
(2008) 01 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Miscellaneous Arbitration Application No. 103 of 2006

Gopal Ram Gumani Ram

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-01-2008

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 14, 15

Citation : (2008) 2 WLN 254

Hon'ble Judges : Manak Lall Mohta, J

Bench : Single Bench

Judgement

Manak Mohta, J.—Heard learned Counsel for the parties in respect of application filed under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996") for appointment of new Arbitrator in place of appointed Arbitrator.

2. It is submitted by the learned Counsel for the applicant that the considering the facts that their existed a dispute between the parties, vide order of the Chief Engineer, IGNP, Jaisalmer No. FA (6AC)(469) Part-II/CE/IGNP/6450-55 dt. 01.07.1995 Shri D.D. Notra (the then sitting Superintending Engineer Gajner-Kolayat Lift Circle-I, I.G.N.P., Bikaner) was appointed as the Arbitrator for adjudication of disputes between the parties and to resolve the claim arising out of Agreement No. 151 of 1984-85 in the matter of "Manufacturing and supplying of pucca tiles and bricks at Kiln near RD 1313 of IGMN".

3. It is further submitted that the appointed Arbitrator Shri D.S. Notra has not culminated the arbitral proceedings as Shri Notra has been transferred to Punjab and since then for the last nine years the matter is pending unattended and has not been finalised and the applicant is suffering monetary loss on account of it, under such circumstances, a prayer was made for the appointment of new Arbitrator with a further request that the newly appointed Arbitrator be directed to resolve the dispute expeditiously. For this purpose, the applicant has also applied several times to the opposite side to make appointment of a new

Arbitrator but despite repeated requests, new Arbitrator has not been appointed. Thus, this application has been filed by the applicant for that purpose, the notices whereof were sent to the opposite party.

4. A reply to the application has been filed by the opposite side but in the reply no substantial cause has been shown why the earlier Arbitrator should not be replaced by appointing new independent Arbitrator.

5. It is not disputed that in past Shri D.S. Notra was appointed as arbitrator as per the terms of the agreement for resolving the dispute, as such, there is no necessity in going into the details with regard to the dispute subsisting between the parties. It has also not been disputed that the appointed Arbitrator has completed the proceedings of dispute as stated by the applicant but a miserable time has spent with no result.

6. It is also borne out from the record that the requisite formalities have already been completed but the Department has failed to consider the request of the contractor to change of the Arbitrator and to appoint new Arbitrator. Thus, considering the overall facts and circumstances of the case in the fitness of things, an independent Arbitrator is to be appointed. I deem it just and proper to appoint Shri M.C. Mehta, Retired Superintending Engineer as the new Arbitrator in place of Shri D.S. Notra.

7. In the result, the application is allowed. Shri M.C. Mehta, Superintending Engineer (Retd.), 490 Kamla Nehru Nagar, Near First Puliya, Chopasni Road, Jodhpur (Raj.) is hereby appointed as the sole Arbitrator to resolve the dispute between the parties. The parties are free to raise their dispute, claim, counter-claim etc., before the Arbitrator. Initial expenses of Rs. 2500/- shall be deposited by the applicant with the Arbitrator (subject to adjustment at the time of final determination of fees) so that the learned Arbitrator may start the arbitral proceedings. The fee of Arbitrator and the cost of arbitration shall be determined by the Arbitrator himself and that shall be borne equally by both the parties. The Arbitrator may be informed accordingly. The new Arbitrator will be authorised to collect the file and record lying with the old Arbitrator. The authority of the old arbitrator is hereby revoked.

8. A copy of this order be also sent to Shri D.S. Notra at the respondent's office address to get serve on him.

9. A copy of this order may also be sent to the learned District Judge, Jodhpur for information and with a request that adequate sitting arrangement and other necessary facilities be made available for the newly appointed Arbitrator, if any request is made by him.

10. With these directions, the arbitration application is hereby accepted. No order as to costs.