
(2006) 07 RAJ CK 0076
In the Rajasthan High Court

Ram Swaroop Meena

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 20

Citation : (2007) 2 ARBLR 496 : (2007) 1 RLW 10

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—The application has filed the instant application u/s 11 of the Arbitration Act, 1996 (for short, "1996 Act") for appointment of Arbitral Tribunal for adjudication of his claim and settlement of the dispute between the parties.

2. The facts, in brief, as stated by the applicant are as follows:

Applicant, a Railway Contractor, was awarded a work on September 2, 1996 vide contract agreement No. W/3189/T dated October 30, 1996. The cost of the work was Rs. 33,56,646/- and the work was to be completed till march 1, 1997. Tenth running bill of the applicant was not paid finally on the ground that the work was not completed within the stipulated period. The applicant stated vide application dated January 31, 1998 he requested for arrangement of sleepers at site as the sleepers and blast was supposed to be supplied by Railway Administration in time. The applicant completed most of the work for which certificate dated April 3, 1998 was issued. The applicant vide letter dated April 12, 1998 stated that the contractor who was supposed to supply blast has not supplied a single piece of blast, therefore, the applicant cannot be penalised. The respondents issued the letter dated April 17, 1998 to start the work otherwise the work will be completed by the other agency at the risk of applicant. The applicant submitted that the application dated May 26, 1998. The applicant vide letter dated January

7, 1999 requested for the payment of due amount. The respondents vide order dated March 18, 1999 informed that even after the letter March 26, 1998 there was no progress in the work and it was not completed within stipulated period, In such circumstances, the applicant served the notice dated June 10, 2003. The applicant in the instant application invoking the provisions of Clause 63 and 64 of the agreement has prayed for reference of the dispute to the arbitrator.

3. The respondents have raised preliminary objection in regard to maintainability of the application on the ground that the application is time barred.

4. I have heard the rival submissions and scanned the material on record.

5. The question that arises for consideration is - Whether the limitation is an issue that can be considered and decided only by the Arbitrator and not by this Court?

6. To decide this issue reference may be made to *Groupe Chimique Tunisien SA Vs. Southern Petrochemicals Industries Corpn. Ltd.*, wherein the Hon'ble Chamber Judge of the Supreme Court indicated in para 10 as under:

In regard to limitation, the petitioner submitted that having regard to the acknowledgment contained in the series of letters written by the respondent requesting for time and the acknowledgments contained in the balance sheets where these amounts are shown as "due and outstanding", the petitioner's claim is not barred by limitation. It is, however, unnecessary to examine this aspect as he learned Counsel for the respondent fairly conceded that this is a question which can be examined by the Arbitral Tribunal, in the event of a reference to arbitration being made. It is now well settled that the limitation is an issue that can be considered and decided by the Arbitral Tribunal.

7. It appears that ratio indicated by the Constitution Bench in *SBP & Co. v. Patel Engineering Ltd.* (2005) 8 SCC 618, was not brought to the notice in the aforesaid case. In *SBP & Co. v. Patel Engineering Ltd.* (supra) their Lordships of the Supreme Court held thus:

The Chief Justice or the designated Judge will have the right to decide the preliminary aspects as indicated in the earlier part of the judgment. These will be his own jurisdiction to entertain the request, the existence of a valid arbitration agreement the existence or otherwise of a live claim, the existence of the condition for the exercise of his power and on the qualifications of the arbitrator or arbitrators.

8. Bearing the principles laid down in *SBP & Co. v. Patel Engineering Ltd.* (supra) I notice that in the instant case a notice on respondents was served on November 29, 1999 wherein the respondents were asked to make payment of Rs. 9,84,464 on or before December 15, 1999, failing which the applicant was to institute civil suit for recovery of the said amount.

9. It appears that even after serving the notice the applicant did not take any

action and slept over his right. Thereafter on July 18, 2003 suddenly a letter was written to Division Railway Manager.

10. I do not find any merit in the submission of learned Counsel that since the claim of the applicant was acknowledged by the respondents it comes within limitation.

11. In Valliamma Champaka Pillai Vs. Sivathanu Pillai and Others, their Lordship of Supreme Court held that mere recital in a document as to existence of past liability coupled with a statement of its discharge does not constitute an acknowledgment.

12. In Sampuran Singh and Others Vs. Smt. Niranjana Kaur and Others, their Lordships of Supreme Court held that acknowledgment should be made during subsistence of period of limitation. Acknowledgment of liability after expiration of prescribed period of limitation for filing suit does not revive period of limitation.

13. In M/s. Pandit Munshi Ram and Associates (Private) Ltd. Vs. Delhi Development Authority and another, their Lordships of Supreme Court held that the limitation for the purpose of filing petition had started on the date when the final bill was accepted. Therefore the petition filed in July 1999 was dismissed barred by limitation.

14. In Union of India Vs. M/s. Momin Construction Company, their Lordships of the Supreme Court held in para 7 thus:

The claim in the first appeal aforementioned arose to the respondents therein before 11th August, 1965, when they issued the No Claim Certificate and the final bill was passed. The right to apply u/s 20 of the Arbitration Act, therefore, arose to the respondents before 11th August, 1965. The application u/s 20 was made by them much after the expiry of three years therefrom. The application u/s 20 was, therefore, plainly barred by time. The cases, in the other appeals are similar.

15. In the instant case since cause of action arose on December 15, 1999 and the applicant did not initiate the proceeding within the period of limitation, the dispute cannot be referred to arbitrator.

16. As a result of above discussion. I find no merit in the application and it accordingly stands dismissed without any order as to costs.