

(2014) 03 RAJ CK 0022

In the Rajasthan High Court

Case No : . Arbitration Application No. 2/2011

New Tech Engineers & Fabricators

APPELLANT

Vs

IVRCL Infrastructure & Projects Ltd. and Others

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Civil Procedure Code, 1908 (CPC) — Section 20

Contract Act, 1872 — Section 23, 28

Penal Code, 1860 (IPC) — Section 15, 16, 17, 18, 19

Citation : (2014) 03 RAJ CK 0022

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Advocate : Sudesh Bansal, Advocates for the Appellant; H.V. Nandwana, Advocates for the Respondent

Judgement

Ajay Rastogi, J.—Instant arbitration application has been filed u/S. 11 of the Arbitration & Reconciliation Act, 1996 for appointment of Arbitrator to settle the alleged arbitral dispute arising from terms & conditions of the contract agreement dt. 08.02.2010.

2. Briefly stated, the facts of the case are that the petitioner-applicant and the respondents entered into a written agreement dt. 08.02.2010 whereby the applicant was assigned work order for providing, laying, jointing, testing and commissioning of 711 mm. dia 6.40 mm thick M.S. Pipeline from Headworks upto water treatment plant at Hungund Town (length 8 KMs.) from comprehensive water supply scheme Hungund, Ilkal, Kustagi and enroute villages with Alamatti reservoir as source under Uidssmt. The terms & conditions of the contract work was reduced in writing which includes clause of arbitration in the event of any dispute arising out of the contract/work order dt. 08.02.2010. The petitioner/applicant started work pursuant to the work order dt. 08.02.2010 and as alleged out of 8 KMs. length, M.S. Pipeline was laid shifted upto 4 Kms. at site but as it reveals from the record, the dispute arose between the parties

arising from the general conditions of parties arising from the general conditions of contract agreement dt. 08.02.2010.

3. As alleged, the petitioner-applicant failed to complete the work order within the prescribed time, the respondents issued letter dt. 28.09.2010 terminating the work order and thereafter, as averred by counsel for applicant, sent a legal notice dt. 18.11.2010 and also requested later on to refer the arbitral dispute to the Arbitrator under Cl. 28 of the contract agreement and thereafter approached this court by filing instant application u/S. 11 of the Act for appointment of sole Arbitrator.

4. After the notices of the present application came to be served, reply has been filed by the respondents and apart from the reply on merits, the respondents raised preliminary objections regarding maintainability of present application in this court and submitted that the territorial jurisdiction does not lie with the High Court of Rajasthan and it was alleged that the contract agreement, between the parties, was signed and executed at Bangalore (Karnataka) and the work was executed by the petitioner-Company at Karnataka in supervision & control of respondent No. 2 at Bangalore and as per Cl. 28 of the contract agreement, if any dispute arises, the same has to be resolved by the sole Arbitrator to be nominated by the Chairman & Managing Director of IVRCL, whose office is situated at Hyderabad and the registered office of the respondent-Company is also at Hyderabad and apart from it Cl. 29 excludes jurisdiction of other High Courts where it was agreed between the parties that it shall be under the jurisdiction of court of Hyderabad. It will be appropriate to quote the relevant Cls. 28 & 29 of the contract agreement, which are duly executed between the parties, ad infra:

"28. DISPUTES: In the event of any dispute arising out of this Contract/Work Order, the parties hereto agree that the matter shall be referred to the Sole Arbitrator who is an officer of M/s. IVRCL Infrastructure & Projects Ltd. (other than concerned with this Contract/Work Order), nominated by Chairman & Managing Director of IVRCL. The award of the Arbitrator so nominated shall be final conclusive and binding on all parties to the dispute. The venue of Arbitration is at Hyderabad. All the expenses of Arbitration shall be borne by the party who has invoked the Arbitration.

29. GOVERNING LAW: This Agreement/Work Order shall be governed by and construed in accordance with the laws of India and under the jurisdiction of court of Hyderabad."

5. Counsel for respondent, in addition to the territorial jurisdiction of this court, has further raised an objection that the legal notice, as alleged to have been served, copy whereof is on record, was only confined to demanding balance of payments which alleged to have not been released in regard to the above work order executed by the applicant but there was no demand for appointment of Arbitrator invoking Cl. 28 of the contract agreement.

