
(2004) 05 JH CK 0016

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4097 of 2003

Modi Construction Company

APPELLANT

Vs

Rites Limited, Govt. of India Enterprise and Others

RESPONDENT

Date of Decision : 12-05-2004

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2004) 3 ARBLR 451

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : Rajiv Ranjan, for the Appellant; G.M. Mishra and M.K. Dey, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—This writ petition was preferred by petitioner against the order dated 13th June, 2003 passed by the Hon''ble Chief Justice, Jharkhand High Court in his administrative capacity in A.A. No. 22 of 2002, whereby and whereunder one Mr. Lalit Kapoor, General Manager (Property Development) RITES was appointed as third Arbitrator out of the list submitted on behalf of the respondents.

2. The main plea as was taken by the petitioner is that the appointment of Mr. Lalit Kapoor, General Manager (Property Development) RITES was contrary to the Section 11 of the Arbitration and Conciliation Act, 1996 as also the other grounds as mentioned in the writ petition.

3. Before deciding the issue, it is relevant to notice Clause 63(b) of the agreement, which reads as follows:

"63(b) For the purpose of appointing two Arbitrators as referred to in sub clause (a)(ii) above, the RITES will send a panel of more than three names of RITES officers of one or more departments of the RITES to the contractor, who will be asked to suggest to the General Manager one name out of the list for appointment as the contractor's nominee. The General Manager while appointing

the contractor's nominee will also appoint a second Arbitrator as the RITES nominee either from the panel or from outside the panel, ensuring that one of the two Arbitrators so nominated is invariably from the Accounts Department. Before entering upon the reference the two Arbitrators shall nominate an Umpire who shall be a RITES officer to whom the case will be referred to in the event of any difference between the two Arbitrators. Officers of the Joint General Manager grade of the Accounts Department of the RITES shall be considered as of equal status to the officers in the General Manager grade of other departments of RITES for the purpose of appointment as Arbitrators."

The aforesaid agreement was taken into consideration by the Hon"ble the Chief Justice in his order dated 10th January, 2003 when it was decided to appoint a third Umpire, to act as the presiding Arbitrator. By subsequent order dated 13th June, 2003, the Hon"ble Chief Justice appointed Mr. Lalit Kapoor, General Manager (Property Development) RITES as the third Arbitrator.

4. It is not in dispute that the parent department of Mr. Lalit Kapoor is Indian Railway. He was on deputation in RITES. Admittedly, the services of Mr. Lalit Kapoor were sent back to Indian Railways and he is no longer on the rolls of RITES. The Arbitration Tribunal in its meeting held on 3rd March, 2004 having noticed the aforesaid fact vide its order dated 16th March, 2004, held that Mr. Lalit Kapoor lost his mandate after his transfer to the parent department and can function only if it is ratified by the Hon"ble Court. The constitution of Arbitration Tribunal was observed to be not proper in terms of Arbitration agreement, after repatriation of Mr. Lalit Kapoor. The Arbitration Tribunal observed that the claimant may approach the appointing authority for ratifying the present Arbitration Tribunal.

5. In this background, the present Arbitration Tribunal having become defunct, Mr. Lalit Kapoor, General Manager (Property Development) RITES being no more in the roll of RITES cannot function as the third Umpire i.e. presiding Arbitrator.

6. In the circumstances, it is not desirable to decide the issues as raised in the present writ petition, which the parties may raise, if so required, at appropriate stage.

7. It will be open to the concerned person to move before the appointing authority for nomination/appointment of a third Umpire i.e. presiding Arbitrator.

8. This writ petition stands disposed of, with the aforesaid observations.

Lakshman Uraon, J.

9. I agree.