
(2013) 09 SHI CK 0015
In the High Court Of Himachal Pradesh
Case No : Arbitration Case No. 25 of 2013

Jagson Airlines Limited

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Citation : (2013) 3 ShimLC 1593

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Ajay Mohan Goel, for the Appellant; Meenakshi Sharma, Additional Advocate General and Mr. Neeraj K. Sharma, D.A.G., for the Respondent

Judgement

Rajiv Sharma, J.—This petition has been filed under sub-section (6) of Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of arbitrator in terms of arbitration clause 19.1 of the agreement executed between the parties on 1.9.2010. The termination notice was issued to the applicant on 19.4.2011. Applicant sent a reply to the same on 14.5.2011. The agreement dated 1.9.2010 was terminated by the respondent on 21.5.2011. Legal notice was issued by the applicant to respondent on 12.9.2012. Respondent sent reply to the applicant on 20.12.2012. The dispute has arisen between the parties, including interpretation of terms of the agreement inter se the parties. Clause 19.1 of the agreement reads as under: 19.1. Any dispute of difference whatsoever arising between the parties to the agreement, of or relating to the construction, meaning, scope, operation or effect of this contract or the validity of breaches thereof shall be referred to the Chief Secretary to the Government of Himachal Pradesh as sole arbitrator who will decide the disputes in accordance with the provisions of Arbitration and Conciliation Act, 1996 and the award made there under by the arbitrator shall be final and binding upon both the parties, subject to legal remedies available under the law.

It is evident from the plain reading of arbitration clause 19.1 that the Chief Secretary to the Government of Himachal Pradesh was to be appointed as sole

arbitrator to decide the dispute in accordance with the provisions of Arbitration and Conciliation Act, 1996. However Mr. Ajay Mohan Goel has vehemently argued that a retired Judge of the High Court or Senior Advocate may be appointed as arbitrator.

2. Mr. Neeraj Sharma, learned Deputy Advocate General was directed to seek instructions whether LR-cum-Secretary (Law) to the Government of Himachal Pradesh can be appointed as arbitrator. He has placed on record copy of communication dated 29.8.2013 whereby it has been stated that LR-cum-Secretary (Law) to the Government of Himachal Pradesh could be appointed as arbitrator.

3. Accordingly, I am of the view that the dispute between the parties can be referred to LR-cum-Secretary (Law) to the Government of Himachal Pradesh. The Arbitrator is directed to enter into reference within a period of four weeks from the date of receipt of the copy of the order. Thereafter, the applicant is directed to file claim petition within a period of three weeks. Reply be filed by the respondent within further three weeks. The pleadings, including, rejoinder and counter-claim, shall also be completed by the parties within a period of eight weeks after entering into reference by the LR-cum-Secretary (Law). It shall be open to the Arbitrator to determine his own procedure with the consent of the parties. The fee of Arbitrator is fixed at Rs. one lakh to be shared equally by the applicant and respondent. He shall also be entitled to secretarial allowance of Rs. 25,000/-. The award shall be made strictly as per the provisions of the Arbitration and Conciliation Act, 1996 within six months. Needless to add that the learned Arbitrator shall pass a speaking order. The Registrar General of this Court is directed to immediately inform the Arbitrator about the passing of the order by sending a copy of this order to him. In view of this, the petition stands disposed of. Pending application, if any, also stands disposed of. No costs.