
(2014) 11 SHI CK 0137
In the High Court Of Himachal Pradesh
Case No : Arbitration Case No. 58 of 2014

Flora Udyog

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2015) 1 ShimLC 346

Hon'ble Judges : Dharam Chand Chaudhary, J.

Bench : Single Bench

Advocate : Sumeet Raj Sharma, Advocate, for the Appellant; Virender Verma, Additional Advocate General and Pushpinder Jaswal, Deputy Advocate General, for the Respondent

Final Decision : Allowed

Judgement

Dharam Chand Chaudhary, J.?In this petition a prayer has been made for appointment of Arbitrator to resolve the disputes having arisen during the course of execution of the work, i.e., "Augmentation of WSSTO Drought Affected Area of Padhar, Darang, Katindi and Kufri from Panjodi Nallah Source" in District Mandi by providing, laying, joining and testing of gravity from main source to WPT i.e., from RD 13125 to 20550, awarded to the petitioner-contractor. It has been claimed that the petitioner-contractor has served the Department with notice highlighting therein the dispute having arisen with a request to appoint the Arbitrator and thereby satisfied the conditions envisaged under sub-sections (5) and (6) of Section 11 of the Arbitration and Conciliation Act, 1996. The respondent-Department allegedly failed to appoint the Arbitrator. Instead of filing the reply to this petition, the respondent-Department has appointed Arbitrator vide order" dated 22nd October, 2014 and placed the copy thereof on record of this petition.

2. It is seen from the order ibid that Shri R.K. Jarhyan, Superintending Engineer (Design), I&PH Department (MZ), Mandi has been appointed as Arbitrator by the

Chief Engineer, I&PH Department (MZ), Mandi to decide and make award regarding claims/disputes having been raised by the petitioner-contractor. On behalf of the petitioner-contractor the appointment of Shri Jarhyan has been objected to on the ground that he has been posted in I&PH Department at Mandi and that the work in question pertains to I&PH Division, Padhar under Mandi Zone of the Department. The apprehension of learned Counsel is that the appointment of Shri Jarhyan is not in the interest of fair and impartial arbitration proceeding and adjudication of the dispute in a fair manner. It has also been submitted that the right vested in respondent-Department ceased to exist on the expiry of thirty days from the date of receipt of the notice served under sub-sections (5) and (6) of Section 11 of the Act in the month of June, 2014. The appointment of the Arbitrator, according to Mr. Sharma is contrary to the law laid down by Apex Court in *Deep Trading Company Vs. Indian Oil Corporation and Others*, .

3. The perusal of notice Annexures P-2 and P-3 reveals that the same are letters dated 3rd June, 2014 and 22nd June, 2014 and despatched through speed post on the same date. Although, no proof qua acknowledgement thereof by the petitioner-contractor has been placed on record, however, as per endorsement made in the order dated 22nd October, 2014 reveals that the notice dated 3rd June, 2014 was received on 7th June, 2014. The Arbitrator having been appointed on 22nd October, 2014, therefore, is beyond the period of thirty days from the date of receipt of the notice by the respondent-Department. The apex Court has held in the judgment *supra* that the Department ceased to exercise the power conferred upon it under the agreement to appoint the Arbitrator in case fails to appoint the Arbitrator within thirty days of the receipt of the notice from the contractor. The appointment of Arbitrator, therefore, as now made is not legal and valid and rather contrary to the law laid down by the apex Court. Meaning thereby that the Arbitrator has to be appointed now by this Court. On behalf of the petitioner-contractor Superintending Engineer (Arbitration), H.P. P.W.D., Solan, has been suggested for being appointed as Arbitrator to resolve the dispute in this matter. There is no serious objection qua such appointment on behalf of the respondent-Department. Otherwise also, the Arbitrator has now to be appointed by this Court after the respondent-Department have lost its right of making appointment of the Arbitrator, in accordance with the agreement. I, therefore, appoint Superintending Engineer (Arbitration), H.P. P.W.D., Solan, as Arbitrator in this case to enter into the reference and make an award after taking into consideration the claims and counter-claims laid by the parties on both sides as expeditiously as possible. It is expected that the Arbitrator shall conclude the proceedings within six months from the date, he enters into the reference. The petition is accordingly allowed and disposed of.