
(2006) 01 DEL CK 0162
In the Delhi High Court
Case No : CS (OS) No. 733 of 1984

Kailash Chand Gian Chand

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 13-01-2006

Acts Referred:

Arbitration Act, 1940 — Section 20

Citation : (2006) 01 DEL CK 0162

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : Vivekanand, for the Appellant; None, for the Respondent

Final Decision : Disposed Off

Judgement

R.C. Jain, J.—The petitioner, above named, has filed this petition u/s 20 of the Arbitration Act, 1940 (in short The Act) for a direction on the respondents to file the arbitration agreement in the Court and thereafter to make an order of reference of the claims / disputes detailed in para 14 of the petition through arbitration in terms of clause 64 of the General Conditions of Contract.

2. The petition has been made with the averments and allegations that the petitioner is a Government contractor and was awarded the work contract vide letter No. 1-W/104/SEN-I/MTP dated 28.6.1981. The disputes/ differences arose between the parties in relation to the said work contract. The contract is governed by the General Conditions of Contract and Special Conditions of contract. Clause 64 of the General Conditions of Contract provide for the settlement of disputes / differences between the parties through the mechanism of arbitration. According to the petitioner, the petitioner has total 8 claims against the respondent.

3. The petitioner approached the respondent for payment of the said amounts or to appoint an arbitrator for settlement of the said claims but to no avail, hence, this petition.

4. Respondents have filed reply to the petition not disputing the execution of the contract and the contract being governed by the General Conditions of Contract containing the arbitration agreement in Clause 64. However, it is stated that several claims raised by the petitioner are excepted matters within the meaning of Clause 63 of the General Conditions of Contract and under the Special Conditions of contract. The petitioner has filed a rejoinder thereby controverting the objects and pleas raised by the respondent in the reply and reiterating the allegations made in the petition.

5. It may be stated that this petition along with several other petitions filed by various contractors u/s 20 of the Act were disposed of by S.K. Mahajan, J vide an order dated 6.11.2000. The petitions were allowed and the respondent was directed to appoint the arbitrator to adjudicate upon all the claims raised by the petitioner. Aggrieved by the said order, the respondent/Railway Administration filed appeals. The said appeals were disposed of by the Division Bench vide order dated 22.4.2002 thereby remitting the petitions to this Court for disposal in view of the decision of the Supreme Court in the case of General Manager Northern Railways and Another Vs. Sarvesh Chopra, . Accordingly, this petition has again come up before this Court for consideration.

6. I have heard the counsel for the petitioner and have bestowed my thoughtful consideration to his respective submissions. In view of the decision of the Supreme Court in General Manager, Northern Railway's case (supra), it is no longer a subject matter of controversy as to what matters/disputes can be referred to arbitration. Those disputes/claims which are covered by excepted matters either under the General Conditions of Contract or Special Conditions of Contract are not liable to be referred to arbitration while all other claims raised by the petitioner are liable to be referred to arbitration.

7. Learned counsel for the petitioner has fairly conceded that so far as claims nos. (2) (3) and (4) listed in para 14 are excepted matters within the meaning of Clause 63 of the General Conditions of Contract or Special Conditions of Contract and, Therefore, may not be referred to arbitration. I have had not the advantage of hearing the learned counsel representing the respondent as none appeared on the date of hearing.

8. In the result, the petition is partly allowed and claim nos. (1), (5), (6), (7) and (8) are referred to the arbitration. The respondent / General Manager, Western Railway is hereby called upon to appoint an arbitrator within a period of eight weeks from the date of this order in terms of Clause 64 of the General Conditions of Contract for settlement of the above claim viz. (1). The arbitrator so appointed shall enter the reference and make and publish his award expeditiously within a period of four months from the date of entering the reference.

9. The petition and other pending applications, if any, stand disposed of accordingly.