

(2008) 01 CHH CK 0002
In the Chhattisgarh High Court

Jaspal Bagh Yadav

APPELLANT

Vs

Hindustan Petroleum Corporation Limited and Others

RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8

Citation : (2008) 3 MPHT 15 : (2008) 2 MPJR 36

Hon'ble Judges : Sunil Kumar Sinha, J; L.C. Bhadoo, J

Bench : Full Bench

Judgement

1. Heard on I.A. No. 3 filed by the respondents u/s 8 of the Arbitration and Conciliation Act, 1996 (for short "the Act, 1996") for referring the dispute to the sole arbitrator.

2. The petitioner entered into an agreement with the respondents for transportation of petroleum products on 28th July, 2006 for period of 2 years. It appears that during this period some dispute arose between the parties and show-cause notices were issued to the petitioner regarding irregularities committed by him vide Annexures P-1, P-6 and P-10. Thereafter, contract was terminated by the respondents on 1.1.2007 vide Annexure P-16. Same order has been questioned by the petitioner in this writ petition.

3. Preliminary objection in the form of I.A. No. 3 has been filed on behalf of the respondents mentioning therein that the parties had entered into an agreement under which contract was awarded to the petitioner. It has been mentioned that as per Clause 16 of the agreement, an arbitration clause has been inserted whereby it has been entered into between the parties that all questions, disputes and differences arising under or in relation to this agreement shall be referred to the sole arbitration of the Director (Marketing) of the Company. If such Director (Marketing) is unable or unwilling to act as the sole arbitrator, the matter shall be referred to the sole arbitration of some other officer of the Company by such Director (Marketing) in his place, who willing to act as such sole arbitrator.

4. Learned Counsel for the respondents argued that the respondents have preferred this application (LA. No. 3), as there is already arbitration clause in the agreement, therefore, in view of the provisions of Section 8 of the Act, 1996, the matter may be referred to the sole arbitrator.

5. After arguing for some time, learned Counsel for the petitioner ultimately submitted that he has no objection if the matter is referred to the sole arbitrator in terms of the provisions of Section 8 of the Act, 1996 and Clause 16 of the agreement. But, his difficulty is that after entering into an agreement, the petitioner herein has incurred huge financial expenditure for making suitable arrangement for transportation of petroleum products. In the midst, if the agreement is cancelled, as his vehicles are standing, he will subject to huge financial loss on account of cancellation of the agreement, therefore, arbitrator be directed to expedite the arbitration proceeding and conclude the same within a period of 4 months.

6. Apart from that, the Hon'ble Apex Court in the matter of Agri Gold Exims Ltd. Vs. Sri Lakshmi Knits and Wovens and Others, , held that "Section 8 of the 1996 Act is peremptory in nature. In a case where there exists an arbitration agreement, the Court is under obligation to refer the parties to arbitration in terms of the arbitration agreement". Similar view has been taken by the Apex Court in the matter of Empire Jute Co. Ltd. and Ors. v. Jute Corporation of India Ltd. and Anr. AIR 2007 SCW 6930. In Para 18, the Apex Court held that now, it is well settled that when there exists arbitration clause, the Courts ordinarily would not exercise its discretion. The Court further held that the power of judicial review vested in the Superior Courts undoubtedly has wide amplitude but the same should not be exercised when there exists an arbitration clause.

7. In view of the above judgments and looking to the arbitration clause in the agreement, the matter has to be referred to sole arbitrator. At the same time, we are of the opinion that prayer made by learned Counsel for the petitioner is just, fair and reasonable, but it is for the arbitrator to take into consideration all aspects of the case and to grant reasonable opportunity to both the parties, expedite the proceeding and pass award at the earliest. But, at the same time, the parties are also duty bound and under obligation to assist the arbitrator, co-operate with him and do the needful at the earliest so he is able to pass the award at the earliest.

8. Learned Counsel for the petitioner is at liberty to approach the arbitrator and submit his claim at the earliest with an advance copy to the respondents and they should file their response and arbitrator shall expedite arbitration proceeding at the earliest.

9. With the words, the matter is finally disposed of with an order that the matter is referred to the sole arbitrator in view of Clause 16 of the agreement dated 28th July, 2006.