

(2000) 04 DEL CK 0002

In the Delhi High Court

Case No : A.A. 216/97

K.L. Khanna and Sons

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 24-04-2000

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2000) 04 DEL CK 0002

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Mr. R. Rajappan, for the Appellant;

Judgement

Mukul Mudgal, J.—This is a petition on behalf of the petitioner u/s 11 of the Arbitration & Conciliation Act, 1996(hereinafter referred to as the "Act") seeking a direction to the respondents to file the original of Arbitration Agreement in this Court & also an Order of reference of the disputes/claims enumerated in Para 7 (C) (i) to (ix) of the petition for arbitration.

2. The petitioner is a contractor working with the Union of India and has entered into contract for the construction work of C/o School for crop protection at IARI, Pusa, New Delhi (J.L.M. Blocks) under Agreement No. 6EE/CDIV/1992-93 with the respondent No. 1.

3. Clause 25 of the contract Agreement provided for the arbitration and reads as follows:

"25. Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications designs, drawings and instructions hereinbefore mentioned and as to the quality of workmanship of materials used on the work or as to any other questions claim, right matter or thing whatsoever in any way arising out of or relating to the contract designs, drawings, specifications, estimates instructions orders or these conditions or otherwise concerning the works of or the execution or failure to execute the same whether

arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the person appointed by the Chief Engineer C.P.W.D. in charge of the work at the time of dispute or if there be no Chief Engineer the administrative head of the said C.P.W.D. at the time of such appointment. It will be no objection to any such appointment that the arbitrator so appointed is a Government servant that he has to deal with the matters to which the contract relates and that in the course of his duties as Government servant he has expressed views on all or any of the matters in dispute or difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, such Chief Engineer or administrative head as aforesaid at the time of such transfer, vacation of office or inability to act, shall appoint another person to act as arbitrator in accordance with the terms of the contract. Such persons shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of this contract that no person other than a person appointed by such Chief Engineer or administrative head of the C.P.W.D. as aforesaid should act as arbitrator and if for any reason, that is not possible, the matter is not to be referred to arbitration at all. In all cases where the total amount of all the claim in dispute is Rs.75,000/- (Rs. Seventy Five thousand only) and above, the arbitrator shall give reasons for the award.

Subject as aforesaid the provisions of the Arbitration Act, 1940, or any statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration under this clause.

It is a term of the contract that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each such disputes.

It is also a term of the contract that the contractor(s) do/does not make any demand for arbitration in respect of any claim(s) in writing within 90 days of receiving the intimation from the Govt. that the final bill is ready for payment, the claim of the contractor(s) will be deemed to have been waived and absolutely barred and the Govt. shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitrator(s) may from time to time with consent of the parties enlarge the time for making and publishing the award.

The decision of the Superintending Engineer regarding the quantum of reduction as well as justification thereof in respect of rates or sub standard work which may be decide to be accepted will be final and would not be open to arbitration."

4. Certain disputes having arisen which according to the petitioner are to be settled in accordance with the provisions of Clause 25 of the Agreement. Accordingly, the petitioner has invoked the said Arbitration Clause by letter dated 25.4.1996 seeking reference of the 16 claims/disputes for arbitration. In the reply filed on behalf of the respondents, the main plea appears to be that since

the bill has already been finalised and accounts of the petitioner settled, the disputes cannot be referred for arbitration.

5. The learned counsel for the petitioner has relied upon the judgment of this Court reported as Nitin Construction Co. Vs. National Agricultural Marketing Federation of India Ltd., to contend that in view of the law laid down in the aforesaid judgment and the judgment followed therein, i.e., Union of India (UOI) and Another Vs. L.K. Ahuja and Co., , this petition should be allowed.

6. The Hon''ble Supreme Court in Union of India (UOI) and Another Vs. L.K. Ahuja and Co., held that even if the final bill was settled and no claim declaration was given, the right to get further payment gets weakened but the claim subsists and whether it does subsist is a matter which is arbitrable. The law laid down in the said Judgment covers the present dispute also.

7. Accordingly, the petition is allowed and the respondents are hereby directed to file the original arbitration agreement in this Court within six weeks from today & refer all the disputes/claims mentioned in Para 7 (C) i) to xvi) of the petition for the consideration by a Sole Arbitrator within 10 weeks from today. The respondent No.2 is directed to appoint an Arbitrator in terms of the Arbitration Act within a period of 10 weeks from today, failing which the independent arbitrator is liable to be appointed by this Court.

8. The petition is accordingly disposed of.