
(2004) 05 PAT CK 0013

In the Patna High Court

Case No : Request Case No. 29 of 2003

M/s Varanasi Steels, Varanasi

APPELLANT

Vs

The General Manager, East Central Railway, Hajipur and
Another

RESPONDENT

Date of Decision : 05-05-2004

Acts Referred:

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

Citation : (2004) 4 PLJR 537

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : Mahendra Thakur, for the Appellant; Vikas Kumar, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.—Heard learned counsel for the parties. The petitioner has come to this Court u/s 11 of the Arbitration and Conciliation Act, 1996. It is submitted by the petitioner that as a dispute has arisen between the parties the matter may be referred to an arbitrator to be appointed by the Court. Referring to paragraph 2900 learned counsel for the petitioner submits that despite service of notices upon the respondents they failed to act in the matter therefore the Court should appoint the arbitrator. On the other hand learned counsel for the respondents submits that the agreement entered into between the parties does not provide for any time limit therefore, the respondents can appoint the arbitrator at any point of time. According to them on 3.5.2004 the Deputy General Manager (G), for General Manager, Eastern Central Railway, Hajipur has appointed the arbitrator and under these circumstances the application deserves to be rejected.

2. Section 11(2) which relates to appointment of arbitrators says that subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators. Sub-section (2) of Section 11 of the Act simply means that the parties would always be free to agree on a procedure for appointing the arbitrator/arbitrators. Sub-section (3) of Section 11 says that failing any

agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator, who shall act as the Presiding Arbitrator. According to sub-section (4), if the appointment procedure in sub-section (3) applies and a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party the appointment shall be made, upon request of a party by the Chief Justice or any person or institution designated by him. In the present matter undisputedly there is an arbitration agreement, the petitioner did make an application to the respondents for appointing the arbitrator and the respondents failed, within a reasonable time, to appoint the arbitrator. The present matter came to be filed on 4.12.2003. Notices were served upon the other side much before 8.4.2004. On 8.4.2004 the parties prayed for time and thereafter the matter has come to this Court today as directed. A fair understanding of Section 11 of the Act would simply show that if a party fails to appoint an arbitrator within 30 days or within a reasonable time from the date of demand of appointment of an arbitrator then the Court shall intervene in the matter and would appoint an arbitrator.

3. At this stage strong reliance is placed on Section 11(6) of the Act to contend that where under an appointment procedure agreed upon by the parties, a party fails to act as required under that procedure etc., a party may request the Chief Justice or any person or institution designated by him to take the necessary measures etc. Assuming provisions of sub-section (6) apply then too the arbitrator will have to be appointed by the Chief Justice or any person designated by him because in the present case the party-respondent failed to act as required under the said procedure. It is also to be seen that notice dated 2.3.2003 (Annexure-3) was served upon the respondent in March, 2003 and they did not care to come out of their slumber nor did they appoint an arbitrator. It is only after the notices from the Court's side were served upon them the respondents entered in a reference and are now exercising their right to appoint the arbitrators. In the opinion of this Court, there are no bona fides in the action of the respondents. They cannot be allowed to play hot and cold at the same lime; on one side they were not ready and willing to appoint the arbitrator and after service of the notice now are showing their eagerness. It is further to be seen that an arbitrator has to be appointed by the General Manager in the case of contracts entered into by the Zonal Railways and production units. In the present matter the order of appointment has not been issued by the General Manager. The order has been issued by the Deputy General Manager for General Manager. Clause 2900 does not authorise the General Manager to delegate his powers upon any person under the authority of the General Manager to appoint the arbitrator. The original letter wherein the General Manager had issued any directions has not been filed in the Court therefore, this Court will have to accept the letter dated 3.5.2004 and must observe that Mr. S.K. Sagar, Dy. General Manager (G), acting for and on behalf of the General Manager has nominated the arbitrator.

4. The appointment itself is bad. It is bad on facts and also is bad under the law. The petition deserves to and is accordingly allowed.
5. At this stage learned counsel for the parties agree that a direction may be issued to the General Manager, Eastern Central Railway to appoint an arbitrator in accordance with paragraph 2900.
6. The General Manager shall appoint an arbitrator within four weeks from today and shall submit the information to this Court through the counsel. Put up in week commencing 12th July, 2004.