
(1998) 09 DEL CK 0039

In the Delhi High Court

Case No : Suit No. 2822-A/95 and Suit No. 2905-A/95

Hindustan Trading Corpn. and M/s. United Engineers

APPELLANT

Vs

MTNL and Others

RESPONDENT

Date of Decision : 01-09-1998

Acts Referred:

Citation : (1998) 75 DLT 399 : (1998) 47 DRJ 485 : (1998) 4 RCR(Civil) 449

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : Mr. Suman Kapur, for the Appellant; Mr. A.K. Sikri and Ms. Madhu Sikri, for the Respondent

Judgement

Dalveer Bhandari, J.—This judgment will dispose of Suit Nos. 2822/A/95, 2905/95 and CCP 1/96. The petitioner Hindustan Trading Corporation and M/s. United Engineers, have filed these petitions u/s 20 read with sections 5 and 12 of the Arbitration Act, 1940, in which the petitioners have prayed that the respondent Mahanagar Telephone Nigam Limited, (for short, MTNL), be directed to file the arbitration agreement dated 21st December, 1995. It is further submitted that the disputes and differences, have arisen between the parties and be referred to the arbitration by appointing an arbitrator. The disputes enumerated are set out as under:-

"(i) Whether the defendant can terminate the contract and declare the plaintiff firm black-listed and their further business be banned with MTNL, in view of the said Show Cause Notice dated 13.9.1995?

(ii) Whether defendant No. 2 can terminate the contract of the plaintiff by only giving Show Cause Notice as contained in letter dated 13.9.1995, without resorting to the Arbitration Clause XIX as contained in the terms of contract?

(iii) Whether plaintiff is entitled to claim damages for the loss of reputation and business due to the issuance/circulation of letter dated 29.9.1995?

(iv) Whether the defendant can black-list the plaintiff firm and order banning further business, in the garb of alleged Show Cause Notice dated 13.9.1995?

[v) Whether plaintiff is entitled to claim damages to the tune of Rs. 10 lakhs for the loss of business, which they have suffered because of non-awarding of work by departments of MTNL, due to issuance of letter dated 13.9.1995 and 29.9.1995?"

2. According to the respondents, the Suits filed by the Petitioners are misconceived and are liable to be dismissed with exemplary costs. In the written statements, many other preliminary objections have been taken. The main objection which has been taken by the respondents is that according to the terms and conditions stated in the NIT, the petitioner cannot be permitted to tender for the work in MTNL because the petitioner's near relative is working in the MTNL.

The relevant para of NIT reads as under :

"The contractor shall not be permitted to tender for works in MTNL (responsible for award and execution of contracts) in which his near relative is posted as JAO/ AAO/AO or an officer in any capacity between the grads of S.E. and A.E. both inclusive. He shall also intimate the names of the persons, who are working with him in any capacity or are subsequently employed by him, and who are near relatives to any officer in MTNL. Any breach of this condition by the Contractor would render him liable to be removed from the approved list of Contractors of this Department."

3. In view of this embargo, the petitioners could not tender for work in the MTNL. It is the further case of the respondent that the controversy involved in this case is no longer rest integra because the Division Bench of this court in the case of the petitioners determined that the petitioners have a close relationship with Dalbir Aggarwal, who is working with MTNL, and the petitioners could not tender for work in the MTNL. The respondents submitted that this matter cannot be referred to an arbitrator because the arbitrator himself is equally bound by the findings of the judgment of the Division Bench of this Court. The entire exercise of referring the matter to the arbitrator would be futile.

4. In the written statement/reply, the respondents have pointed out that Dalbir Aggarwal is the son-in-law of J.P. Aggarwal, brother of the petitioner P. Aggarwal, Proprietor of the petitioner's firm. It is further submitted that this relationship clearly falls within the definition of near relative and according to the embargo placed by the respondents in the aforementioned para of NIT, the petitioners are not entitled to participate in the bid and cannot tender for any work in the MTNL. It is further mentioned that when the respondents learnt about the relationship of the petitioners with Dalbir Aggarwal a Show Cause Notice dated 13.5.95 was issued. The reply to the said notice was filed on 29.9.95. Relevant portion of the reply reads as under :

"In this connection we are to submit that Shri Dalbir Aggarwal, alleged to be our relative in your above said letter, is not our relative, and the declaration given by us is correct. Hence, the above said letter may kindly be withdrawn."

