
(2014) 01 AP CK 0011

In the Andhra Pradesh High Court

Case No : Arbitration Application No. 133 of 2013

M/s. Atharva Consultancy and Allied Services

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6) 7

Citation : (2015) 2 ALD 170 : (2014) 3 ALT 341 : (2014) 3 ARBLR 432

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Advocate : V.V.N. Narasimham, for the Appellant;

Final Decision : Dismissed

Judgement

Kalyan Jyoti Sengupta, J.—In spite of direction given to file counter, nothing has been done and even none appears to oppose this application. This application has been taken out for appointment of an Arbitrator to resolve the disputes between the parties, u/s 11(6) of the Arbitration and Conciliation Act, 1996 (for short, "the Act").

2. On perusal of the records, learned counsel for the applicant submits that clause (k) of the Supply Order dt. 13.5.2010 is the arbitration agreement. Said clause (k) is set out hereunder:

Arbitration: In case of arbitration on any issue, the decision of Flag Officer, Commanding-in-Chief, Head Quarters, Eastern Naval Command, Visakhapatnam, will be final.

3. According to the learned counsel for the applicant this is the arbitration agreement in terms of the expression given in Section 7 of the Act. I set out Section 7 of the Act hereunder:

7. Arbitration agreement.—(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which

have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in-

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

4. After considering the submission, I am of the view that the aforesaid clause (k) is not an arbitration agreement in terms of Section 7 of the Act. In order to become a valid, lawful and operative arbitration agreement, the parties must have entered into an agreement referring all or certain disputes which have arisen or which may arise for adjudication by arbitration. The aforesaid clause (k) merely mentions arbitration. The word arbitration simpliciter is not complete requirement of Section 7 of the Act. If the aforesaid clause is read as a whole, it appears that if the parties agree to arbitration then the aforesaid Officer would be sole Arbitrator, but I do not find any agreement for referring the disputes to arbitration. Until then, the aforesaid clause does not have force for application. Therefore, I hold and declare that there is no valid and lawful arbitration agreement factually.

5. Learned counsel for the applicant says that in fact a learned single Judge of this Court has been pleased to observe that clause (a) of the Supply Order is the arbitration agreement. In this context, the observation of the learned single Judge in the writ petition, is quoted hereunder:

...As rightly pleaded by the respondent in the counter affidavit, the petitioner can seek reference of the dispute arising under the terminated contract to arbitration as provided under Clause (a) of the Supply Order, dated 13.05.2010.

6. The learned trial Judge has no occasion to examine the scope of the aforesaid clause (k). What was pleaded by the respondent before the learned trial Judge is not placed before me, nor the same has been made a foundation of this application. This application is filed basing on the aforesaid clause (k) and nothing. Hence, going by the material placed before me, I am of the view that no appointment of Arbitrator is called for. Accordingly, this application is dismissed.