
(2001) 09 DEL CK 0086
In the Delhi High Court
Case No : Suit No. 1401-A of 1995

M/s B.R. Electricals

APPELLANT

Vs

The Chairman, Telecom Commission and Others

RESPONDENT

Date of Decision : 12-09-2001

Acts Referred:

Arbitration Act, 1940 — Section 8
Constitution of India, 1950 — Article 226

Citation : (2001) 09 DEL CK 0086

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. Rajiv Dutta and Ms Enakshi Kulshrestha, for the Appellant; Mr. Maninder Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—This petition is filed by the petitioner u/s 8 of the Arbitration Act, 1940 for appointment of an arbitrator. As per the case put up by the petitioner ; General Manager, Telecommunications (for short "GMT"), Srinagar, Kashmir floated a tender on 21st August, 1991 for the supply of PVC insulated twin galvanised wire. The petitioner responded to the said offer by submitting its tender which was accepted and agreement dated 8th October, 1991 arrived at between the GMT and the petitioner for supply of the goods. It is further stated that the petitioner thereafter supplied the goods to the respondents as per specifications mentioned in that agreement. Sometime thereafter, various Circle Offices of the respondents placed similar/identical orders on the petitioner for supply of these goods which were also supplied. However, despite having supplied the specified goods to the respondents" various Circle offices, the respondents have failed to pay the petitioner the outstanding amount of Rs.1,46,10,485.78 paisa. The petitioner sent various representations on 8th February, 1993, 10th March, 1993 and 23rd June, 1993 to the respondents requesting them to honour their commitment by paying the outstanding the amount. However, thereafter the petitioner was surprised to receive letter dated

22nd December, 1993 issued by the Divisional Engineer, Telecommunication at Kumbakonam wherein it was stated that the payment of the outstanding bills raised by the petitioner, could not be made as the Divisional Engineer had received instructions from the Directorate, department of Telecommunications, New Delhi to this effect. The legal notice dated 1st February, 1995 was sent but as this did not yield the desired results, the petitioner filed the petition under Article 226 of the Constitution of India in this Court. However, vide order dated 5th October, 1994 the said petition was dismissed on the ground that the remedy of the petitioner was to file suit and not the petition under Article 226 by resorting to extraordinary jurisdiction. That is how the present petition for appointment of an arbitrator has been filed as it is stated that clause 8 of the agreement dated 8th October, 1991 contains the arbitration clause. This clause reads as under:

"In case of any dispute touching the effect of this Agreement, decision of the General Manager, Tele-com Kashmir, Srinagar on behalf of the President of India, shall be final and legally binding on the supplier."

2. In the written statement filed by the respondents, various preliminary objections are taken to the maintainability of the petitioner. Twin objections which were pressed at the time of arguments are stated below:

1. This court has no territorial jurisdiction to entertain the present petition as no cause of action has arisen in Delhi.

2. None of the alleged contracts entered into by the petitioner contains an arbitration clause. The contract dated 8th October, 1991 could not be pressed into service as this was the contract with GMT, Kashmir and the respective obligations of this contract had already been carried out. This contract had been completed and the petitioner was given the payments under the orders of Jammu & Kashmir High Court. The amounts claimed by the petitioner do not arise out of this contract dated 8th October, 1991. The petitioner was claiming the amount on account of supplied made to other circles for which admittedly there was no written contract, "and Therefore no arbitration clause. Therefore, there being no arbitration clause, the present petitioner is not maintainable.

3. It may mentioned that in reply the respondents have stated that even Clause 8 of Agreement dated 8th October, 1991 does not constitute arbitration agreement. But it was not argued.

4. On merits, it is stated that the goods supplied by the petitioner were substandard and not as per the specifications. The petitioner in criminal conspiracy with the then General Manager, Telecom, Kashmir, Srinagar defrauded the exchequer of huge amounts. This criminal conspiracy is being investigated by the Central Bureau of Investigation which has registered a case bearing No.RC-7(A)/93-JMU. In view of the pendency of this case, instructions were made by department of Telecommunication not to make any payment to the petitioner.