5. It is further mentioned that according to the terms of the contract each approved contractor was to be given the work of Rs. 50 lakhs in a year, whereas in a period of 7 months from 1.2.1995 to 30.9.95, the petitioners were given a total payment of Rs. 3,60,04,540. Much more work has been awarded to the petitioners than what could normally be allocated to the approved contractors according to the norms. It is also mentioned that there are various firms on the approved list of contractors who have not been awarded any work like Telecommunication Consultants India Pvt. Ltd. and Star Construction. It is also mentioned that a few other approved firms have been given marginal work and those firms have also raised the dispute about non award of adequate work to them.

6. Mr. Sikri, learned Senior Counsel appearing, for this respondents has placed reliance on the said judgment of the Division Bench of this Court delivered on April 12, 1996, in C.WP No. 4686/95. The Division Bench examined the case of these petitioners and other connected firms. In para 7.3, it is mentioned that B.C. Aggarwal, L.R. Aggarwal, Murlidhar Aggarwal and J.P. Aggarwal are all brothers. In para 7.4, it is mentioned that J.P. Aggarwal's son-in-law Dalbir Aggarwal is a Construction Officer (South) in MTNL. It is also mentioned that as per the terms of the contract, each approved contractor was to be given work of Rs. 50 lakhs in a year, whereas the work secured by the petitioner and other related concerns was running in several crores, and there are number of other approved contractors who were not given any work or given very marginal work, and there has been a clear violation of the principles of equality, in distribution of the work by MTNL.

7. The Division Bench framed four questions. The questions read as under:-

"(1) Whether total exclusion of such persons as have relations employed in MTNL without regard to the place where they are working and the capacity in which they are posted amounts to an unreasonable restriction on the fundamental right to trade guaranteed by Article 19(1) of the Constitution?

(2) Whether such a restriction can be said to be arbitrary and unreasonable and offensive of Article 14 of the Constitution?

(3) Whether brother's son-in-law can be said to be a near relative?

(4) What is the effect of the petitioners in CWP 4686/95 and 4687/95 having made a disclosure of relationship while filing their tender?"

8. The Division Bench of this Court examined a catena of judgments delivered by the Supreme Court. Regarding the issue, whether the brother's son-in-law is close relation or not, the Division Bench held that a brother's son-in-law would also be included within the meaning of near relatives. The Division Bench also

observed that the petitioners were not entitled to bid tenders with the MTNL.

9. The Division Bench also mentioned that the test of eligibility is to be applied on the date of bidding the tender and maintained throughout the execution of the work under the contract. The court also observed that the question whether such relation in the MTNL has actually influenced the tender or work is immaterial. What is sought to be achieved is avoiding the possibility of such influence being exercised and maintaining fairness and neatness in the dealings of the MTNL. The court's conclusion in the said judgment was that restriction can be imposed by an execution fiat and is neither arbitrary nor unreasonable. The Court observed that it does not offend Article 14 of the Constitution. It satisfies the test laid down by the Supreme Court in the case of *State of Madras Vs. V.G. Row*, .

10. Mr. Sikri, learned Senior Counsel for the respondents submitted that in view of the finding of the Division Bench of this Court in the case of the petitioners, no useful purpose would be served by referring the matter to the arbitrator.

11. The learned counsel for the petitioners made an unsuccessful attempt to wriggle out of the said judgment. The Division Bench of this Court had examined this very controversy involved in this case and arrived at a categorical finding that the petitioner's brother's son-in-law is included in the terms near relative", and this submission whether the MTNL was actually influenced in giving the work to the petitioner is immaterial and the restriction imposed by the MTNL does not offend Article 14 in any manner.

12. The entire exercise of referring the matter to arbitration would be totally a futile one because the arbitrator is bound by the decision of this Court.

13. In view of my aforesaid conclusion. I find no merit in these suits. These suits being totally devoid of any merit are accordingly dismissed. However, in the facts and circumstances of this case, I direct the parties to bear their own costs. The suits and all surviving IAs are accordingly dismissed.