to the Airports Authority of India, appeared on its behalf. No objections have, however, been filed to the petition nor has Mr. Chandwani prayed for any time to do so. All that was argued by Mr. Chandwani was that the present petition suffers from certain procedural defects in terms of the scheme framed by the High Court for reference of matters u/s 11 of the Arbitration and Conciliation Act, 1996. That objection is, in my opinion, wholly insufficient to shut out the petitioner or decline relief to him. I say so for more than one reasons. Firstly, because the execution of an

agreement between the parties is not disputed. That the contracted work was regulated by the general conditions of contract including Clause 57 which envisages arbitration, is fairly conceded by Mr. Chandwani. A copy of the agreement and Clause 57 of the general conditions of contract has been produced by the petitioner along with the petition. It is also not in dispute that differences have arisen between the parties which were sought to be referred to arbitration in terms of the petitioner's letters dated 19th May, 2004 and 31st May, 2004. The fact that the authority competent to nominate the arbitrator for adjudication of the disputes, has not acted in the matter or made any appointment till date is also admitted. If that be the case, there is no question of this Court refusing or declining to exercise its powers u/s 11(6) of the Act. Section 11(6) envisages appointment of Chief Justice or any person or institution designated by him in cases where authority or institution fails to act as required under the procedure settled for nomination of the arbitrator or reference of the disputes to him. The authority competent to nominate the arbitrator in the instant case has admittedly not acted in the matter despite a clear-cut demand on the part of the petitioner to do so. Even as on date, the authority has not come forward to make the appointment.

3. Mr. Chandwani then argued that while the Airports Authority is ready and willing for a reference even at present notwithstanding a contrary view taken by it in its communication dated 24/26th August, 2004 filed as Annexure VI to the petition, such a reference may be made to one of the officers included in the panel of arbitrators maintained by the Authority. I however see no reason to go by the panel which the Airports Authority of India appears to have maintained for making references to arbitration. If the competent authority wished to make a reference to anyone of the persons so empanelled, it could have exercised that option at the appropriate stage. Having failed to do so, it has in my opinion forfeited the right to insist on a nomination out of the panel. Even otherwise, the panel of arbitrators maintained by the Airports Authority of India has nothing sacrosanct about it. Mr. Chandwani fairly conceded that any retired Chief Engineer could ask for empanelment and the same is granted without asking any question or verification of his credentials. Such being the position, I see no reason why the Court should necessarily go by the panel. The proper course in my opinion is to refer the disputes to a person of known integrity. I accordingly refer the disputes to Shri Prem Kumar, former AD & SJ, Delhi for adjudication. The parties shall appear before the arbitrator on 4th April, 2005. The arbitrator shall be entitled to a fee of Rs. 5,500 for effective hearing and Rs. 2,000 for every non-effective hearing subject to a total of Rs. one lakh. The parties shall deposit the fee with the arbitrator as and when directed by him in such proportions as he may direct. Incidental expenses shall be paid separately as and when the parties are directed by the arbitrator to do so.

4. The petition is disposed of with the above directions.

5. No costs.