
(1995) 11 DEL CK 0043
In the Delhi High Court
Case No : Suit No. 558 of 1994

Ram Singh

APPELLANT

Vs

National Capital Territory of Delhi and Another

RESPONDENT

Date of Decision : 22-11-1995

Acts Referred:

Citation : (1996) 62 DLT 265 : (1996) 113 PLR 40

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : Vivekanand, for the Appellant;

Judgement

N.G. Nandi, J.

(1) By this petition, u/s 20 of the Arbitration Act, the petitioner prays for filing of the agreement containing the arbitration clause and also the reference of disputes detailed in para 11 of the petition in terms of Clause 25 of the Arbitration Act for adjudication to the arbitration.

(2) The say of the petitioner is that the petitioner is the sole proprietor of M/s. R.S. Electricals and has been executing various types of electrical works with (he respondents and other Government departments; that the agreement bearing No. 5/EE(E)/PWD-II/86-87 came to be executed between the petitioner and the respondents for construction of 500 beds Ddu Hospital at Hari Nagar, New Delhi SH: providing E.I. and Fans in six storeyed block; that immediately after the award of the work, pursuant to the aforesaid agreement, the petitioner made all necessary arrangements and the work commenced; that the work has also been completed on 28.11.92; that the respondents failed to do the things required to be done under the agreement for the execution and completion of the work by the petitioner; that the respondent committed faults, failures, breaches, latches and lapses, which were brought to the notice of the respondents by writing various letters from 16.2.87 to 30.11.87 and thereafter also; that because of the breaches of the contract by the respondents, the work could not

be completed within the stipulated period and the work prolonged beyond the stipulated period, resulting into losses and damages to the petitioner on account of the increased rates, overhead, establishment and watch & ward expenses; that the petitioner by its letter dated 30.11.87 requested the respondents to make good all these losses and pay 25%, over and above the tendered rates beyond the stipulated date of completion or close the contract; that the respondent did not close the contract and forced and pressurised the petitioner to continue with the work as and when the site was made available to the petitioner; that vide letter dated 29.6.92, the petitioner requested respondent No. 2 to appoint Arbitrator and refer the claims/disputes detailed therein for adjudication to the arbitration in terms of clause 25 of the agreement/ general conditions of the contract; that respondent No. 2, in response to the said letter, vide its reply dated 14.7.92 asked the petitioner to apply for arbitration in the prescribed form. The petitioner accordingly, vide letter dated 25.7.92, applied for arbitration in the prescribed proforma. Inspire of that, the Arbitrator was not appointed by the respondents and the petitioner called upon the respondents to appoint the Arbitrator and refer the claims/disputes of the petitioner for adjudication to the arbitration vide notice dated 28.8.92, but of no avail.

(3) It may be seen from the petition that para 11 thereof enumerates the disputes/claims arising out of the agreement between the parties, besides the contention that the "No Claim Certificate" dated 30.8.93 was got signed under coercion, pressure, force and undue influence and that the same is of no validity, consequence and not binding on the petitioner.

(4) In para 11 of the reply, the respondent refuting the averments with regard to the "No Claim Certificate" has contended that if the petitioner feels that his son was forced to sign the letter dated 30.8.93, regarding withdrawal of arbitration and claims, the matter may be taken up with the local police and if the petitioner feels that his son was not authorised to sign on behalf of the petitioner, then the matter may be taken up accordingly. Thus, one of the contentions by the respondents, is that in view of the "No Claim Certificate" issued by the petitioner, the disputes enumerated in the petition, can not be referred for adjudication to the arbitration as the cause for arbitration does not arise.

(5) The Supreme Court had the occasion to consider whether the claim for reference of disputes to the arbitration subsists or not, after the contractor executing the construction work and accepting the payments, giving "No Claim Declaration" in the case of Union of India (UOI) and Another Vs. L.K. Ahuja and Co., . The Supreme Court observed 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."

"IN the case of M/s. Navbharat Dal Mills Vs. Food Corporation of India and another, , the Division Bench of this Court held that "the question whether the claim is filed within time or that there is accord and satisfaction between the

parties, the same would be decided by the Arbitrator and not by the Court".

(6) In the contention of the respondent in view of "No Claim Certificate" issued by the petitioner, there is accord and satisfaction and that there is no cause for reference of the disputes for adjudication to the arbitration. Thus, according to the D.B. judgment (supra), the question as to accord and satisfaction between the parties, would be decided by the Arbitrator and not by the Court.

(7) In the case of B.D. Chawla v. Union of India reported in 1984 Rlr 421, it has been observed in para 15 by the learned Single Judge of this Court "that "No Claim Certificate", if given under coercion, then this question can be decided by the Arbitrator and not by the Court, in view of the arbitration agreement between the parties". In the instant case, according to the petitioner, "No Claim Certificate" was given under coercion, pressure, force and undue influence, and Therefore, not valid and binding to the petitioner. Thus, the disputes enumerated in para 11 of this petition, when the "No Claim Certificate", according to the petitioner, has been obtained by the respondents by coercion, pressure, force and undue influence, would be arbitrable and would be liable to be referred for adjudication to the agency of arbitration.

(8) In the reply, the respondents do not dispute the existence of arbitration agreement between the parties, i.e. Clause 25, which requires the reference of disputes arising under the contract between the parties for adjudication to the agency of arbitration. Para 11 of the petition, enumerates the disputes arising out of the agreement between the parties. The defense, as pointed out above, is that of accord and satisfaction of the disputes in view of the issue of "No Claim Certificate" by the petitioner. As pointed out above, according to the petitioner "No Claim Certificate" is obtained by the respondents by coercion, pressure, force and undue influence etc.

(9) In view of the above, the disputes enumerated in the petition would be liable to be referred to the arbitration for adjudication. Clause 25 of the General Conditions of the Contract, requires the disputes arising out of the agreement between the parties, to be referred for resolution/adjudication of the same to the arbitration agency. This clause also requires respondent No. 2, the Chief Engineer, to appoint/ name the Arbitrator for adjudicating the disputes between the parties. It, Therefore, follow from the above, that the petitioner is entitled to the relief claimed and the disputes enumerated in para 11 of the petition, being arbitrable referred to the agency of arbitration for adjudication and respondent No. 2, Therefore, required to name/appoint the Arbitrator in accordance with Clause 25 of the General Conditions of Contract. I, Therefore, pass the following order : Order The petition is allowed. The disputes enumerated in para 11 of the petition, are referred to the arbitration of the Arbitrators, who shall be appointed/ named by respondent No. 2, in accordance with Clause 25 of the General Conditions of Contract, within 4 weeks from today. The Arbitrator so named/ appointed shall enter upon the reference after the receipt of communication from respondent No. 2, in accordance with Clause 25 and shall make and publish the

award within 4 months from the date of entering upon the reference. This Order be communicated to respondent No. 2 for compliance. No order as to costs of this petition.