
(2012) 02 P&H CK 0236
In the Punjab And Haryana At Chandigarh
Case No : Arbitration Case No.20 of 2012

M/s Rajdhani Advertisers

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(6), 14, 15, 2

Citation : (2012) 02 P&H CK 0236

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Judgement

Hemant Gupta, J.—This is an application u/s 11 of the Arbitration & Conciliation Act, 1996 (for short "the Act") for appointment of an independent and impartial sole Arbitrator to decide the disputes and differences relating to Agreement dated 30.11.2007.

2. The petitioner was awarded contract for providing, installation and maintaining of Nine Glow Sign Gantries within the Municipal Corporation, Patiala on built, operate & transfer basis vide the aforesaid Agreement. The dispute arose between the parties. The Commissioner, Municipal Corporation, Patiala was the sole Arbitrator in terms of the Arbitration Clause in the Agreement. The Arbitration Clause III(xvi) reads as under:

xvi. That in case of any disagreement or dispute on interpretation of any term used in this agreement, the decision of the Commissioner, Municipal Corporation, Patiala being sole administrator on reference by the either party shall be final and binding. No other Court, tribunal or forum shall have the jurisdiction to entertain and try and dispute or disagreement arising out of this contract agreement.

3. Earlier, this Court in Arbitration Case No.47 of 2009 titled "M/s Rajdhani Advertisers Vs. The State of Punjab and others" directed the petitioner to appear before the said Arbitrator i.e. Commissioner, Municipal Corporation, Patiala along

with the statement of claim. Four weeks time was granted to the respondent to submit reply. It was observed that the arbitration proceedings should be concluded preferably within a period of six months. The operative part of the order dated 14.01.2010 reads as under:

In my view the letter which had been issued by the Commissioner shall not come in the way of his acting as the Arbitrator. Accordingly, I direct that the petitioner would appear on 26.03.2010 at 11 AM before the Commissioner, Municipal Corporation, Patiala alongwith the statement of claim. Response to the statement of claim shall be filed within four weeks thereafter. I have no doubt in my mind that the Arbitrator shall not take into consideration the letter issued by him and shall dispose of the arbitration proceedings as early as possible preferably within a period of six months.

4. Since the matter was not decided by the Arbitrator, the petitioner invoked the jurisdiction of this Court for appointment of an independent Arbitrator.

5. It is argued that after the expiry of time fixed by this Court, the named Arbitrator has become functus officio and cannot proceed with the arbitration proceedings. Reliance is placed upon a judgment of Hon'ble Supreme Court reported as N.B.C.C. Ltd. Vs. J.G. Engineering Pvt. Ltd.,

6. A perusal of the Arbitration Clause, reproduced above, shows that there is no time limit in the agreement in respect of conclusion of arbitration proceedings nor there is any time limit in the Act for completion of arbitration proceedings. Since there is no time limit for deciding the arbitration proceedings by an Arbitrator in the Agreement or in the Act itself, the inference drawn by the petitioner that the Arbitrator has become functus officio is not tenable. This Court in its order dated 14.1.2010 has observed that the arbitration proceedings should be disposed of as early as possible preferably within a period of six months. The order does not contemplate consequences of not concluding the arbitration proceedings within the time recited. Thus, the time limit fixed in the order is only directory.

7. The judgment referred to by the learned counsel for the petitioner is clearly distinguishable. The Agreement contemplated the Arbitrator to extend time for announcing award. In the aforesaid case, after a long delay in concluding of the proceedings, the Court has fixed six months period for conclusion of arbitration proceedings with the consent of the parties. It was found that once Court has fixed time with the consent of the parties, the Arbitrator cannot unilaterally extend period of announcing the Award. It appears that the parties have invoked the original jurisdiction of Calcutta High Court to seek termination of the mandate of an arbitrator in terms of Section 14 and 15 of the Act. Such application was before the principal court of civil original jurisdiction as contemplated by Section 2(e) of the Act. This Court does not exercise original jurisdiction and is not principal court of civil original jurisdiction. There is no discussion in the aforesaid order that the Chief Justice or his designate u/s 11(6) of the Act can terminate

the mandate of an Arbitrator, if time is fixed by the Chief Justice or his designate earlier.

8. In view of the above, I am of the opinion that the aforesaid judgment is not helpful to the argument raised by the learned counsel for the petitioner.

9. It shall be open to the petitioner to invoke its jurisdiction of the principal court of civil original jurisdiction to seek revocation of the mandate of an Arbitrator before the competent court in accordance with law.

10. Disposed of accordingly.