5. On the issue of territorial jurisdiction of this court, the learned senior counsel for the petitioner submitted that since various Circles Offices come under the administrative jurisdiction of Department of Telecommunications, New Delhi and the payment by them is stopped because of the instructions issued by Department of Telecommunications, New Delhi this court has a jurisdiction to entertain the present petition. In support, learned counsel for the petitioner relied upon the following judgments:

1. Union of India (UOI) and Others Vs. Oswal Woollen Mills Ltd. and Others, .

2. M/s. Patel Roadways Limited, Bombay Vs. M/s. Prasad Trading Company,

6. This contention of the petitioner is without any merit. Merely because the Central Government or for that matter office of Department of Telecommunication is located in New Delhi would not confer territorial jurisdiction on this court to entertain such a petition even when no cause of action has arisen within the territorial jurisdiction of court. Admittedly, the agreement dated 8th October, 1991 was entered into with GMT, Srinagar. Goods under this agreement were also supplied at Srinagar. Payments were also to be made by GMT, Srinagar and were in fact made by that authority. Similarly the goods supplied to other various Circle Offices were of the different states and it is those circles who were to make the payments. Thus no part of cause of action arose in Delhi, and Therefore, this court will not have territorial jurisdiction to entertain the present petition.

7. None of the judgments cited by the learned counsel for the petitioner are applicable in the instant case Union of India (UOI) and Others Vs. Oswal Woollen Mills Ltd. and Others, was a case under Article 226 of the Constitution of India. Moreover, in that case the petitioner, Oswal Woollen Mills Ltd., which had its registered office in Ludhiana and branch office at Calcutta, filed writ petition in Calcutta High Court and the Supreme Court held that the Calcutta High Court had no jurisdiction as principal respondent against whom primary relief was sought were at New Delhi and, Therefore, the petition should have been filed in High Court of Punjab & Haryana or in the Delhi High Court. The facts would further reveal that reliefs were sought against Union of India (through the Secretary, Ministry of Commerce, New Delhi), the Chief Controller of Imports and Exports, Amritsar, the Collector of Customs, Calcutta and the State Trading Corporation of India, New Delhi. The set of circumstances in which the question of territorial jurisdiction arises in that case is clearly different from the present one in the instant case.

8. Similarly in M/s. Patel Roadways Limited, Bombay Vs. M/s. Prasad Trading Company, the Supreme Court held that where the defendant company/corporation has its principal office at one place and subordinate office at another place and cause of action arises at the place where the subordinate office is located, suit had to be filed only in the court within whose jurisdiction the company/corporation has its subordinate office and not in court within whose jurisdiction it

has its principal office. This case, Therefore, goes against the petitioner as in the instant case, the cause of action has arisen in other parts of the States where Circle Offices of the respondent are located and no cause of action has arisen in Delhi. Of course, the Supreme Court in this case also held that where the defendant company/corporation has only a principal office then suit can be filed in court whose jurisdiction the principal office is located even if cause of action arises elsewhere. That is not the situation here.

9. Learned counsel for the respondents relied upon the judgments of Supreme Court in the case of Bakhtawar Singh Bal Kishan Vs. Union of India (UOI) and Ors, and in the case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, in support of his contention that this court has no territorial jurisdiction. The ratio of the aforesaid cases squarely applies to the facts at hand. Therefore, I am of the considered view that this court lacks territorial jurisdiction to entertain the present petition. Merely because there is a letter from Department of Telecommunications instructing other circle offices not to make the payment will not confer the jurisdiction on this court inasmuch as the present petition filed by the petitioner is for payment of the dues which are payable by other telecom circles. The petitioner has itself stated in para 14 of the petition that dispute is for remaining payment which is still outstanding for specified goods which have already been supplied to the respondents. As already stated above, these are supplied to the various telecom circles outside Delhi and payment was also to be made by them.

10. In view of the finding on this issue although it is not necessary to deal with the preliminary objection of the petitioner regarding arbitration agreement although prima facie, it appears that contention of the respondents had merit. Agreement dated 8th October, 1991 is between the petitioner and GMT, Srinagar. It is this agreement which contains the so-called arbitration clause. However, this agreement has already been worked out. It is categorically stated by the respondents in their written statement that the terms of this contract have already been completed and the payment have been made under the orders of Jammu & Kashmir High Court. The amounts which are claimed by the petitioner do not arise out of this agreement but are for the supplies made by the petitioner to various other telecom circles including Kumbakonam for which admittedly there was no written contract. However, as I am rejecting petition on the ground of lack of territorial jurisdiction, it is not necessary to give definite finding on this issue.

11. In view of the aforesaid discussion, this petition is rejected. No order as to cost.