
(1993) 07 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision Petition No. 2262 of 1992

Rose Construction Co.

APPELLANT

Vs

Haryana State

RESPONDENT

Date of Decision : 28-07-1993

Acts Referred:

Arbitration Act, 1940 — Section 33
Constitution of India, 1950 — Article 299(1)

Citation : (1993) 105 PLR 243

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : Subash Ahuja, for the Appellant; Sanjeev Manrai, AAG, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—Respondents invited tenders for the construction of Over-head water-tank for supply of drinking water. In response to the said notice, the petitioner submitted his tender, which was accepted by the respondents. Under the letter of acceptance, petitioner was required to sign the agreement within ten days. The said letter of acceptance also contained a clause that in case of dispute between the parties, the matter shall be referred to the Arbitrator. As per case of the respondents, the petitioner was asked to sign the documents number of times, but he failed to turn up. On his failure to sign the contract and for not executing that work, the respondents invoked Clause 25-A of the un-signed contract which provided for arbitration for referring the dispute to the arbitrator. Before the Arbitrator could enter into reference, the petitioner filed a petition u/s 33 of the Arbitration Act, challenging the validity of the arbitration agreement. Respondents on appearance, stated that the petitioner was asked many times to sign the contract as well as to submit design and drawing, but the petitioner deliberately avoided the signing of the agreement and thus, delayed the submission of design, drawing and calculation. Respondents also referred to some of the letters which they had written to the petitioner. On the pleadings of

the parties, the trial Court framed the following issues:-

- "1. Whether there exist an agreement between the parties which contain the present dispute ? OPR.
2. Whether the present petition is not maintainable ? OPR.
3. Whether a party himself can be an Arbitrator ? OPR.
4. Whether the present petition is barred by doctrine of resjudicata ? OPA.
5. Relief.

The parties were given opportunity to lead evidence and on the basis of evidence brought on record, petition u/s 33 of the Arbitration Act was dismissed on the ground that on acceptance of tender, a valid contract had come into being and, therefore, respondents were entitled to invoke Clause 25-A of the contract which provided for arbitration. The order of the trial Court is being impugned in the present revision petition.

2. Having heard the learned counsel for the parties at length, I am of the view that the revision petition deserves to succeed. Admittedly, letter of acceptance contained a condition requiring the petitioner to sign the formal contract within ten days, but he did not sign the same. From the acceptance of letter, the trial Court concluded that the petitioner is estopped from raising a plea that the acceptance letter does not constitute binding contract between the parties. The conclusion so arrived at by the trial Court is contrary to what has been held by this Court in *State of Haryana and Another Vs. O.P. Singhal and Co.*, and in *M/s Om Parkash Baldev Krishan v. The State of Punjab through the Secretary to Government Punjab, Department of P.W.D. Chandigarh*,² (1981) 92 P.L.R. 313 , wherein it was held that merely because of submission of tender and acceptance thereof, no binding contract as envisaged by Article 299 of the Constitution can come into being. Thus, where no binding contract has come into being between the parties within the meaning of Article 299, the arbitration clause contained in the unsigned agreement could not be relied upon. In *M/s Om Parkash Baldev Krishan's* case (supra), the petitioner therein was also required to sign the agreement within ten days from the acceptance of tender. The petitioner therein had also fulfilled some of its requirements by submitting designs, calculations etc. like the present case. In these circumstances, the Court held that Article 299(1) of the Constitution applies to a contract made in exercise of the executive power of the Union or the State. The Judgment of the Supreme Court in *Union of India (UOI) Vs. A.L. Rallia Ram*, , relied upon by the counsel for the respondents was taken note of by this Court in *M/s O.P. Singhal's* case (supra) and was rightly distinguished. In *Rallia Ram's* case (supra) it was assumed that there existed a valid contract between the parties, but the arbitration agreement which was reduced into writing, though not signed by the parties, was the subject-matter of the consideration. In these circumstances, it was held that unsigned agreement would be valid. However, in the present case, no valid contract came

into existence between the parties and, therefore, clause relating to arbitration in an unsigned agreement cannot be invoked.

3. As a result thereof, the revision petition is allowed and the impugned order is set aside and in consequence thereof, petition u/s 33 of the Arbitration Act stands allowed. No costs.