
(1992) 08 DEL CK 0028

In the Delhi High Court

Case No : Original Miscellaneous Petition No. 114 of 1991

R.S. Rana

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-08-1992

Acts Referred:

Citation : (1992) 08 DEL CK 0028

Hon'ble Judges : Sagar Chand Jain, J

Bench : Single Bench

Advocate : D.N. Goverdhan, for the Appellant;

Judgement

S.C. Jain, J.

(1) This petition u/s 8 of the Arbitration Act has been filed by Shri R.S. Rana alleging himself to be one of the legal heirs of deceased Harbhajan Singh, who had allegedly entered into an agreement with the respondent No.2 for carrying out the work of S/R to N.H. No. 1, bye pass connecting N.H.1 and N.H.2 upper Bela Road Alipur Road and Mall Road by laying a fresh layer of 3" thick premix S.H. supply of materials vide agreement No.14/EE of 1969-70. Clause 25 of the agreement provides that disputes would be referred to Arbitrator to be appointed by the Chief Engineer Cpwd, in charge of the work or if there be no Chief Engineer, the Administrative Head of the Cpwd at the time of such appointment. The disputes which had arisen between the parties were duly referred by the order of this court dated 16.3.71 to Mr V.V. Vaze, as sole arbitrator but he resigned due to his transfer to his parent Department Or 31.5.73. Thereafter Shri Joginder Nath was appointed as the sole arbitrator. He also resigned on 29.10.1975. Thereafter the matter was referred to Mr M.S. Telang and on his resignation the matter was referred to Kumari K.P. Sarojini, who on account of her transfer also resigned on 31.8.79. The Chief Engineer, respondent No. 2, wide letter dated 29.1.80 then appointed Shri G.V.G. Krishnamurti as an Arbitrator. He also resigned on account of his transfer. In August, 1988 Shri N. Krishnamurti was appointed as Arbitrator. He also resigned on account of transfer

as alleged.

(2) Shri R.S. Rana Vs. Union of India & Ors. 69 Thereafter, Shri Sarvesh Chandra and then Shri G.D. Chopra were appointed but they also resigned. Eventually, on 4.9.90 Shri V. Nainani was appointed as Arbitrator but he also resigned vide his letter dated 4.7.91 which reads as under.

"I resigned from this case. The file of the case is retained in my office and will be transferred to subsequent arbitrator, if any."

(3) As per the case of the Department as set out in the affidavit of H.P.Bansal, Executive Engineer, Cpwd I, Mr Nainani was forced to resign on account of dilatory tactics adopted by the petitioner and other legal heirs of late Harbhajan Singh. On account of their non co-operation with the Arbitrator they did not allow him to proceed with the matter. As per the averments, which have not been controverted, Mr V. Nainani was reappointed as Arbitrator on 9.9.1991 by the Chief Engineer PW(D&A), Zone I, New Delhi by letter dated 21.8.91 and the said Arbitrator is dealing with the matter and his appointment is in accordance with the terms of the agreement.

(4) The petitioner, who argued the case in person submitted that a retired Judge or a practicing lawyer be appointed to adjudicate upon the disputes. According to the petitioner, the Chief Engineer has refused to appoint a new Arbitrator in place of Mr V. Nainani who has resigned. He also submitted that considerable long time has been spent resulting in hardship to the heirs of late Harbhajan Singh, petitioner herein.

(5) The only question which requires determination in this case is whether the Arbitrator who has once resigned can be reappointed to continue the proceedings and whether the provisions of Section 8 of the Arbitration Act can be invoked in such a case?

(6) In para 10 of the affidavit of Shri H.P.Bansal, it has been mentioned that the petitioner has been negligent in pursuing the matter and is not interested in arbitration proceedings and the Arbitrator was forced to resign. The petitioners, the legal heirs of late Harbhajan Singh, were not cooperating and persisted in their uncooperative behavior. However, he was reappointed on 19.9.91 by the Chief Engineer.

(7) In para 11 of the affidavit it is further alleged that the Arbitrator is dealing with the matter and is conversant with the facts. There is no specific denial of this averment meaning thereby that the plea of the Department has to be accepted as correct.

(8) Section 8 envisage a case where the proceedings are pending before the Arbitrator and the Arbitrator dies or become incapable to act or refuses to act If the arbitrator refuses, the court cannot compel him to arbitrate. The Arbitrator has full power to retract his resignation before it is accepted. In this case neither the resignation has been accepted nor acted upon and rather he is still dealing

with this matter. There is nothing on record to indicate that he is incapable of conducting the proceedings. The provisions of Section 8 cannot be invoked in this case. The Arbitrator was appointed under the terms of the specific agreement. Prayer of the petitioner that some retired judge or a practicing advocate be appointed in place of Mr. V. Nainani, whose appointment was "not challenged earlier cannot be accepted now as he is still seized of the matter as alleged in the affidavit of Shn H.P. Bansal, Ex. Engineer PWD(I).

(9) This petition is, Therefore, dismissed. It is however, made clear that the parties should cooperate with the Arbitrator who in turn would make and announce the award at the earliest.