
(2021) 08 UK CK 0097

In the Uttarakhand High Court

Case No : Arbitration Application No. 20 Of 2020

Harjinder Pal Singh

APPELLANT

Vs

Cantonment Board, Dehradun

RESPONDENT

Date of Decision : 06-08-2021

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 11(6), 11(8), 12(5)

Citation : (2021) 08 UK CK 0097

Hon'ble Judges : Raghvendra Singh Chauhan, CJ

Bench : Single Bench

Advocate : Mahanand Joshi, Kanti Ram, B.S. Adhikari

Final Decision : Disposed Of

Judgement

S. No., Work Order, "Amount/Value

(in INR)", "Amount of Bill

(in INR)", Date of Bill

1., "Repairs to door window

glazing of Cantt. Quarter

No.4 (2nd June, 2017)", "34,319/-", "34,319.43/-", 25.06.2018

2., "Public Group Latrine Double

Compartment in Cantt. Area

6 nos. (17th November,

2017)", "3,71,755/-", "3,71,755.57/-",

3., "Construction of vacation

room & extension of

playground at Cantt. Inter

College, Chakrata (19th

September, 2017)", "11,49,019/-", "11,49,019/-",

4., "Repairs to Ceiling Gate and

Mile Steel Grill of Cantt.

Qtr. No.18 (5th March,

2018)", "65,262/-", "65,262.48/-", 25.06.2018

Amount Payable,, "16,20,355/-", "16,20,356.48/-",

the request of the applicant for appointing the Garrison Engineer as the sole Arbitrator. Thirdly, since the respondent maintained a study", , , ,

silence and did not appoint the Arbitrator, as requested within a period of thirty days, the applicant had no option but to approach this Court under", , , ,

Section 11(6) of the Act for appointment of the sole Arbitrator. Therefore, according to the learned counsel for the applicant, once this Court is seized", , , ,

of the matter under Section 11(6) of the Act, it is only this Court which has the power to appoint the sole Arbitrator. Hence, according to the learned", , , ,

counsel for the applicant, the contentions raised by Mr. B.S. Adhikari, the learned counsel for the respondent is highly misplaced." , , , ,

15. Heard the learned counsel for the parties and perused the record. , , , ,

16. Section 12(5) of the Act is as under:- , , , ,

Â 12(5). Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the", , , ,

subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an", , , ,

arbitrator: , , , ,

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express", , , ,

agreement in writing. , , , ,

17. A bare perusal of the proviso clear reveals that it creates a bar with regard to the appointment of an Arbitrator who is in relationship with the", , , ,

parties or with the counsel or with the subject matter of the dispute. However, the proviso contained an exception. The exception is that, after disputes", , , ,

have arisen between the parties, both the parties agreed by an express

agreement in writingâ??, only then can the bar contained in Section",,,,,

12(5) of the Act be said to be the waiver by the parties.,,,,,

18. Admittedly, in the letter dated 17.06.2020, the applicant had requested for appointing â??the Garrison Engineerâ?? as the sole Arbitrator.",,,,,

However, the request had to be acted upon within a period of thirty days. Undoubtedly, the respondent did not act on the said request within a period",,,,,

of thirty days. Moreover, in the present case, there has been no â??express agreement in writingâ??, with regard to the waiver of the bar",,,,,

contained in Section 12(5) of the Act. Therefore, the learned counsel for the respondent is not justified in claiming that, by letter dated 17.06.2020, the",,,,,

applicant had waived the bar imposed by Section 12(5) of the Act. Moreover, admittedly, the applicant had filed the present application on 24.09.2020",,,,,

before this Court. Even after the filing of the present application, the respondent sat quietly over the request of the applicant for appointing â??the",,,,,

Garrison Engineerâ?? as the sole Arbitrator till 15.10.2020. Therefore, the learned counsel for the respondent is not justified in claiming that the",,,,,

respondent is legally justified in appointing â??the Garrison Engineerâ?? as the sole Arbitrator in accordance with the arbitral clause. Hence, the",,,,,

contention raised by the learned counsel for the respondent is clearly unacceptable.,,,,,

19. Admittedly, the disputes continue to exist between the parties. Obviously, the dispute needs to be resolved through the arbitral proceedings.",,,,,

Therefore, this Court appoints Mr. B.C. Kandpal, Retd. Judge, High Court of Uttarakhand, R/o 117 Rajeshwar Nagar, Phase-I, Sahastradhara Road,",,,,,

Dehradun, as the sole Arbitrator after his disclosure in writing is obtained in terms of Section 11(8) of the Act; and only after receipt thereof, shall his",,,,,

appointment, as an arbitrator, come into force.",,,,,

20. On giving consent to arbitrate the disputes between the parties, Mr. B.C. Kandpal, Retd. Judge, High Court of Uttarakhand, R/o 117 Rajeshwar",,,,,

Nagar, Phase-I, Sahastradhara Road, Dehradun, shall enter reference, and shall pass an award in accordance with law. The learned arbitrator shall",,,,,

fix his fees in consultation with both the parties.,,,,,

21. The arbitration application is disposed of accordingly.,,,,,