
(2006) 03 DEL CK 0192
In the Delhi High Court
Case No : OMP No. 132 of 2002

Laldee Private Limited

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-03-2006

Acts Referred:

Arbitration Act, 1940 — Section 12, 12(2), 28, 33, 5

Citation : (2006) 2 ARBLR 262 : (2006) 128 DLT 195 : (2006) 88 DRJ 372

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : J.N. Aggarwal, for the Appellant; Nasir Ahmed, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjay Kishan Kaul, J.

OMP No. 132/2002

1. The present proceedings have been filed by the petitioner u/s 33 of the Arbitration Act 1940 (hereinafter referred to as the "said Act") seeking to determine the existence and validity of the arbitration clause contained in Clause (b) of Para 2900 of ISR conditions of contract and to revoke the authority of respondent no-2 arbitrator in view of the order dated 14.01.1991 passed in OMP NO. 100/87 by this court.

2. The dispute relates to a purchase order placed by respondent no. 1 on the petitioner dated 13.12.1978. In view of the arbitration clause forming part of the terms and conditions of contract, the respondent no. 1 invoked the arbitration clause in terms of notice dated 22.04.1980 for non supply under the purchase Order of MS Two Way Keys. The matter was referred to the sole arbitration of Sh. J.C.Singhal, who however entered upon reference only on 13.07.1984. The respondent no. 1 kept on taking time for filing the statement of claim and in the mean time, the time for making of the award expired. The arbitrator sought extension of time to make and publish the award, but the same was not agreed

to by the petitioner.

3. In view of the aforesaid facts, respondent no. 1 filed an application u/s 28 of the said Act for extension of time being OMP no. 100/87. The petition was opposed by the petitioner and it is this petition which was disposed of on 14.09.1991 by D.P.Wadhwa, J (as he then was). The learned Judge noted that the time for making the award had expired in November, 1984 and the petition was filed on 22.08.1987 after a delay of more than two and a half years. On being asked to give better particulars about the delay, the same were not found to be satisfactory by the learned Judge as the only reason given was that the department had shifted and the entire record/files had been misplaced and could not be traced out. The court thus declined to extend the time for making the award after expiry of more than two and a half years of the time stipulated for making the award. No appeal was filed against this order and the same became final.

4. Respondent no. 1 once again after a lapse of more than four years in 1995 sought to invoke the same arbitration clause alleging that the earlier arbitrator could not give the award within the prescribed period and the application for extension of time period was rejected. The earlier arbitrator Sh. J.C.Singhal had retired and thus the proceedings u/s 28 of the said Act had become infructuous as per Clause (b) of Para 2900 of the IRS conditions of contract. On this alleged ground, the arbitration proceedings were sought to be re-started. Another communication was received vide letter dated 01.12.1998 from respondent no. 1 appointing Sh. Pradeep Kumar, the then Chief Engineer of Respondent no. 1 as the sole arbitrator. The petitioner informed the sole arbitrator about the proceedings in OMP No. 100/1987 and ultimately vide a letter dated 20.04.2001 Sh. Pradeep Kumar refused to proceed further with the arbitration case. The matter did not rest at that and respondent no. 1 once again started the process of arbitration by appointing respondent no. 2 as the sole arbitrator vide letter dated 16.09.2001 and respondent no. 2 in turn informed the petitioner vide letter dated 11.01.2002. The petitioner protested to the commencement of arbitration proceedings vide reply dated 06.03.2002, but the arbitrator decided to proceed further.

5. In view of the aforesaid facts and circumstances, present petition was filed and interim orders were passed on 07.05.2002 staying further proceedings before the arbitrator. The respondents have filed their reply. The petitioner has filed the affidavit of evidence to prove the various documents. No reply affidavit was filed by the respondent and none appeared from the respondent before the Joint Registrar on 07.09.2005, 18.11.2005, 12.12.2005 and 24.01.2005. The matter was thus placed before the court.