6. Counsel for petitioner/applicant submits that since partly the cause of action arose within the jurisdiction of High Court at Jaipur and Cl. 29 does not expressly exclude the jurisdiction of other courts and the High Court of Rajasthan also holds territorial jurisdiction to try and entertain the instant application u/S. 11 of the Act, 1996.

7. On the other hand, counsel for respondents submits that u/Cl. 29 the jurisdiction is specified in the contract agreement with the intention to exclude all other courts from its operation/and in support of submission, counsel placed reliance on the recent judgment of the Apex Court in *Swastik Gases P. Ltd. Vs. Indian Oil Corporation Ltd.*,

8. While examining the question of territorial jurisdiction, in reference to the application filed u/S. 11, S. 20 of CPC is equally relevant which states that subject to the limitations provided in Ss. 15 to 19 every suit shall be instituted in a court within the local limits of whose jurisdiction:- (a) the defendant, or each of the defendants where there are more than one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or (b) any other defendant, where there are more than one, at the time of commencement of suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or (c) the cause of action, wholly or in part arises.

9. In the instant case, it has been specifically alleged by the respondents in their reply that apart from the petitioner-Company runs office within the territorial jurisdiction of High Court of Rajasthan at Jaipur neither the agreement nor the work order; or any activities partially or otherwise in any transaction/work order were executed within the territorial jurisdiction of this court at Jaipur, in particular, as claimed by the petitioner.

10. It is true that if the part of cause of action arose at any place or at Jaipur, as alleged, ordinarily in absence of any clause, contrary to the agreement, the Chief Justice or the Designated Judge holds jurisdiction to consider the application made by the applicant for appointment of Arbitrator u/S. 11 of the Act, 1996 but in the instant case, the question is that when the parties by virtue of Cl. 28 r/w Cl. 29 of the agreement, have agreed to have jurisdiction of court at Hyderabad, whether u/Cl. 29 of the agreement, the jurisdiction of Chief Justice of Rajasthan High Court stands excluded ?

11. This question arose for consideration before the Apex Court in recent judgment in the case of *Swastik Gases Private Limited (supra)* and the Apex Court laid down *ad infra*:-

"32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing

for jurisdiction clause in the agreement the words like "alone", "only", "exclusive" or "exclusive jurisdiction" have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties - by having clause 18 in the agreement - is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like clause 18 in the agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.

33. The above view finds support from the decisions of this Court in *Hakam Singh, A.B.C. Laminart, R.S.D.V. Finance, Angile Insulations, Shriram City, Hanil Era Textiles and Balaji Coke*.

34. In view of the above, we answer the question in the affirmative and hold that the impugned order does not suffer from any error of law. The civil appeal is, accordingly, dismissed with no order as to costs. The appellant shall be at liberty to pursue its remedy under Section 11 of the 1996 Act in the Calcutta High Court."

12. In the instant case also apart from the preliminary objection raised by the respondent in their reply about place of execution of contract agreement so also execution of work order, which as alleged, was at Bangalore, on a conjoint reading of Cls.28 & 29 of the agreement, apart from Laws of India, which are applicable in reference to the work order, it has the jurisdiction of court at Hyderabad and in the light of judgment of Apex Court, referred to supra, it is the court of Hyderabad to have the jurisdiction and that impliedly excludes jurisdiction of other Courts including High Court of Rajasthan.

13. In the light of the judgment of Apex Court, referred to supra and the facts which are brought to the notice of the court and in view of Cls.28 & 29 of agreement, in particular, where the contract agreement specifies jurisdiction of the courts at a particular place & such courts have jurisdiction to deal with the matter, in the opinion of this court, the parties intended to exclude the jurisdiction of all other courts including High Court of Rajasthan.

14. Accordingly, this court does not hold jurisdiction to entertain the Instant application seeking appointment of Arbitrator under the provisions of S. 11 of the Act, 1996.

15. The instant application is devoid of merit and accordingly stands dismissed. However, the applicant is at liberty to initiate proceedings, if so advised, before the court holding jurisdiction, in terms of the agreement executed between the parties.

16. No costs.