
(2005) 04 JH CK 0031

In the Jharkhand High Court

Case No : Arbitration Application No. 4 of 2004

Goyel Brothers Ghatsila

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 27-04-2005

Acts Referred:

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

Citation : (2005) 2 JCR 457

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Manoj Prasad, for the Appellant; A.K. Sinha, AG, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Heard learned counsel for the parties.

2. In the instant request petition filed u/s 11(6) of the Arbitration and Conciliation Act, 1996. Petitioner has prayed for appointment of an independent person as an Arbitrator for adjudication of the disputes arose out of a contract.

3. Petitioner M/s Goyel Brothers is a firm carrying on business of civil and transport contracts who pursuant to advertisement issued by the Irrigation Department Subernrekha Multipurpose Project submitted tender for the work of excavation and bed lining of Galudih Right Bank Main Canal. Petitioner submitted tender which was accepted and work order was issued in 1984 and the work was to be completed by 9th October, 1986. Petitioner's case is that the work could not be completed because of non-fulfillment of contractual obligations by the respondents. Petitioner alleged to have made series of correspondence with the respondents but even the bills for the work done was not cleared because of paucity of fund. The contract was ultimately closed in 1992. It is contended that final bill was prepared by the respondents in 1995 but all sum payable to the petitioner was not included. Petitioner lodged his protest vide letter dated 3.11.1995. Petitioner, thereafter, vide letter dated 5.12.1995 addressed to the

Superintending Engineer, Galudih Barrage Circle, Mahulla sought decision within 60 days in terms of Clause 51 of the contract. The Superintending Engineer in response to his letter denied and disputed the claim of the petitioner which was communicated vide letter dated 24.2.1996.

4. Petitioner's further case is that being dissatisfied with the decision of Superintending Engineer, petitioner vide letter dated 29.2.1996 and 23.3.1996 made reference to the concerned Chief Engineer of the respondents for arbitration in terms of Clause 52 of the Contract. However, the Chief Engineer vide letter dated 2.4.1996 furnished a panel of 3 (three) persons for selection of an Arbitrator for deciding only some of the disputes and also counter claim of the respondents. One Mr. Gagan, Director, Hydrology Water resources Department was appointed Arbitrator but he by letter dated 16.4.1996 expressed his inability to accept the appointment as sole arbitrator. Petitioner, thereafter, vide letter dated 28.4.1996 requested the Chief Engineer to furnish a fresh panel for appointment of Arbitrator but latter did not agree to the same.

5. Respondents filed their counter affidavit, wherein it is stated that petitioner has suppressed material facts in his application, inasmuch as petitioner earlier filed an application before the Court of Sub-Judge, Ghatsila being Misc. Case No. 11/96 and the said case is still pending in the Court of learned Sub-Judge, Ghatsila. It is stated that against the order dated 23.11.1996 passed in the aforesaid Misc. Case, petitioner preferred Misc. Appeal No. 267/1996 (R) before the Patna High Court (Ranchi Bench) and the said appeal was subsequently withdrawn. Respondents further case is that for resolving the disputes, the matter was referred to the Sole Arbitrator Md. Ahmad and both the parties have also filed their claim and counter claim and participated arbitration proceeding. Various other facts have been stated in the counter affidavit.

6. Learned counsel for the petitioner in course of argument has not disputed the material facts disclosed in the counter affidavit i.e. petitioner already moved Subordinate Court, Ghatsila and the matter is sub-judice before him. Petitioner also has not disputed the fact that parties have filed their claim and counter claim before the Sole Arbitrator Md. Ahmad and both the parties have participated in the said proceeding. Prima facie, therefore, the instant application u/s 11(6) of the Arbitration and Conciliation Act is not maintainable.

7. Besides the above, in the request petition cause of action for making prayer u/s 11(6) of the Act is that respondents inspite of request made by the petitioner in 1996 for reference of the disputes to the Arbitrator for adjudication the respondents did not refer the matter to the Arbitrator. If that is so then the instant request petition after 9 years is not at all maintainable, as the same is barred by limitation.

8. For the aforesaid reasons, there is no merit in this request petition, which is, accordingly, dismissed.