
(2010) 07 P&H CK 0163
In the Punjab And Haryana At Chandigarh

Purshotam Dass Contractor	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 14-07-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2010) 07 P&H CK 0163

Hon'ble Judges : Mukul Mudgal, C.J

Bench : Single Bench

Judgement

Mukul Mudgal, C.J.—In the present petition filed u/s 11 of the Arbitration and Conciliation Act, 1996 appointment of an Arbitrator has been sought on the basis of arbitration clause contained in the agreement, which is to the following effect:

If the Contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Engineer's decision.

Procedure for disputes:

25.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

25.2 The Adjudicator shall be paid daily at the rate specified in the Contract Data together with reimbursable expenses of the types specified in the Contract Data and the cost shall be divided equally between the employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

2. Learned Counsel for the respondents contended that final payment had been made on 30.3.2007 and as per Clause 24.1 of the agreement the matter was

required to be referred to the adjudicator within 14 days, which the petitioner adopted belatedly, hence the claim could not be referred to the arbitrator.

3. Learned Counsel for the petitioner contended that a sum of Rs. 90482/- towards payment of final bill was paid on 31.3.2007 and the balance amount of Rs. 3,96,626/- on 7.6.2007 and the petitioner moved for referring the matter to the adjudicator on 19.6.2007, who has not decided the matter so far, therefore, in this view of the matter, it is appropriate to appoint an arbitrator to adjudicate upon the dispute between the parties.

4. I have heard learned Counsel for the parties and gone through the record. Learned Addl: A.G. appearing for the State of Haryana failed to repel the submissions made by counsel for the petitioner that last payment of Rs. 3,96,626/- was made on 7.6.2007 towards settlement of final bill and that the petitioner had moved an application on 19.6.2007 for referring the matter to adjudicator who has not decided the same so far. In this view of the matter, the plea of limitation raised by learned Counsel for the respondent is without any substance. Since the adjudicator has not decided the matter so far, the present petition is allowed and Shri R.N. Singal, District & Sessions Judge (Retired) is appointed as an Arbitrator to settle the dispute between the parties.

5. The statement of claims be supplied to counsel for the respondents within four weeks and response thereof shall be supplied to the counsel for the petitioner within four weeks thereafter. The parties shall appear before the Arbitrator on October 04, 2010 or on an agreed date convenient to the parties but not later than a fortnight from October 04, 2010 after exchange of pleadings as directed aforesaid. The Arbitrator shall render the award not later than six months from the first date of appearance of the parties. The arbitrator so appointed shall fix his own fee.

6. With these directions, the petition stands disposed of.