
(2015) 07 SHI CK 0104
In the High Court Of Himachal Pradesh
Case No : Arbitration Case No. 44 of 2015

Mohinder Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6), 14, 15

Citation : (2015) 2 ShimLC 964

Hon'ble Judges : Rajiv Sharma, J.

Bench : Single Bench

Advocate : Sumeet Raj Sharma, Advocate, for the Appellant; Parmod Thakur, Additional Advocate General, for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Sharma, J.—In terms of arbitration clause 25 of the agreement, Sh. Raghuvir Singh, Superintending Engineer, IPH Circle Nurgpur was appointed as Arbitrator by the Chief Engineer vide letter dated 18.4.2012. The Arbitrator entered into reference on 25.5.2012. The petitioner submitted his statement of claim on 22.6.2012 and respondent No. 2 submitted reply on 18.9.2012. Thereafter, no proceedings were undertaken by the Arbitrator. The Chief Engineer, I&PH Department Dharamshala Zone appointed Sh. Rajesh Bakshi, Superintending Engineer, I&PH Circle, Nurgpur as Arbitrator in place of Sh. Raghuvir Singh vide letter dated 30.10.2013. Thereafter, no proceedings have been undertaken by Sh. Rajesh Bakshi Arbitrator though a period of more than 1 1/2 years has elapsed. The proceedings ought to have been concluded expeditiously. Their Lordships of the Hon'ble Supreme Court in North Eastern Railway Vs. Tripple Engineering Works, have held that the Court can deviate from procedure agreed by the parties and exercise the power under Section 11 (6) of the Arbitration and Conciliation Act, 1996 to facilitate mechanism contemplated and effectuate remedy provided under statute. Their Lordships have held as under:

"10. In the present case Clauses 64(3)(a)(ii) and (iii) of the General Conditions of Contract do not prescribe any specific qualification of the arbitrators that are to be appointed under the agreement except that they should be railway officers. As already noticed, even if the arbitration agreement was to specifically provide for any particular qualification(s) of an arbitrator the same would not denude the power of the Court acting under Section 11(6) , in an appropriate case to depart therefrom. In Singh Builders Syndicate pendency of arbitration proceedings for over a decade was found by this Court to be a mockery of the process. In the present case, admittedly the award in respect of disputes and differences arising out of the contract No. CAO/CON/722 is yet to be passed. Though the appellant-Railway has in its pleadings made a feeble attempt to contend that the process of arbitration arising out of the said Contract has been finalized, no material, whatsoever, has been laid before the Court in support thereof. The arbitration proceedings to resolve the disputes and differences arising out of Contract No. CAO/CON/738 has not even commenced. A period of nearly two decades has elapsed since the contractor had raised his claims for alleged wrongful termination of the two contracts. The situation is distressing and to say the least disturbing. The power of the Court under the Act has to be exercised to effectuate the remedy provided thereunder and to facilitate the mechanism contemplated therein. In a situation where the procedure and process under the Act has been rendered futile, the power of the Court to depart from the agreed terms of appointment of arbitrators must be acknowledged in the light of the several decisions noticed by us."

2. Similarly, in a recent judgment, their Lordships of the Hon"ble Supreme Court in Union of India (UOI) Vs. U.P. State Bridge Corporation Ltd.--> have held that when there is failure on the part of Arbitral Tribunal to act and it is unable to perform its function either de jure or de facto, it is open to a party to arbitration proceedings to approach the Court to decide on the termination of its mandate and seek appointment of substitute arbitrator. Their Lordships have held as under:

"12. As is clear from the reading of Section 14 , when there is a failure on the part of the Arbitral Tribunal to act and it is unable to perform its function either de jure or de facto, it is open to a party to the arbitration proceedings to approach the Court to decide on the termination of the mandate. Section 15 provides some more contingencies when mandate of an arbitrator can get terminated. In the present case, the High Court has come to a categorical finding that the Arbitral Tribunal failed to perform its function, and rightly so. It is a clear case of inability on the part of the members of the Tribunal to proceed in the matter as the matter lingered on for almost four years, without any rhyme or justifiable reasons. The members did not mend their ways even when another life was given by granting three months to them. Virtually a pre-emptory order was passed by the High Court, but the Arbitral Tribunal remained unaffected and took the directions of the High Court in a cavalier manner. Therefore, the order of the High Court terminating the mandate of the arbitral tribunal is flawless. This

aspect of the impugned order is not even questioned by the Appellant at the time of hearing of the present appeal. However, the contention of the Appellant is that even if it was so, as per the provisions of Section 15 of the Act, substitute arbitrators should have been appointed "according to the rules that were applicable to the appointment of the arbitrator being replaced". On this basis, it was the submission of Mr. Mehta, learned ASG, that High Court should have resorted to provision contained in Clause 64 of the GCC."

3. In the instant case, the progress made by the Arbitrator was tardy. If the arbitration proceedings are not concluded expeditiously, litigants may lose faith in arbitration mechanism. Sh. Raghuvir Singh, Superintending Engineer, I&PH Circle Nurgpur was appointed as Arbitrator, but he could not conclude the proceedings and in his place Sh. Rajesh Bakshi was appointed as Arbitrator, but since he has failed to enter into reference for the last more than 1 1/2 years, the Court is constrained to terminate his appointment and appoint Sh. Vijay Arora, Advocate and Ms. Meghna Kashva, Advocate as assisting Arbitrator. It shall be open to the Arbitrator to determine his own procedure with the consent of the parties. It shall also be open to the Arbitrator to fix his fee alongwith the fee of assisting Arbitrator. The award shall be made strictly as per the provisions of the Arbitration and Conciliation Act, 1996 within six months. Needless to add that the Arbitrator shall pass a speaking order. The Registry of this Court is directed to immediately inform Mr. Vijay Arora, Advocate and Ms. Meghna Kashva, Advocate about the passing of the order by sending a copy of this order to them. Sh. Rajesh Bakshi, Superintending Engineer, I&PH Circle, Nurgpur is directed to hand over the records to newly appointed Arbitrator forthwith. It is made clear by way of abundant precaution that Mr. Vijay Arora, Advocate will commence the proceedings from the stage the appointment of Sh. Rajesh Bakshi, Superintending Engineer, I&PH Circle, Nurgpur as Arbitrator is terminated for the speedy disposal of the arbitration proceedings. In view of this, the petition stands disposed of. Pending application, if any, also stands disposed of. No costs.