
(2012) 03 P&H CK 0388

In the Punjab And Haryana At Chandigarh

Case No : Arbitration Case No. 166 of 2011 (O and M)

M/s Emm Enn Associates

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(6), 15, 16

Citation : (2012) 03 P&H CK 0388

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Judgement

Hemant Gupta, J.—Petitioner has sought appointment of an arbitrator in respect of disputes arising out of an agreement No. CWE/AF CHD/CHD-289/2001- 2002 for Special Repair to Officers Quarters at High Ground, near Chandigarh dated 21.9.2001. Since, the arbitrator was not appointed in terms of the general conditions of the contract, petitioner invoked the jurisdiction of this Court for appointment of an arbitrator u/s 11(6) of the Arbitration and Conciliation Act, 1996 (for short the "Act"). this Court vide the order dated 30.3.2007 (Annexure P-5) in Arbitration Case No. 268 of 2006, M/s EMM Enn Associates v. Commander Works Engineer and others appointed Shri Abhay Kumar Sinha, Additional Chief Engineer, Principal Director (Planning), HQ Chief Engineer Chandigarh Zone, "N" Area, Airport Road, Chandigarh as a sole arbitrator.

2. The said arbitrator gave his Award on 5.1.2008, wherein it was held to the following effect: -

28. And whereas in light of various submissions made by claimant and respondent in writing as well as during hearing and copies of various judgments produced by both the parties it is concluded that: -

(i) The claimant contractor has invoked Arbitration as per Contract Agreement vide letter No. MN/CWE/AF CHD/CHD- 28/2001-02/01/05 dated 23 Feb 2005 after a gap of 2 years and 10 months approx. from the date of signing bill. This is

well within limitation and is in order.

(ii) Claimant contractor has received full and final payment against CA No. CWE/AF/CHD/CHD-28/2001-2002 "Special Repair to Officer's Married Quarters at High Ground near Chandigarh" amounting to Rs. 1,06,662/- without any protest or reservation when final bill amount has been received by claimant vide cheque No. J-265296 dated 31.3.2002 for Rs. 106662.00 claimant was not able to produce any document contrary to these facts.

(iii) As per Condition 65 of IAFW 2249 forming part of the contract no further claim shall be made by the contractor (claimant) after submission of Final Bill and these shall be deemed to be waived and extinguished by Union of India.

(iv) Claimant contractor could not produce any documentary evidence to establish an element of coercion or duress during currency of work or submission of final bill and afterwards.

29. In view of Para 28(i) to Para 28(iv) above and provisions of Section 16 of Arbitration and Conciliation Act, 1996, it is concluded that in present case claim of the claimant contractor does not subsist. As each party has defended their own case, each party will bear their own expenses and therefore, nothing is awarded to each party on account of Cost reference.

2. The petitioner filed objections against the said Award, which were dismissed by the Additional District Judge, SAS, Nagar (Mohali) on 2.6.2010. However, appeal against the said order i.e. FAO No. 5211 of 2010, M/s EMM Enn Associates v. Union of India and another preferred by the petitioner was allowed on 21.4.2011. Such order dated 2.6.2010 was set aside and the objections filed by the petitioner were accepted. Petitioner was given liberty to initiate the proceedings u/s 11 of the Act.

3. Thereafter, the petitioner invoked the jurisdiction of this Court for appointment of an arbitrator in Arbitration Case No. 87 of 2011 but the same was withdrawn on 1.6.2011 with liberty to call upon the competent authority to appoint an arbitrator in terms of the agreement between the parties, in the first instance.

4. Thereafter, the petitioner sought appointment of an arbitrator vide the communication dated 30.6.2011 (Annexure P-3). Petitioner also submitted a reminder on 31.8.2011 (Annexure P-4) but since the arbitrator was not appointed, petitioner invoked the jurisdiction of this Court u/s 11(6) of the court again.

5. Mr. Bansal, Learned Counsel for respondents has filed reply to the present petition, wherein, it has been asserted that a mandate of arbitrator has not been terminated by this Court while setting aside the Award nor it is terminated u/s 15 of the Act. There is no vacancy in the office of arbitrator hence, this application is not maintainable.

6. I have heard Learned Counsel for the parties at some length and find that the

stand of the respondents is not tenable.

7. The arbitrator has given his Award holding that the contractor is not entitled to any amount as he has accepted the full and final payment. It is not a case of non entertainment of the claim of the petitioner on a preliminary ground of limitation as is sought to be agreed by Mr. Bansal. Once, the Award is announced on merits, the arbitrator becomes functus officio. Such Award was set aside in appeal and the liberty given to the petitioner to seek appointment of the arbitrator u/s 11 of the Act, therefore, it cannot be said that the vacancy has not arisen. The disputes are, thus required to be decided by an arbitrator.

8. Mr. Gupta, has given a list of the arbitrators who are on the panel of the respondents.

9. Keeping in view the said panel, Shri Mukesh Dhir, Superintending Engineer, Director (Pers & Legal) HQ Chief Engineer, Chandigarh Zone, Airport Road, "N" Area, Chandigarh is appointed as an arbitrator to adjudicate upon the disputes between the parties. He shall be entitled to his fee. Disposed of.