
(2019) 03 RAJ CK 0014

In the Rajasthan High Court

Case No : Arbitration Application No. 9 Of 2017

Maisars Kalma Construction Company

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 25-03-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 11(6A), 12, 14, 15

Citation : (2019) 03 RAJ CK 0014

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Pradeep Choudhary, K.D. Singh

Final Decision : Allowed

Judgement

This application under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 ('the Act') has been filed by the application seeking substitution of the Arbitrator.

By order dated 28.04.2009 (Annex.-1 to the application) for resolving the dispute between the parties, the respondent No.4 was appointed as Arbitrator to decide the dispute between the parties.

It is claimed that the Arbitrator appointed by order dated 28.04.2009, entered the reference by his letter dated 25.03.2016 calling upon the parties to file their claim. The applicant filed his claim on 07.04.2016. However, the respondent informed the Arbitrator that at the relevant time, he was the in-charge of the Klin, based on which a communication dated 21.09.2016 was issued by the Arbitrator expressing his inability to proceed with the arbitration.

Based on the said submissions, the application has been filed seeking substitution of the Arbitrator.

When the matter came up before this Court on 13.07.2018, the applicant was called upon to file an affidavit indicating as to what action was taken by the

applicant pursuant to the order dated 28.04.2009 passed by this Court in S.B. Civil Misc. Arbitration Application No. 52/2008 as apparently, the Arbitrator had entered the reference after 7 years of passing of the said order.

The applicant has placed on record, an affidavit making allegations against official respondents regarding their avoiding the arbitration proceedings and, thereafter, the Arbitrator issuing the notice entering the reference.

After notices being issued, the respondents have filed the reply, inter alia, indicating that after appointment of the Arbitrator by the Court, no notice was received by the respondents and, thereafter for the first time a letter dated 03.02.2015 (Annex.-R/1) was issued to the Arbitrator, which was followed by letters dated 03.07.2015, 10.08.2015, 07.10.2015 and 22.02.2016, whereafter the notice was issued by the Arbitrator entering the reference, when a letter dated 26.05.2016 (Annex.-R/2) was sent to the Arbitrator indicating that he was at the relevant time posted at Jaisalmer and was related to the agreement and, therefore, he may decided on the said aspect.

From the perusal of the application and the reply filed by the respondents, it is apparent that after appointment of the Arbitrator by this Court by order dated 28.04.2009, neither of the parties took any interest in approaching the Arbitrator for decision on their dispute and, thereafter the respondents in the year 2015 started writing letters one after the other, based on which the Arbitrator, entered the reference and as soon as the letter entering the reference was received, the respondents again raised objections, inter alia, pointing out that as he was related to the agreement being posted at the relevant time at Jaisalmer, he may take a view essentially raising dispute to his continuance in office, on which the Arbitrator has refused to continue with the arbitration.

The entire sequence of events as noticed, clearly indicates the approach of the parties in taking the proceedings before the Arbitrator in a casual manner and not even approaching the Arbitrator for over 6-7 years and the Arbitrator also despite being aware of his appointment chose not to issue the notice, however, as now the Arbitrator has refused to act on account of his being posted at the disputed site at the relevant time, the circumstances as envisaged by Section 15 of the Act having arisen, wherein the mandate of the Arbitrator stands terminated as he has withdrawn from the office, a substitute Arbitrator is required to be appointed by this Court.

Certain submissions have been made by the respondents in reply seeking to question the maintainability of the claim, however, in view of the provisions of Section 11 (6A) of the Act, all those issues would have to be raised before the Arbitrator.

In view of the above fact situation, the application filed by the applicant is allowed. Mr. N.R. Mehta, Retd. Chief Engineer, Water Resources Department, resident of - G-52, Shastri Nagar, Jodhpur (Raj.) is appointed as sole Arbitrator to adjudicate upon the disputes between the parties as per the Rajasthan Manual

of Procedure for Alternative Dispute Resolution, 2009 as amended up to date. The above appointment is subject to the necessary disclosure being made under Section 12 of the Act.