
(2001) 09 DEL CK 0243
In the Delhi High Court
Case No : OMP 122 of 2001

Rajnigandha Cooperative Group Housing Society Ltd. APPELLANT
Vs
M/s Chand Construction Co. and Another RESPONDENT

Date of Decision : 20-09-2001

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16, 16(2), 16(3), 34, 44

Citation : (2001) 94 DLT 636 : (2001) 60 DRJ 293

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : Mr. A.P.S. Ahluwalia, for the Appellant; Mr. Sandeep Sharma, for the Respondent

Final Decision : Dismissed

Judgement

J.D. Kapoor, J.—The short controversy that calls for determination is whether the interim order/award of the arbitrator ruling on its jurisdiction to determine the dispute, raised by one of the parties is liable to be challenged u/s 34 of the Arbitration and Conciliation Act, 1996 (herein after referred to as the "Act") or not. The controversial clause which has given rise to the interim order/award of the arbitrator and the instant petition is Clause 44 of the agreement. It reads as under:-

"44. SETTLEMENT OF DISPUTES

All disputes and differences of any kind whatever arising out of in connection with the contract or carrying out of the work (whether during the progress of the work or after their completion and whether before or after the determination, abandonment or breach of the contract shall be referred to and settled by the employer, who shall state his decision in writing. Such decisions may be in form of a final certificate or otherwise. The decision of the employer with respect to any or all of the following matters shall be final and binding and without appeal;

XXXXX

2. The applicant is a cooperative Group Housing Society of which Sh. C.M. Mathew is the President. After due negotiations with respondent no.1, the petitioner engaged respondent no.1 for the electrical installation in flats constructed by the society and clause 44 is one of the terms of the contract entered into between the parties. Vide letter dated 18.6.1998, final bill for the amount of Rs. 14,38,189/- was submitted by respondent no.1 to the President of the Society. However, After checking the details, the President of the Society reduced it to Rs. 4,11,674/- and sent a cheque of the net balance towards full and final settlement.

3. The crucial question before the Arbitrator was whether the letter dated 27.6.1998 whereby cheque for the amount of Rs. 4,11,674/- was forwarded to respondent no.1 by referring it as net balance amount towards full and final settlement tantamounted to the decision of the President as contemplated under Clause 44 or not and whether stipulation in the said clause that if the Contractor be dissatisfied with the decision of the employer on any matter, question or dispute of any kind except the matters listed above, then and in any such case the Contractor may within twenty eight days, after receiving notice to such decision, give a written notice to employer is of mandatory or directory nature.

4. However, the learned Arbitrator after hearing both the parties came to the conclusion that the letter dated 27.6.1998 cannot be termed as final decision of the President as contemplated u/s 44 and since no letter was given by the respondent accepting the amount towards the full and final settlement mere acceptance of the cheque for the said amount cannot be said to be acceptance of the bill towards full and final settlement. The learned Arbitrator reasoned that "since reduction in the payment of final bill was because of deduction, this itself is a dispute to be looked into on the merit of controversy".

5. The other relevant observation of the learned Arbitrator is with regard to plea of the respondent that since claimant did not dispute the decision of the President within 28 days, he is debarred from approaching the Arbitrator. The Arbitrator held that whether this clause is directory or mandatory can also be gone into by the arbitrator.

6. The contention of the learned counsel for the petitioner that with the settlement of disputes through the letter dated 27.6.1998, the contract itself came to an end and Therefore arbitration clause ceased to exist has neither any substance nor any legal force as the Section 16 was specifically brought on the statute book to do away with such objections in order to remove obstacles or obstructions created by the parties in the suit in smooth, efficient and expeditious running of the arbitration proceedings.

7. The plea that arbitral tribunal does not have jurisdiction has been answered by Section 16 itself. Relevant extracts are as under:-

16. Competence of arbitral tribunal to rule on its jurisdiction:- (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with

respect to the existence or validity of the arbitration agreement, and for that purpose,-

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the validity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator."

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) of sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34."

8. The question whether Section 16 of the Act places an embargo upon the petitioner to challenge the interim award under the provisions of Section 34 of the Act came up for consideration before this court in *Union of India and Another Vs. M/s East Coast Boat Builders and Engineers Ltd.*, .

9. The court went into various relevant provisions in this regard and dealt with the proposition in very lucid and elaborate manner and came to the conclusion that the decision by an arbitral tribunal u/s 16(5) holding that it has jurisdiction to entertain the claim petition is not an interim award. The court in categorical terms held that where the arbitral tribunal decides the question of jurisdiction u/s 16(5) of the Act and rules that the disputes raised in the claim petition are arbitrable, the petition u/s 34 of the Act is not maintainable as no appeal is provided under the Act against such order and since the order is not an interim award it is not challengeable u/s 34 of the Act.

10. It was further observed that from the scheme of the Act, it is apparent that the legislature did not provide appeal against the order u/s 16(5) whereby the arbitral tribunal takes a decision rejecting the plea that the arbitral tribunal has no jurisdiction. The intention appears to be that in such case the arbitral tribunal shall continue with the arbitral proceedings and make an award without delay and without being interfered in the arbitral process at that stage by any Court in their supervisory role.

11. In view of the aforesaid position of law as enunciated by this court in clear and unambiguous manner, the instant petition has no merits and is dismissed.

12. Interim order shall stand vacated.