

(2019) 10 DEL CK 0227

In the Delhi High Court

Case No : Arbitration Petition No. 677 Of 2019

Gaurav Enterprises

APPELLANT

Vs

Janakpuri Super Specialty Hospital & Anr

RESPONDENT

Date of Decision : 22-10-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 11(6), 11(6A), 12, 34

Citation : (2019) 10 DEL CK 0227

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Tarkeshwar Nath, Ramesh Singh, Chirayu Jain

Final Decision : Disposed Of

Judgement

Jyoti Singh, J

I.A. 14759/2019

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

ARB.P. 677/2019

1. This is a petition under Section 11(6) of the Arbitration & Conciliation Act, 1996 ("Act") for appointment of an Arbitrator to adjudicate the disputes between the parties.

2. An agreement dated 06.09.2007 was signed between the parties for deployment of Security Guards in the premises of Super Specialty Hospital, Janak Puri.

3. Disputes having arisen between the parties, an Arbitrator was appointed by this Court on 04.11.2016 in Arb.P. 478/2016. An Award was rendered by the Arbitrator on 01.05.2017.

4. Aggrieved with the final Award, the petitioner had challenged the Award before this Court on 21.07.2017 in OMP(COMM) 315/2017 under Section 34 of the Act, vide judgment dated 04.04.2019. Petition was allowed and the Award was set aside, leaving it open for the parties to agitate their claims by way of appropriate proceedings, in accordance with law.

5. On 15.04.2019, the petitioner invoked the Arbitration Clause for appointment of the Arbitrator. It is the case of the petitioner that the respondent has failed to appoint an Arbitrator pursuant to the said notice of invocation and hence the present petition has been filed.

6. Learned Standing Counsel for the Government of NCT of Delhi, Mr. Ramesh, enters appearance on an advance copy. Mr. Ramesh raises a preliminary objection to the maintainability of the petition on the ground that the invocation notice dated 15.04.2019 has been addressed to the Lt. Governor whereas it should have been addressed to the party to the agreement, which is Medical Superintendent, Super Specialty Hospital, Janak Puri. He has drawn the attention of this Court to the invocation notice, which is at page 27 of the petition.

7. Learned counsel for the petitioner, on the other hand, has drawn the attention of this Court to clause 38, which is part of the NIT issued by the respondent. Clause 38 reads as under:

"In case of any dispute or difference, the award of the Arbitrator appointed by the Lt. Governor of GNCT of Delhi will be final and binding on the parties to the contract and the court of Delhi/New Delhi shall only have the jurisdiction over the same."

8. I have heard learned counsels for the parties.

9. A bare perusal of Clause 38, which forms part of the NIT issued by the respondent, clearly indicates that the Lt. Governor is the Appointing Authority. The agreement entered into between the parties on 06.09.2007 also reveals that the contract was entered into in the name of the President of India through the Medical Superintendent, Super Specialty Hospital, Janak Puri.

10. The relevant clause of the agreement is extracted herein as under:

"This agreement made at Delhi on the 6th day of September 2007 between the President of India through Medical Superintendent, Super Specialty Hospital, C-2B, Janakpuri, New Delhi (Herein after called "The Government" which expression shall unless excluded by or repugnant to the context, be deemed to include its successors in office and signs) of the one part M/s. Gaurav Enterprises, 241, Gali No. 4, Durgapuri Extension, Delhi, Director Sh. P.R. Pillai hereinafter called the contractor which expression shall unless excluded by or repugnant to context, be deemed to include its/heirs, successors, executors, administrators, representatives and assigns of the other part."

11. In my view, since the Appointing Authority is the Lt. Governor, the invocation

notice has been rightly addressed to the Lt. Governor. Seen from another angle, if pursuant to the invocation notice, there is a failure to appoint the Arbitrator, the said failure would be on part of the Appointing Authority, which is the Lt. Governor. This Court thus does not find any merit in this contention of the learned counsel for the respondent.

12. This is the second round of litigation between the parties. The existence of the Arbitration Clause was not in dispute in the earlier round and is not in dispute herein.

13. In view of the judgment of the Apex Court in M/s Mayavati Trading Pvt. Ltd. Vs. Pradyut Deb Burman, Civil Appeal No. 7023/2019 decided on 5.9.2019, at this stage, the Court is only required to examine the existence of the Arbitration Clause. Relevant portion of the judgment of the Apex Court is as under:

"10) This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgment as Section 11(6A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment Duro Felguera, S.A. (supra) - see paras 48 & 59.

11) We, therefore, overrule the judgment in United India Insurance Company Limited (supra) as not having laid down the correct law but dismiss this appeal for the reason given in para 3 above."

14. In view of the above, Hon"ble Mr. Justice Kailash Gambhir, a retired Judge of this Court, is appointed as an Arbitrator to adjudicate the disputes between the parties.

15. The address and mobile number of the learned Arbitrator is as under:

Hon"ble Mr. Justice Kailash Gambhir,

Former Judge of Delhi High Court,

W-67, Third Floor, GK-I,

New Delhi-110048

Mobile No.: 9871300033

16. The learned Arbitrator shall give disclosure under Section 12 of the Act before entering upon reference.

17. The fee of the Arbitrator will be as per the Fourth Schedule of the Act.

18. The petition is disposed of in the above terms.