

(2012) 09 P&H CK 0259

In the Punjab And Haryana At Chandigarh

Case No : Arbitration Case No. 89 of 2012 (O and M)

M/s Moneesh and Co.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-09-2012

Acts Referred:

Constitution of India, 1950 — Article 299

Citation : (2012) 09 P&H CK 0259

Hon'ble Judges : Jasbir Singh, Acting C.J.

Bench : Single Bench

Advocate : Naresh Markanda, with Mrs. Kavita Markanda, for the Appellant; R. Kartikeya, Panel Counsel, for the Respondent

Final Decision : Allowed

Judgement

Jasbir Singh, Acting Chief Justice

1. This petition has been filed u/s 11 (6) of the Arbitration and Conciliation Act, 1996 (in short, the Act) for appointment of an Arbitrator. It is not in dispute that vide an agreement / letter of allotment dated 20.12.2010 (P2), contract to supply Eggs, Fish (fresh) at Supply Depot ASC Jalandhar was awarded in favour of the petitioner. Existence of arbitration clause in the said agreement to settle the dispute is not controverted. The said clause No. 23A reads thus:-

23(a) In the event of any question, dispute or differences arising under these conditions or any special conditions of contract, or in connection with this contract, (except as to any matter the decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole arbitration of the officer sanctioning the contract as per powers conferred by clause (i) of Articles 299 of the Constitution or of any officer appointed by him not below the rank of Lieutenant Colonel. The award of the arbitrator shall be final and binding on the parties to this contract.

2. At the time of arguments, counsel for the respondents intimates that during

pendency of this petition, the respondents have appointed an Arbitrator on 22.7.2012.

3. Counsel for the petitioner states that the said action on the part of the respondents is not legal. It is stated that once this Court is seized of the matter, the respondent is not left with any authority to appoint an Arbitrator as per terms and conditions of the contract agreement.

4. Contention raised by counsel for the petitioner appears to be correct and justified.

5. This Court in Arbitration Case No. 107 of 2010 decided on 17.08.2012 titled as Arch Consultancy Services (P) Ltd. versus The Commissioner, Municipal Corporation, Amritsar while dealing with a similar situation, has observed as under:-

It is contended by counsel for the petitioner that when the respondent has failed to appoint an Arbitrator on receipt of a representation within a reasonable time, the respondent cannot appoint the Arbitrator when this Court is seized of the matter.

The contention raised appears to be correct. It has been so said by the Hon''ble Supreme Court in Union of India v. M/s Bharat Battery Manufacturing Co. (P) Ltd., 2007 (3) SLJ 1443, wherein it was observed as under:-

9. We are unable to countenance with the submission of the learned counsel for the appellant. Section 11(8) of the Act could have come to the aid of the appellant had the appellant appointed the arbitrator within 30 days from the date of receipt of request to do so from the respondent or the extended time as the case may be. In the present case, as noticed above, Section 11(6) petition was filed on 30.3.2006 by the respondent. The appellant stated to have appointed one Dr. Gita Rawat on 15.5.2006, i.e. after Section 11(6) petition was filed by the respondent on 30.3.2006, which is not permissible in law. In other words, the appellants are stopped from making an appointment of the arbitrator in terms of Clause 24 of the agreement after Section 11(6) petition is filed by the respondent. Once Section 11(6) petition is filed before the Court, seeking appointment of an arbitrator, the power to appoint an arbitrator in terms of arbitration clause of the agreement ceases.

In view of ratio of the aforesaid judgment, appointment of an Arbitrator by the respondent after filing of these petitions is not proper and justified. The appointment was made after invocation of the jurisdiction of this Court, by the petitioner which cannot be allowed. Reliance of the respondent on a judgment of the Supreme Court in M/s Raja Transport (P) Ltd.'s case (supra) is not justified. Facts of that case are altogether different.

6. It is not in dispute that the petitioner sent a notice dated 28.5.2012 (P6) praying therein for appointment of an Arbitrator to settle the dispute between the parties. When nothing was done, this petition was filed on 9.7.2012, whereas

the respondents appointed the arbitrator on 22.7.2012. Therefore, in view of the law laid down by the Supreme Court in the case of M/s Bharat Battery Manufacturing Co. (P) Ltd. (supra) followed by this Court in the case Arch Consultancy Services (P) Ltd. (supra), the respondents have lost the right to appoint the arbitrator. In view of facts mentioned above, this petition is allowed and Mr. B.C. Gupta, retired Additional District and Sessions Judge, resident of House No. 601, Phase II, Mohali is appointed as an Arbitrator to settle the dispute. He shall charge fee as per norms fixed by this Court.