
(2007) 10 RAJ CK 0063

In the Rajasthan High Court

Case No : Civil Miscellaneous Arbitration Application No. 29 of 2006

Gangotri Enterprises Limited

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 24-10-2007

Acts Referred:

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

Citation : (2008) 1 WLN 376

Hon'ble Judges : Manak Lall Mohta, J

Bench : Single Bench

Judgement

Manak Mohta, J.—Heard learned Counsel for the parties in respect of application u/s 11(6) of the Arbitration and Conciliation Act, 1996 for the appointment of Arbitrator.

2. It is stated by learned Counsel for the applicant that applicant is a Limited Company incorporated under Indian Companies Act, 1956 and is carrying on the business of contract or ship. The applicant was awarded contract by the Executive Engineer, Irrigation Division, Pali (Raj.) for the "construction of Bandi Nehra Irrigation Project Tehsil and District Pali" vide work-order No. Accts/Bandi/ Nehra/97-98/11091-101 dt. 10.02.1998. The said work was to be started from 01.12.1997 and was to be completed by 30.11.1999 (24 months period including rainy season). The contract was for an amount of Rs. 3,05,20,647/- and an Agreement No. 131/1997-98 (Annex. A/1) was also executed in this respect between the parties having arbitration clause that in case of any sort of dispute, the dispute was liable to be referred to "Standing Committee". It was alleged in the application that the respondents created hurdles and did not fulfill the obligation on their part, as a result of which, the work could not be completed within the contract period. Not only that, the running bills of applicant were not paid as per the terms and conditions of the agreement (Annex.A/1). It is also stated that the contract period was extended from 30.11.1999 to 31.05.2000 and during the extension period, the respondent-Department abruptly stopped

the work on 23.12.1999 and an order for re-starting the work was issued on 24.06.2006, hence, it is stated that the agreement is still alive. Despite completion of work amounting to Rs. 84,28,340/-, payment of the applicant was not released, as such, a dispute arose between the parties. The applicant claimed payment on various heads, the details whereof is as under:

3. The applicant sent a notice on 09.06.2004 (Annex.A/2) alongwith Demand Draft No. 407103 dt. 25.08.2005 for a sum of Rs. 1,00,000/- to the Department with a prayer to refer the matter to the "Standing Committee" for the redressal of dispute but despite receipt of notice, no effective and required action was taken. It was, therefore, prayed that the relief claimed in the application may kindly be granted and the application be allowed.

4. Learned Counsel for the respondent-Department opposed the application stating that the contractor has not acted in accordance with the mandate of Rajasthan Public Works Account Rules, 1990 for getting the matter referred to Arbitrator. RPWA 90 prescribes detailed procedure for getting the matter referred and until and unless the those requirements are fulfilled/complied with, it cannot be said that proper application for getting the matter referred to the Arbitration Committee was ever moved by the contractor. No cause of action can be said to have accrued in favour of the applicant to maintain the arbitration application. The application of the contractor for getting the matter referred is lacking in material particular in many aspects, as such, for the want of requisite details, it was not possible for the Department to take action thereon. The procedure prescribed for submitting the application for settlement of dispute by the "Sanding Committee" too has not been followed by the contractor through the same has been embodied in the Rules. The contractor ought to have complied with the same and in absence of the same requirement, Clause 11(6) of the Arbitration and Conciliation Act, 1996 cannot be said to be fulfilled by the contractor. Thus, the contractor is not entitled to maintain this arbitration application and the same deserves to be dismissed. It was further stated that right from beginning the contractor was negligent in performing his job and at no point of time he was sincere towards the performance of the work. The contractor has levelled false and bald allegations that the respondent-Department created unnecessary hurdles and did not fulfil their obligation, as a result of which, the contract work could not be completed within the stipulated time but it was stated that the contractor himself was responsible for the delay and in not performing the work in time and has thus caused heavy loss to the Department. No case for appointment of sole arbitrator is made out. The arbitration application is not maintainable either at facts or at law and the same deserves to be dismissed.

5. After considering the contentions, it is the admitted fact from the perusal of the material available on record that a work-contract was given to the applicant-firm and an agreement No. 131 of 1997-98 was also executed between the parties. The allegation of the applicant that the work could not be completed due

to departmental hurdles, though the Department has denied the same but these points are to be seen by the Arbitrator. Thus, considering the overall facts of the case there is a dispute between the parties, that has to be resolved by the Arbitrator as per the terms of the admitted Agreement (Annex.A/1). It is also borne out from record that the applicant had sent notice on 09.06.2004 (Annex.A/2) and had also deposited the required fees for referring the dispute to Arbitrator (vide DD No. 407103 dt. 25.08.2005 for a sum of Rs. 1,00,000/-) as per the terms of the Agreement but despite expiry of reasonable time, the matter has not been referred to Arbitrator, that gives a cause to file this application.

6. Considering the overall facts and circumstances of the case, this application deserves to be allowed and is hereby allowed. In the facts of the case Shri U.M. Lodha, Retired Chief Engineer, PHED is hereby appointed as the sole arbitrator, to whom all the dispute with reference to the said workcontract may be referred by the parties. It will be open for the parties to raise all the objections including about jurisdiction of the arbitrator as well as maintainability of the claim before the Arbitral Tribunal. The fee of the arbitrator and the cost of arbitration shall be determined by the arbitrator himself.

7. In view of the aforesaid, the application filed u/s 11(6) of the Arbitration and Conciliation Act, 1996 is allowed. Let the intimation of appointment as Arbitrator be sent to Shri U.M. Lodha, Retired Chief Engineer, P.H.E.D., C-31 Shastri Nagar, Jodhpur (Raj.)