
(2010) 01 AHC CK 0314
In the Allahabad High Court
Case No : A & C Application No. 1 of 2010

K.C.C. Builders India Ltd.

APPELLANT

Vs

Mahanideshak (MARG VIKAS), Avam Vishesh Sachiv and
others

RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6)

Citation : (2010) 01 AHC CK 0314

Hon'ble Judges : Sabhajeet Yadav, J

Judgement

Sabhajeet Yadav, J.

By this application, the applicant has sought appointment of Arbitrator u/s 11(6) of the Arbitration and Conciliation Act, 1996 herein after referred to as "the Act" with the allegation that the respondents did not take action towards reference of dispute to the arbitration in view of clause 25.2 of Part of the Agreement contained in Annexure2 of the writ petition, which reads as under:

"25.2. The Dispute Review Expert (Board) shall be paid daily at the rate specified in the Contract Data together with reimpursable expenses of the types specified in the Contract Data and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Dispute Review Expert. Either party may give notice to the other to refer a decision of the Dispute Review Expert to an Arbitrator within 28 days of the Dispute Review Expert's written decision. If neither party refers the dispute to arbitration within the next 28 days, the Dispute Review Expert's decision will be final and binding."

According to the applicant it has moved application on 25.5.2009 before the Dispute Review Expert invoking clause 24 of the agreement entered into between the partes, which has authority to settle the dispute and failing to do so, the dispute is liable to be referred before Arbitrator. In my opinion, submission of learned counsel for the applicant is misconceived, thus has to be rejected.

Under clause 24 of the said document, there is a provision for settlement of dispute which provides that if the Contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by contract or that the decision was wrongly taken, the decision shall be referred to the Dispute Review Expert within 14 days of the notification of the Engineer's decision. Under clause 25 of the said document the procedure for redressal of disputes seems to be given. Under clause 25.1 the provisions have been made to the effect that the Dispute Review Expert (Board) shall give a decision in writing within 28 days of receipt of a notification of a dispute. Clause 25.2 of the said document further provides that either party may give notice to the other to refer a decision of Dispute Review Expert to an Arbitrator within 28 days of Dispute Review Expert's written decision. If neither party refers the dispute to arbitration within 28 days, the Dispute Review Expert's decision will be final and binding.

Since it is a case of the applicant that it has moved application before Dispute Review Expert (Board) on 25.5.2009 and since then nothing has been communicated to him about the decision taken on his application. Therefore, it has prayed that this Court may be pleased to appoint an Arbitrator under the aforesaid provisions of the Act.

In my opinion, according to clause 25.2 of said document either party can give notice to the other to refer a decision of Dispute Review Expert to Arbitrator within 28 days of the Dispute Review Expert's written decision. Since the Dispute Review Expert did not take any decision in the matter by now, therefore, no question arises for any of the party to refer said decision before the Arbitrator. Accordingly, in given facts and circumstances of the case, I am of the view that it is too early to ask this Court to appoint the arbitration under the provisions of the Act.

The application is misconceived. Accordingly, the same is rejected as premature.