
(2002) 09 DEL CK 0039
In the Delhi High Court
Case No : A.A. No. 125 of 2001

Haryana Telecom Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 17-09-2002

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(5), 11(6), 13, 14(1)

Citation : (2002) 09 DEL CK 0039

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : S.K. Gupta, for the Appellant; Yayant Bhushan, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Gupta, J.—The petitioner filed this petition u/s 11(6) of the Arbitration and Conciliation Act, 1996 (for short "the Act"), inter alia, alleging that it is engaged in the manufacture of Polythene Insulated Jelly Filled telephone cables. Pursuant to tender No. 14-21/94-MMT (MMS) dated 30th November 1994 for procurement of 352 LCKM underground cables in various sizes and types floated by the respondents the petitioner submitted bid(s) which was accepted by respondents. As per terms of contract the petitioner was entitled to a minimum order to the extent of 20% of the tender quantity. Tender Evaluation Committee evaluated the tender differently and finalised the allocation of order to petitioner to the extent of 27.60 LCKM leaving a shortfall of 8.4 LCKM. Further, the respondent withheld releasing 1.04 LCKM out of purchase order of 22.34 LCKM again leaving shortfall of 1.04 LCKM making the total shortfall of 14.7 LCKM. It is alleged that the action of respondents in not placing purchase order for the balance quantity was wholly malafide. So, the petitioner filed CWP No. 1200/97 in this court but in view of arbitration clause appearing in tender documents the same was disposed of by the order dated 17th February 2000 with direction to the respondents that as and when the petitioner invokes arbitration clause, an arbitrator would be appointed. Vide letter dated 26th February, 2000 sent through lawyer the

petitioner invoked the arbitration clause. By the letter dated 25th April 2000 the respondents conveyed the appointment of K.L. Jain, G.M. (Development), Haryana Telecom Circle as arbitrator to decide the disputes. Vide letter of May 2000 the respondents informed the petitioner that since K.L. Jain has expressed his unwillingness to act as arbitrator, Ram Kumar, G.M. (A & P) UP (W) Telecom circle, Dehra Dun has been appointed in his place. Vide letter dated 27th June 2000 this arbitration asked the petitioner to file claims which the petitioner submitted on 27th October 2000. As the said arbitrator did not held even a single hearing after the filing of claims, the petitioner vide letter dated 14th February 2001 requested him to proceed in the matter. It appears that said arbitrator was not interested to continue as arbitrator. So, vide letter dated 23rd March 2001 the petitioner requested Director General, Department of Telecommunication, New Delhi, to appoint another person to act as arbitrator. Despite receipt of above letter the said Authority has failed to appoint another arbitrator. It was prayed that an independent arbitrator preferably a retired Judge of this court may be appointed as arbitrator to decide the disputes.

2. In the short reply filed on the affidavit of R.N. Bhagat, Assistant Director General (ST) it is stated that a decision has been taken on 4th October 2001 to appoint R.K. Tyagi, G.M. (Dev), Haryana Telecom circle in place of Ram Kumar as arbitrator and the petition has, thus, been rendered infructuous.

3. In the rejoinder filed to reply on the affidavit of P.K. Sharma, Dy. Manager (Legal) of petitioner, it is stated that petitioner is not agreeable to the appointment of R.K. Tyagi as arbitrator as he has been monitoring OMP No. 251/01 filed by the Department against petitioner company challenging the award dated 7th August 2000 made by Justice P.K. Bahri (Retd).

4. Order dated 3rd May 2002 notices the statement made by Sh. Jayant Bhushan for respondents that Ram Narain, G.M. (Vigilance) MTNL has now been appointed as arbitrator in place of R.K. Tyagi. This order further notices the statement made by Sh. S.K. Gupta for petitioner that petitioner is also not agreeable to the appointment of Ram Narain as arbitrator. Thereafter on 5th September 2002 the petitioner filed affidavit of said P.K. Sharma opposing the appointment of Ram Narain alleging that he has been actively participating before Justice P.K. Bahri (Retd) in two arbitration matters arising out of Suit No. 163 and 164 of 1997 on behalf of the Department and this gives rise for justifiable doubt as to his independency/impartiality. It is further alleged that the Appointing Authority did not have jurisdiction and power to appoint an arbitration during the pendency of present petition.

5. Main thrust of argument advanced by Sh. S.K. Gupta was that as R.K. Tyagi was appointed as arbitrator much beyond the period of 30 days of the service by the petitioner of notice dated 23rd March 2001, this court alone had the jurisdiction to appoint arbitrator. In support of submission, my attention was drawn to the provision contained in Sub-sections (5) and (6) of Section 11 of the Act as also the decision in Datar Switchgears Ltd. Vs. Tata Finance Ltd. and

Another, . However, the submission is without any merit. The provisions of said Section 11(5) and (6) will not be attracted as admittedly Ram Kumar was in position as arbitrator on the date notice dated 23rd March, 2001 demanding appointment of arbitrator was issued by the petitioner. In case Ram Kumar who has been replaced by R.K. Tyagi and again by Ram Narain, had failed to act without undue delay, as alleged, the remedy open to petitioner was to file petition u/s 14(1)(a) of the Act for his removal. Further, appointment of Ram Narain as arbitrator on 19th April, 2002 can be assailed by taking resort to challenge procedure as provided in Section 13 of the Act alone and not in present petition. Datar Switchgears" case (supra) has no applicability to the facts of this case.

6. Consequently, the petition is dismissed being without merit. No order as to costs.