
(2001) 08 DEL CK 0279
In the Delhi High Court
Case No : A.A. No. 213 of 1998

M/s Dewan Chand

APPELLANT

Vs

Indian Welfare Railway Organisation

RESPONDENT

Date of Decision : 27-08-2001

Acts Referred:

Citation : (2001) 94 DLT 563 : (2001) 60 DRJ 705

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Ms. Amita Sanghi and Mr. Mohan Rao, for the Appellant; Mr. A.T. Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, J.—This is a petition for appointment of an Arbitrator on various grounds as mentioned in the petition. However, the same are not important as learned counsel for the petitioner has confined her arguments only on one aspect that if No Claim Certificate was given by the petitioner to the respondent still the question whether there was an accord of satisfaction between the parties has to be referred to the Arbitrator. Ms. Sanghi, learned counsel for the petitioner has cited various authorities of this Court as well as of the Supreme Court in support of her contention. She has contended that whether there is an accord of satisfaction between the parties is a question which has to be decided by the Arbitrator and not by this Court. In support of this contention, she has cited M/s. Navbharat Dal Mills Vs. Food Corporation of India and another, , Bharat Heavy Electricals Ltd. v. Amar Nath Bhan Prakash , Mehta and Co. vs. Union of India 1983 (I) Arbitration Law Reported 71. She has also cited Union of India (UOI) and Another Vs. L.K. Ahuja and Co., .

2. On the other hand, counsel for the respondent has contended that the plea of the petitioner that the No Claim Certificate was issued under coercion and duress was an after thought as No Claim Certificate was issued on 28th May, 1997 and the petitioner did not ever protest to the respondent that the said No Claim

Certificate was issued under duress or coercion or same was under protest. It was contended before me that not only it was not protested to the respondent but as a matter of fact from May, 1997 till the filing of the petition on 23.7.98, the petitioner never took said plea. It was only when in the reply to the present petition the respondent stated that a No Claim Certificate has been issued by the petitioner, the petitioner as an after thought made a reference in the rejoinder that the No Certificate was signed under protest.

3. It was further contended by learned counsel for the respondent that the authorities cited by counsel for the petitioner are not applicable to the present case as by agreement between the parties and specifically in view of Clauses 5.7.2 and 5.9.0 (II) and in view of the No Claim Certificate given, the arbitration clause ceases to have any effect after issuance of the No Claim Certificate by the petitioner.

4. I have heard arguments advanced by learned counsel for the parties.

5. There cannot be dispute with the proposition of law that accord of satisfaction and whether there was an accord of satisfaction between the parties, the matter in that case has to be referred to the Arbitrator as it is not for the Court to decide about the Accord of Satisfaction of agreement between the parties. But in the present case whether that accord was ever disputed or satisfaction was challenged by the petitioner or it is simply an after thought to have the matter referred to arbitration? A argument was raised that the No Claim Certificate which has been issued by the petitioner was under protest, i.e. on the basis of the person who had signed the No Claim Certificate, Mr. Sanghi has contended that very small letters U P connotes Under Protest. If No Claim Certificate was issued under protest which according to counsel for petitioner were mentioned in a corner under the signature, what stopped the petitioner from protesting it or bringing it to the notice of the respondent at the first opportunity? The alleged No Claim Certificate was given by the petitioner on 28th May, 1997. The petitioner has put on record various correspondence starting from September 1997 till filing of the petition nowhere the stand has been taken by the petitioner that No Claim Certificate was issued under protest. Even when the petition was filed, in the petition also it has not been averred that the No Claim Certificate was issued under protest. It is only when the respondent in its reply took the stand that in view of the No Claim Certificate issued by the petitioner, the petitioner was not entitled to raise any dispute petitioner mentioned in their rejoinder in a half hearted manner that same was given under protest. The matter was argued by the petitioner on the basis that certain words underneath the signatures were U P i.e. "Under Protest". Even if it is assumed that same are U P what stopped the petitioner from pleading so in the petition or in the rejoinder. Clause 5.7.2. of the general conditions of the contract is reproduced below:-

5.7.2 Signing of "No Claim" Certificate:

The contractor shall not be entitled to make any claim, whatsoever, against the IRWO under or by virtue of, or arising out of this contract nor shall IRWO entertain or consider any such claim, if made by the contractor, after he shall have signed a "No Claim" certificate in favor of IRWO in such form, as shall be required by the IRWO after the works are finally measured up. The contractor shall be debarred from disputing the correctness of the items covered by the "No Claim Certificate". In such cases, it will be term of contract that there is no Arbitration Clause at all.

In the present case, the agreement also contained the general conditions of contract and Clause 5.9.0 (ii) is relevant, same is reproduced below:-

"It is the term of the contract that no person other than a person nominated by the employer should act as an arbitrator and if for any reason that is not possible, the matter is not to be referred to arbitration at all. In case where the contractor has signed the final bill with "No Claim Certificate" the matter will not be referred to arbitration and in such cases it will be the term of the contract that there is no arbitration clause at all.

As a matter of fact, the petitioner who knew very well about the existence of these clause, clause 5.7.2 which inter-alia stipulated that the respondent will not entertain or consider any claim if a No Claim Certificate was issued in favor of the respondent and Clause 5.9.0 (ii) which, inter-alia, stipulated that when the Contractor had signed the final bill and No Claim Certificate, the matter shall not be referred to arbitration and in that case there will be no arbitration clause at all. Mindful of these clauses in a very clever manner, firstly, the petitioner did not disclose to this Court that No Claim Certificate has been issued and when in the reply it was brought to the notice of the Court that no Arbitrator could be appointed as No Claim Certificate has been issued and the relevant clauses of the agreement were brought to the notice of the Court, the petitioner filed the rejoinder and took the plea that the same was under protest. Even this theory that the word U P occurring under the signature has not been pleaded in the rejoinder. The petitioner has come to this Court with unclean hands as it has suppressed material facts. As a matter of fact he has abused the process of law. From the above Clauses of the contract, No Claim Certificate issued in this regard in view of the agreement between the parties and petitioner having not protested after issuance of the No Claim Certificate, I dismiss this petition with cost of Rs. 10,000/= The cost to be paid within fifteen days to the Delhi Legal Aid Service Authority.