
(2012) 11 P&H CK 0079

In the Punjab And Haryana At Chandigarh

Case No : Arbitration Case No. 134 of 2011 (O and M)

Kartar Singh Contractor

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2012) 11 P&H CK 0079

Hon'ble Judges : A.K. Sikri, C.J

Bench : Single Bench

Advocate : Vikram Singh, for the Appellant; Paramjit Batta, Additional Advocate General, Haryana, for the Respondent

Judgement

A.K. Sikri, C.J.—The petitioner was allotted work on 18.12.2006 which was to be completed within a period of three months, but due to certain reasons, same was not completed within the stipulated period. Certain disputes had arisen out of the aforesaid agreement. It is not necessary to go into the nature of those disputes. Suffice it to say that as per the petitioner, the respondents had committed certain breaches of the aforesaid agreement which had given rise to some claims. The respondents contend otherwise. Be as it may, there is no controversy that disputes have arisen between the parties. It is also an admitted position that Clause 25A of the agreement contains arbitration clause as per which in the event of such disputes matter is to be referred to arbitration of any serving Superintending Engineer or Chief Engineer of Haryana, PWD B&R Branch, to be nominated by designation by the Engineer-in-Chief, PWD Branch at the relevant time. The petitioner had sent notice dated 6.11.2009 for appointment of the Arbitrator in terms of Clause-25A of the agreement. As no response was received within 30 days, the petitioner, thereafter, filed the present petition u/s 11 of the Arbitration & Conciliation Act, 1996, for appointment of the Arbitrator by the Court.

2. In the reply filed by the respondents, it is stated that the petitioner has not

deposited the security as is required under Clause 25-A(7), therefore, no reference for arbitration is maintainable. Sub clause-7 of Clause-25A reads as under:-

7. It is also a term of this arbitration agreement that where the party invoking arbitration is the contractor, no reference for arbitration shall be maintainable unless the contractor, furnishes to the full satisfaction of the Executive Engineer In charge of the work, a security deposit of a sum determined according to details given below and the sum so deposited shall, on the termination of the arbitration proceedings, be adjusted against the cost, if any, awarded by the arbitrator against the claimant party and the balance remaining after such adjustment in the absence of any such cost being awarded, the whole of the sum will be refunded to him within one month from the date of the award.

The stamp fee due on the award shall be payable by the party as desired by the arbitrator and in the event of such party's default the stamp-fee shall be recoverable from any other sum due to such party under this or any other contract.

3. It is clear from the above that along with the demand for arbitration, the petitioner was to furnish security deposit of the sum determined according to the details given in the said sub-clause to the full satisfaction of the Executive Engineer and only on furnishing of this security deposit that the Executive Engineer was to take further action for appointment of Arbitrator. Admittedly, this security deposit was not furnished. Learned counsel for the petitioner submits that such a clause, requiring furnishing of security deposit as a precondition for appointment of Arbitrator, is not valid in law. However, as of today, the validity of this clause has not been challenged by filing any appropriate petition.

4. Faced with this position, learned counsel for the petitioner submits that the petitioner would furnish security deposit with the Executive Engineer under protest and without prejudice to the action which he can take challenging the validity of the said clause. On the basis of this submission, present petition is disposed of with liberty to the petitioner to furnish the security deposit in terms of sub clause-7 of Clause-25A of the agreement with fresh request to Executive Engineer to appoint the Arbitrator. On furnishing of this security deposit within two months, Arbitrator shall be appointed by the Executive Engineer, in terms of Clause-25A, within 15 days thereafter. Petition stands disposed of.