

(2004) 09 DEL CK 0163

In the Delhi High Court

Case No : Arbitration Petition 135 of 2004

R.K. Chaudhary and Sons

APPELLANT

Vs

MCD and Another

RESPONDENT

Date of Decision : 30-09-2004

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2004) 115 DLT 677

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : J.P. Gupta, for the Appellant; Gorang Kanth, for the Respondent

Judgement

Mukul Mudgal, J.—This is an application u/s 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator. It is not in dispute that clause 25 of the agreement provides for arbitration and the respondent while not denying this has quoted the following paragraph relevant according to it for determination of the issues raised in this petition.

"it is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-Charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the MCD shall be discharged and released of all liabilities under the contract in respect of these claims."

2. It is submitted by the respondent MCD that the claim for appointment of an arbitrator not having been made within 120 days of the final bill being received, the relief in the present application cannot be granted.

3. I am of the view such pleas as sought to be raised in paragraph 9 of the reply can be raised before the Arbitrator in reply to the statement of claim of the petitioner. This is the settled position of law as per the decisions of the Hon'ble

Supreme Court in the following cases which take the view that the High Court's role u/s 11 is administrative and not adjudicatory and contentious issues are to be raised before Arbitrator.

1. Konkan Railway Corporation Ltd. and Another Vs. Rani Construction Pvt. Ltd.,
2. Hythro Power Corporation Ltd. Vs. Delhi Transco Ltd.,
3. Food Corporation of India Vs. Indian Council of Arbitration and Others etc. etc.,
4. Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums,
5. State of Orissa and Others Vs. Gokulananda Jena,

4. It is also not in dispute that the petitioner sought the appointment of Arbitrator on 27th March, 2004. This letter seeking appointment of an arbitrator has not been disputed in paragraph 7 of the reply. However, reliance has been placed on the fact that the demand for appointment of arbitrator has not been made in writing within 120 days from the receiving of the intimation of the final bill from the Engineer in Charge. It is open to the respondent to raise this plea before the Arbitrator.

5. Accordingly Mr. A.S. Sareen, Chief Engineer (Maps), C.P.W.D. Curzon Road Barracks, New Delhi (Telephone No. 23387177) is appointed as an Arbitrator. The parties to appear before the Arbitrator on 9th November, 2004 at 4.30 PM on which date, statements of claim shall be filed by the parties. The Arbitrator is directed to dispose of the reference within six months from the first date of hearing.

6. The petition stands disposed of accordingly.