
(1996) 05 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Civil Suit No. 87 of 1995

Rajeev Chopra

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 08-05-1996

Acts Referred:

Arbitration Act, 1940 — Section 20, 8

Citation : (1997) 1 ShimLC 11

Hon'ble Judges : Surinder Sarup, J

Bench : Single Bench

Advocate : J.S. Bhogal, for the Appellant; P.A. Sharma, Sr. Central Govt. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Surinder Sarup, J.—This is an application under Sections 8 and 20 of the Arbitration Act, hereinafter to be referred to as "the Act", which has been filed by the Plaintiff-contractor for appointing an Arbitrator to adjudicate the dispute between the parties.

2. The Plaintiff is duly enlisted with the P.W.D. for execution of civil work. He has been doing such work for various Government departments, including the Defendants. He had entered into an agreement with Defendant No. 1 through Defendant No. 2, for the execution of the work of "Excavation of trenches and laying of OFC on Chandigarh-Kalka-Parwanoo route". Photo-copy of this agreement is Ex.D I of the written statement filed in this case on behalf of the Defendants. Although the case of the Plaintiff is that he has duly completed the said work assigned to him to the entire satisfaction of the Defendants, their stand in the written-statement is that this has not been done as the Plaintiff had agreed to initially complete the work by 2nd November, 1991, the date was further extended upto 31st January, 1992, but he could do only 60% of the work agreed between the parties.

3. Where as the case of the Plaintiff is that he was required to lay the cable at greater depth than specified in the agreement and for which was entitled to additional payments as per the Conditions therein, yet he was not paid for the extra work thus done by him, inspite of his repeated requests. Therefore, according to the Plaintiff dispute exists between the parties relatitig to the following amounts, which are being claimed by him:

(a) Amount due on account of the extra Rs. 5,86,107.00 depth. (b) Interest on the said amount at the Rs. 3,12,824.00 rate of 18% p.a. (calculated upto 22-10-1994).

On the other hand, the case of the Defendants is that the Plaintiff was to lay the Optical Fiber Cable at the depth of 1.35 Metres as per the agreement between the parties, however, as per the instructions issued by the department subsequently to him, he was asked to lay the cable at a depth of 1.65 Metres. The Plaintiff", however, did not do so on the entire work, except to the extent of 393 Metres which too was done at a depth of 1.50 Metres according to the measurement book which has been duly accepted by the pasties.

4. It is the admitted case of the parties that the agreement entered into between them does contain an arbitration clause, being clause No. 23 for reference of their disputes to an Arbitrator to be appointed by the General Manager, Task Force, Department of Telecommunications, Mandi (HP). The common case of the parties further is that the Plaintiff vide this letter dated 19th July, 1994 submitted a claim of Rs. 9,02,556 to the Defendants, which, according to the Plaintiff was on account of extra work done by way of increased depth of digging from 1.35 Metres to 1.65 Metres. This claim was not acceptable to the department and the dispute was then referred by the General Manager, Task Force to the arbitration of the Director, Telecom. Projects, Mandi.

5. Whereas the case of the Plaintiff is that the said General Manager, Task Force was requested by means of a notice dated 22nd October, 1994, served on him by the Plaintiff for the purpose of appointing an Arbitrator to decide the dispute between the parties and despite having received the said notice, the General Manager had failed to nominate or appoint an Arbitrator, it has been pleaded on behalf of the Defendants in their written statement that the aforesaid Arbitrator had duly been appointed by them. But no formal letter giving appointment to the Arbitrator and fixing the terms of reference of arbitration was issued. The Defendants are relying in the written statement on a document, purported to have been signed by one Shri K.K. Sapra, Director, Telecom. Projects, Mandi, which has not been addressed to any particular person or authority Photo copy of this document dated 10th April, 1995 issued from the Office of the Directory Telecom. Projects, Shimla is only available, as per the pleading in the written statement, which is annexed as D 2. It has further been pleaded in the written statement that no arbitrator's award has been notified to the parties nor has it been filed in the Court. However, payment of Rs. 1,17,084 has been made on the basis of document (Annexure D 2 of the written statement) dated 10th April,

1995. This payment is for the work done by the Plaintiff-contractor by laying cable at the claimed depth of 1.65 Mts. for 7866 Mts. The stand of the Defendants in the written statement is that on receiving this amount, the Plaintiff has given a no claim acknowledgement in writing by stating that he is fully satisfied with the decision communicated vide Annexure D 2 and, therefore, no more amount is due to him from the Defendants for the said work done by him of laying of Optical Fiber Cables on the Chandigarh Kalka-Parwanoo route. This alleged no-claim acknowledgement in writing by the Plaintiff is on the record in the shape of a photo copy (Annexure D 3 of the written statement).

6. In para 9 of the written statement it has been pleaded by the Defendants that no arbitrator's award has been filed in Court to make it a rule of the Court, therefore, this Court may decide whether fresh arbitration is required or not, in the facts and circumstances of the case as narrated above.

7. The learned Counsel for the parties have been heard and the record has been perused by this Court. In the facts and circumstances of the case, which have been narrated and discussed in detail above, it has now to be seen whether despite the admission of the Plaintiff vide document Ex.D 3 that no more amount is due from the Defendants to him, and that the matter may be treated as closed, there still subsists a dispute between the parties with regard to the said work done by the Plaintiff, in terms of Clause 23 of the agreement between the parties. In this connection, the learned Counsel for the Plaintiff has placed reliance on Union of India (UOI) and Another Vs. L.K. Ahuja and Co., While interpreting Section 20 of the Act, the apex Court has laid down therein that it is true that on completion of the work, right to get payment would normally arise and it is also true that on settlement of the final bill, the right to get further payment gets weakened but the claim subsists and whether it does subsist, is a matter which is arbitrable. These observations of the Hon'ble a Supreme Court fully apply to the facts and circumstances of the present case. In this connection it would not be inappropriate to again refer to the pleadings of the Defendants in para 9 of their written statement. According to them, no award of the Arbitrator has been filed in the Court, to make it a rule of the Court. In other words, there is no award in terms of the arbitration Clause 23 in the agreement entered into between the parties in this case.

8. The legal position that thus emerges in the present case, is that there is a dispute between the parties in respect of the payments to be made to the Plaintiff-contractor for the work done by him in laying of Optical Fiber Cables on the Chandigarh-Kalka-Parwanoo route as per the agreement between them (Annexure D 1). This dispute has not been formally referred to the Arbitrator as required by Clause 23 of the Agreement. Nor the document dated 10th April, 1995 vide Annexure D 2 can be considered or taken as an award by a duly appointed arbitrator in accordance with Clause 23 *ibid*. In these circumstances, no claim acknowledgement by the Plaintiff vide Annexure D 3, cannot be treated as acquiescence of the amount claimed by the Plaintiff and paid by the

Defendants in respect of the said works. Therefore, the application of the Plaintiff under Sections 8 and 20 of the Act deserves to be accepted.

9. For the reasons recorded above, this application is allowed and the Defendants are directed to appoint an Arbitrator strictly in accordance with Clause 23 of the agreement entered into between the parties in respect of the execution of the said works assigned to the Plaintiff-contractor by the Defendants, to adjudicate the dispute between them which has arisen with regard to the payment to be made to the Plaintiff for the execution of the said works by him. The Arbitrator, who will thus be appointed, is directed to make his award expeditiously, preferably within six months. The parties are left to bear their own costs.