6. The sole contention of the learned counsel for the respondent No. 1 is that respondent no. 1 is within its jurisdiction to appoint an arbitrator in view of provisions of Clause (b) of Para 2900 of the IRS conditions of contract which contain the arbitration clause. The same reads as under:

In the event of the arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the authority appointing the arbitrator to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

7. Learned counsel for respondent No. 1 submits that in the present case since the arbitrators were neglecting or refusing to act, the respondent no. 1 well within his authority to appoint the arbitrator. I am unable to accept the plea of the learned counsel for the respondent no. 1. The said clause (b) of para 2900 cannot be read in isolation and dehors the facts. No doubt that in case the arbitrator appointed by respondent no. 1 neglects or refuses to act, respondent no. 1 would be well within its authority to replace the arbitrator. The present case however is one where the earlier arbitrator was proceeding with the arbitration. Respondent no. 1 failed to file the necessary pleadings and the time period expired. The petitioner refused to accept extension of time. This appears to have occurred especially since the purchase order was of the year 1978 and invocation of arbitration was on 22.04.1980 by respondent no. 1 while the arbitrator entered upon reference on 13.07.1984 after lapse of more than four years. Respondent no. 1 thereafter did not take any steps till 1987 when the petition was filed u/s 28 of the said Act for extension of time. Learned single Judge of this court (as he then was) found that there was no satisfactory Explanation for the inordinate delay of two and a half years in seeking extension of time and dismissed OMP by the order dated 14.01.1991. In the absence of the appeal, the order became final and thus the effect of it was the arbitration proceedings stood revoked.

8. Learned counsel for the petitioner has referred to the Judgment of the Division bench of the Kerala High Court in Edakkavil Karimbuvalappil Abdulkhader Haji Vs. Thalakkal Kunhammad and Others, to advance the proposition that an order of the court u/s 28 of the said Act refusing to enlarge time for making the award is an order amounting to supersession of arbitration. In the said case, the question arose as to whether such an order would be appealable and it was held that the same was appealable since it amounted to an order superseding arbitration proceedings.

9. The question of extension of time u/s 28 of the said Act and of revocation of authority u/s 12 of the said Act have been considered in two recent judgments of this court. In OMP No. 53/1995 titled M/s Stelco Tubes (P) Ltd v. Union of India decided on 10.09.2005 the petition for revocation of the authority of the arbitrator was allowed on account of lapse of time. This judgment was passed on the strength of the Division Bench judgment of this court in Union of India Vs. Som Nath Chadha and Co., . It was held that the very object of arbitration stands defeated if there is no speedy end of the strife. Thus in case a party unreasonably neglects to promote the conduct of arbitration proceedings, the said party cannot avail of the remedy of the arbitration where there is no

reasonable Explanation forthcoming for the inordinate delay.

10. In OMP No. 239/99 titled Union of India v. M/s Auto Pins (India) P. Ltd. decided on 20.09.05 extension of time was declined on account of such inordinate delay and the judgment of the apex court in M/s Fulchand Kanhaiyalal Co. v. Kharda Company Ltd. AIR 1966 SC 1036 was taken note of where it was held that the expeditious commencement of arbitral proceedings is a must as delay defeats justice and equity. If a party sleeps over its right over a long period of time, the court would be justified in exercising its discretionary power and exercise jurisdiction u/s 5 & 12(2)(b) of the said Act to permit rescinding of the arbitration agreement and declare that the arbitration agreement shall cease to have effect with respect to the differences and disputes referred to in the notice and relieve the parties from the arbitration agreement.

11. In the present case the matter went further since the conduct of respondent no. 1 was examined by this court in OMP NO. 100/87. The stand of respondent no. 1 is misconceived as it is based on the premise as if the arbitrator had failed to act and thus the respondent no. 1 was within its rights to appoint a new arbitrator. There was negligence on the part of the respondent.1 in prosecuting the arbitration matter and this court declined to exercise jurisdiction u/s 28 of the Act. The result was that the same brought to an end the arbitration proceedings. I am in full agreement with the views expressed by the Division Bench of the Kerala High court in this behalf that the declining of relief for extension u/s 28 of the said Act brings to an end the arbitration proceedings. There cannot thus be any question of respondent no. 1 exercising jurisdiction in terms of Clause (b) of Para 2900 of the terms and conditions.

12. It is most unfortunate that on the one hand respondent neglects to prosecute arbitration proceedings over a long period of time and on the other hand keeps on invoking the jurisdiction of arbitration periodically after sleeping for a couple of years. The matter has gone on for almost more than two decades in this fashion.

13. I am of the considered view that the present petition is liable to be allowed and the appointment of respondent No. 2 set aside since arbitration proceedings stood revoked. The respondent No. 1 will have no right for invoking the jurisdiction of the arbitrator in respect of the subject matter of the dispute.

14. The petitioner shall also be entitled to costs quantified at Rs 7,500/-.

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15. The application does not survive for consideration in view of the disposal of the petition. The application stands disposed of.