

(2019) 07 UK CK 0017

In the Uttarakhand High Court

Case No : Arbitration Application No. 4 Of 2019

M/s SRF Limited

APPELLANT

Vs

Uttarakhand Power Corporation Limited And Others

RESPONDENT

Date of Decision : 12-07-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 11(4), 11(5), 11(6), 11(8), 12(5)

Citation : (2019) 07 UK CK 0017

Hon'ble Judges : Ramesh Ranganathan, CJ

Bench : Single Bench

Advocate : A.S. Rawat, P.C. Pethshali, D.S. Patni

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Sri A.S. Rawat, learned Senior Counsel appearing on behalf of the applicant and Sri D.S. Patni, learned counsel for the respondents.

2. This application is filed under Section 11(5) &(6) of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') seeking appointment of an Arbitrator.

3. The agreement, which contains the agreement clause, is for supply of electrical energy to the consumers having contracted demand of more than 75 KW (or 100 BHP). Clause 16 of the agreement dated 25.02.2005, contains the arbitration clause, and reads as under:

"If any question or dispute or difference arises between the parties to this agreement as to the interpretation or effect of any provision or clause herein contained or the construction or effect of any provision or clause herein contained or the construction thereof or as to any other matter in any way connected with or arising out of this agreement of the operation thereof or the rights duties or liabilities of either party in connection therewith, such question,

dispute or difference shall be referred to the Arbitration of the Chairman Uttaranchal Power Corporation Limited or the person nominated by him and the award / decision of the said Arbitrator shall be final and binding upon the parties. In case of any neglect or refusal by the nominee to proceed with the arbitration, the Chairman, MD of Uttaranchal Power Corporation Ltd. may nominate another person in his place to proceed with the dispute as Sole Arbitrator."

4. In the exercise of the powers conferred by the clause, extracted hereinabove, the Chairman, Uttaranchal Power Corporation Limited nominated a retired District Judge as the arbitrator. The applicant has, however, invoked the jurisdiction of this Court contending that, since the Chairman, Uttaranchal Power Corporation lacked jurisdiction to nominate an arbitrator, it is only the Court which can, on an application filed under Section 11(4) and (6) of the 1996 Act, appoint an arbitrator.

5. Reliance is placed by Sri A.S. Rawat, learned Senior Counsel appearing on behalf of the applicants, on the judgment of the Supreme Court in TRF Limited vs. Energo Engineering Projects Limited : (2017) 8 SCC 377.

6. As noted hereinabove, Clause 16 requires disputes or differences to be referred to the arbitration of the Chairman Uttaranchal Power Corporation Limited who is the named arbitrator under the agreement.

7. Section 12(5) of the 1996 Act, as introduced by Act 3 of 2016 with retrospective effect from 23.10.2015, stipulates that, notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator. Entry 1 of the Seventh Schedule lists an arbitrator who is an employee, consultant, advisor or has any other past or present business relationship with a party. The Uttaranchal Power Corporation Limited is a party to the agreement, and the agreement which stipulates its Chairman to be the arbitrator, undoubtedly, violates Section 12(5) read with Entry-1 of the Seventh Schedule of the 1996 Act.

8. In TRF Limited, the Supreme Court observed that, since the arbitrator is ineligible as per the prescription contained in Section 12(5) of the 1996 Act, a person who was statutorily ineligible cannot nominate another person as an arbitrator. In the light of the law declared by the Supreme Court in TRF Ltd, nomination of a retired District Judge by the Chairman of the Uttaranchal Power Corporation Limited is illegal.

9. When I asked both Sri A.S. Rawat, learned Senior Counsel appearing on behalf of the applicant and Sri D.S. Patni, learned counsel for the respondent-Corporation, to suggest a common name as an arbitrator, both of them agree that Sri Justice Irshad Hussain, a retired Judge of this Court, residing at Irshad Manzil, 13/36, Azad Nagar, Banbhoolpura, Haldwani, Nainital, be appointed as an Arbitrator.

10. The learned Arbitrator shall, in terms of Section 11(8) of the 1996 Act, furnish his disclosure in writing to this Court within 15 days from the date of receipt of a certified copy of this order. He shall, thereafter, fix his remuneration, and charges towards other expenses, in consultation with the parties to the dispute. He shall endeavour to complete the arbitral proceedings, and to pass an award with utmost expedition, preferably within six months from the date on which he enters upon a reference.

11. The Arbitration Application stands disposed of accordingly.