
(1989) 04 DEL CK 0012
In the Delhi High Court
Case No : Suit No. 61A of 1987

Man Chand Dhiman and Co.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-04-1989

Acts Referred:

Citation : (1989) 2 ARBLR 40 : (1989) 39 DLT 3

Hon'ble Judges : Gian Chand Jain, J

Bench : Single Bench

Advocate : G.N. Aggarwal and P.K. Jain, for the Appellant;

Judgement

G.C. Jain, J.

(1) Partnership firm, M/s. Mam Chand Dhiman and Company, the petitioner, entered into an agreement No. EE/IV/Agt. 20/79-80 for the construction of two lane bridge of Arterial High Way at R.D. 10330 M of Trunk Drain No. I with the Union of India, respondent No. 1. The agreement admittedly contained an arbitration clause (Clause No. 29). Certain disputes arose between the parties. In accordance with the arbitration agreement the same were referred by the persona designata, the Chief Engineer (I & F), Delhi Administration, respondent No. 2, to the sole arbitrator Sh.Kishan Chand, respondent No. 3 vide memo dated 13th August, 1985 for decision. The learned arbitrator entered upon the reference vide his letter dated 21st August, 1985.

(2) During the pendency of the petition, on 15th November, 1985 the petitioner requested the Chief Engineer respondent No. 2, also to refer its claim in respect of interest at the rate of 20%, p.a. (compound) pre-suit, pendente lite and future, to the said arbitrator for decision. This request was rejected vide letter dated 2nd December, 1985. On 14th January, 1986 the petitioner again requested respondent No. 2 to refer the said claim. It was turned down on 27th January, 1986.

(3) The petitioner filed its statement of facts on 27th November, 1985.

Respondent No. 1 filed its statement of facts on 7th March, 1986. On 24th April, 1986 the Chief Engineer, respondent No. 2, also referred counter claims of respondent No. 1 for decision to the said arbitrator. Respondent No. 1 filed its statement of facts in respect of counter claims on 8th July, 1986. Thereafter some proceedings were held between September, 1986 and November, 1986. With the consent of the parties the arbitrator on 27th October, 1986 extended the date of the making and publishing the award up to 23rd January, 1987 and the case was fixed for hearing on 28th November, 1986. Earlier, on 30th April, 1986 the arbitrator had retired on superannuation.

(4) On 17th December, 1987 the office of the Chief Engineer (I & F) issued a letter to the arbitrator which reads :-

"IN view of the instructions conveyed by the Law & Judicial Deptt., Delhi Administration Delhi, all the arbitration cases assigned to you earlier and which are lying pending with you undecided are hereby withdrawn. It is further requested that all relevant documents relating to each case may be returned to undersigned in a confidential folder immediately without initiating any further hearing/award etc.

(5) On 7th January, 1987 the petitioner brought the present application under Sections 20 and 28 of the Arbitration Act seeking three reliefs, namely (i) the arbitration agreement be ordered to be filed and claim for interest be ordered to be referred to the arbitration of respondent No. 3; (ii) letter dated 17th December, 1986 issued from the office of respondent No. 2 be quashed and (iii) time for making and publishing the award be extended from 23rd January, 1987.

(6) It was averred that the authority of an arbitrator could not be revoked by the Chief Engineer, respondent No. 2 persona designata without the leave of the court and the letter dated 17th December, 1986 was illegal, void, without jurisdiction, arbitrator and malafide. It was further averred that respondent No. 2 was not justified in declining the request of the petitioner for referring its claim regarding interest to respondent No. 3 before whom the disputes were pending adjudication. It was also alleged that the petitioner was always ready and willing and still ready and willing to get the disputes settled through arbitration and do all things necessary for the conduct of arbitration.

(7) The petition was opposed by the respondent. It was alleged that Clause 29 of the agreement, which provides for arbitration, empowered the Chief Engineer to appoint another arbitrator in case the previous arbitrator was transferred, vacated his office or was unable to act for any such reason. Respondent No. 2 in this case revoked the authority of the arbitrator because of the instructions conveyed to him by the Law and judicial Department of the Delhi Administration. The letter dated 17th December, 1986 was legal and valid. It was next averred that the claim of the petitioner regarding interest was not tenable in terms of the agreement.

(8) On the pleadings of the parties the following issues were framed :-

"1. Whether the order passed on 17th December 1986 by the office of Chief Engineer (I & F) withdrawing the arbitration cases pending before Sh. Kishan Chand is valid ?

2. Whether the dispute mentioned in paragraph 25 of the petition is referable ?

3. Whether it is a fit case where time be extended ?

4. Relief."

(9) Section 5 of the Arbitration Act provides that "The authority of an appointed arbitrator or umpire shall not be revocable except with the leave of the court, unless a contrary intention is expressed in the arbitration agreement." From these provisions it is clear that once an arbitrator has been appointed, his authority can be revoked only (i) in accordance with the terms of the agreement, if there is any provision for the same, or (ii) with the leave of the court, In the present case the leave of the Court was never sought. The sole question for determination, Therefore, is whether arbitration agreement empowered the Chief Engineer to revoke the authority of the arbitrator appointed by him. The relevant portion of Clause 29 which contained arbitration agreement reads as under :-

"THE arbitrator up to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reasons 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 terms of contract. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor."

(10) I have carefully examined these provisions in the arbitration agreement. Under these provisions the Chief Engineer concerned was competent to appoint another arbitrator in accordance with the terms of the contract. He could not simpliciter revoke the authority of the arbitrator already appointed by him. By the impugned letter dated 17th December, 1986 the office of the Chief Engineer and not even the Chief Engineer, revoked the authority of the arbitrator. However, till today no other arbitrator in place of the earlier arbitrator has been appointed.

(11) It is pertinent to note that Sh. Kishan Chand retired from service on superannuation on 30th April, 1986 It was after his retirement when on 28th July, 1986, respondent No. 1 tiled its statement of facts in respect of its counter claims. Respondent No. 1 participated in the arbitration proceedings held thereafter. On 27th October, 1986 the arbitrator extended the period of making the award with the consent of the parties. In these circumstances the respondents had acquiesced in the continuation of Sh. Kishan Chand as arbitrator even after his retirement. His authority could not be revoked by the office of the Chief Engineer thereafter. This view finds support from a decision of this Court in Mohinder Pal Mohmdra v. Delhi Admn. & anr., Omp 23 of 1987 decided on 19th January, 1989. I consequently hold that the order dated 17th December, 1986

was illegal. The issue is decided accordingly.

(12) In para 25 of the application the petitioner has prayed that his claim for interest at the rate of 20% p.a. pre-suit, pendente lite and future till the date of payment may also be referred to the arbitrator. Such claim, in my opinion, was covered under the arbitration agreement contained in Clause 29 of the agreement which was very wide. The question whether the arbitrator was competent to award the interest or not cannot be gone into in these proceedings. The fact remains that the claim was referable. The issue is decided accordingly.

(13) The delay in making the award was because of the letter issued by the office of respondent No. 2 revoking the authority of the arbitrator. There was no delay on the part of the petitioner. In my opinion, it is a fit case for extending the time. The issue is decided in the favor of the petitioner.

(14) I consequently accept the petition and quash the letter dated 17th December, 1986 and direct respondent No. 2 to file the arbitration agreement and refer claim mentioned in para 25 of the petition also to the arbitration of respondent No. 3. Time for making and publishing the award is extended up to 24th August, 1989 from 23rd January, 1987. Parties are left to bear their own costs.