

(2013) 08 MP CK 0135

In the Madhya Pradesh High Court

Case No : Arbitration Case No. 33 of 2012

R.C. Saxena and Company

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-08-2013

Acts Referred:

Citation : (2013) 08 MP CK 0135

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Shekhar Sharma, for the Appellant; Govind Patel, for the Respondent

Final Decision : Disposed Off

Judgement

Rajendra Menon, J.—Applicant was granted a contract for construction of Maternity Ward, Labour Room, Operation Theatre and certain other items in a 50 Bedded Hospital to be constructed by the authorities of West Central Railway, Jabalpur. In the execution of the contract as certain disputes arose and as there was an arbitration clause and when arbitrator was not being appointed, it seems that the applicant filed a Writ Petition being W.P. No. 4035/2007. However, the writ petition was withdrawn on 18.4.2012, with a liberty to initiate proceedings under the Arbitration and Conciliation Act. Shri Shekhar Sharma, learned counsel for the applicant, invites my attention the work-order issued to the applicant on 26.10.2004, the dispute that arose between the parties and the fact that when the dispute arose the arbitral Tribunal so constituted was presided over by the arbitrator - Shri Neeraj Pandey. However, sometime in the year 2007 Shri Neeraj Pandey retired/left the services of railway and, therefore, the arbitration could not be concluded. In the meanwhile, when the dispute was not being resolved, applicant filed the writ petition as indicated hereinabove. During the course of hearing of the writ petition and while considering the objection raised by the respondents, it transpired that after Shri Neeraj Pandey left the railway service and when the matter was pending before this Court, the Railway administration wrote a letter to the applicant on 25.5.2009 vide Annexure R/1 and indicated a

panel of four officers, and the applicant was requested to suggest the name of two persons as Contractor's nominee, for appointment. It seems that the applicant did not take any action because a writ petition was pending before this Court and now the applicant wants constitution of an arbitral Tribunal presided by an independent person ? may be a Former District Judge, to be nominated by this Court.

2. Shri Govind Patel, learned counsel for the non-applicant, objects to the same and submits that once the arbitration clause itself contains a named arbitrator and when the railway administration had given a panel of options to the applicant, the applicant instead of complying with the option given, has rushed to this Court and, therefore, it is stated by learned counsel that now no indulgence be made.

3. Having heard learned counsel for the parties and on a perusal of the records, it is clear that after the original arbitral Tribunal was constituted in accordance to the requirement of the arbitration agreement and when Shri Neeraj Pandey became disqualified for working as an arbitrator, due to his relinquishment of the railway services, the railway administration had on 25.5.2009 given option to the applicant to nominate his arbitrator. But, it seems that the applicant under the misapprehension that the matter is pending before this Court in W.P. No. 4035/2007, did not take action. Once the arbitration agreement between the parties contemplates a procedure and when a named arbitrator is available, the normal rule is that the agreement between the parties should be given effect to and deviation from the same is only permissible in exceptional cases. Refer to the judgment of the Supreme Court in the case of Indian Oil Corporation Ltd. and Others Vs. Raja Transport (P) Ltd.,

4. Keeping in view the aforesaid and considering the facts and circumstances of the case, it is thought appropriate to direct the railway administration to take steps for constituting the arbitral Tribunal in accordance to the terms and conditions of the agreement. On the railway administration receiving a certified copy of the order within 30 days hereof, they shall communicate to the applicant the names of the arbitrators proposed to be appointed and their names. Option shall be given to the applicant to nominate his arbitrator and based on the nomination to be submitted by the applicant, the competent authority shall proceed to constitute the arbitral Tribunal. The applicant shall submit his option within a period of 15 days on receiving the communication from the railway administration and the entire process shall be completed within a period of 60 days from the date of receipt of certified copy of this order.

5. With the aforesaid, the application stands disposed of. Certified copy as per rules.