
(2011) 03 P&H CK 0401
In the Punjab And Haryana At Chandigarh
Case No : Arbitration Case No. 34 of 2009

Sanjay Kumar Contractor

APPELLANT

Vs

Haryana State Industrial Development Corporation and
Another

RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Citation : (2011) 03 P&H CK 0401

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Judgement

Hemant Gupta, J.—Present petition is for appointment of an independent sole Arbitrator to adjudicate the disputes/differences having arisen out of work of providing & laying of Storm Water Drainage at Food Park at Industrial Estate Rai developed at Haryana State Industrial Development Corporation-Respondent here in.

2. It is the case of the Petitioner that the work of providing and laying of storm water drainage was allotted to the Petitioner on 5.10.2005. The work was to be completed within a period of nine months from the date handing over of site for completion of work. Petitioner completed the work on 10.12.2006 and an amount of Rs. 34,16,398/- was paid to the Petitioner on 19.6.2007. On 21.11.2007, Petitioner served a letter (Annexure A-2) upon the Deputy General Manager (IA) pointing out less payments and committing breach of contract. Subsequently, on 25.1.2008 vide the Annexure A-3, Petitioner called upon the Managing Director of the Corporation to appoint an Arbitrator within 30 days of this request to decide the disputes/differences arisen between the parties.

3. It is pointed out that Respondents has not appointed any Arbitrator in terms of the Arbitration Clause even though, a period of 30 days has expired, therefore, Petitioner invoked the jurisdiction of this Court for appointment of an Arbitrator. Petitioner also challenged the Clause contemplating the deposit of amount of cost of the proceedings contained in Clause 25-A (7). In reply, on behalf of

Respondents, it is pointed out that the Petitioner has failed to adhere to the provisions contained in Clause 25-A of the Agreement. It is averred that in the first instance, the disputes/differences were required to be referred by the Petitioner for settlement to Assistant General Manager or Deputy General Manager Incharge of the work who was to settle the dispute between 60 days. It was only on failure of the said authority to decide the dispute, the Petitioner could seek appointment of an Arbitrator.

4. Having heard learned Counsel for the parties at some length, I am of the opinion that Respondents have failed to appoint an Arbitrator in terms of Clause 25-A of the Agreement. Relevant extract of the Agreement reads as under:

Clause 25A(1) If any dispute or difference of any kind what so ever shall arise between the Corporation/his authorized agents and the contractor in connection with or arising out of the contract of the execution of the work that is (i) whether before its commencement or during the progress of the work or after its completion (ii) and whether before or after the termination abandonment or breach of the contract, it shall in the first instance be referred to for being settled by the AGM/DGM (IA) in charge of the work at the time and he shall within a period of sixty days after being requested in writing y the contractor to do so convey his decision to the contractor and subject to arbitration as hereinafter provided such decision in respect of every matter so referred shall be final and binding upon the Contractor. In case the work is already in progress the contractor will proceed with the execution of the work on receipt of the decision by the AGM/DGM (IA) in charge as aforesaid with all due diligence whether he or the Corporation/his authorized agent requires arbitration as hereinafter provided or not. If the AGM/DGM (IA) in charge of the work has conveyed his decision to the contractor and no claim to arbitration has been filed with him by the contractor within a period of sixty days from the receipt of letter communicating the decision, the said decision shall be final and binding upon the contractor and will not be a subject matter or arbitration at all. If the AGM/DGM (IA) in charge of the work fails to convey his decision within a period of sixty days after being requested as aforesaid the contractor may within further sixty days of the expiry of first sixty days from the date on which request has been made to the AGM/DGM (IA) request the General Manager, that the matter in dispute be referred to arbitration, as hereinafter provided.

7... It is also a term of this arbitration agreement that where the party invoking arbitration is the contractor no reference for arbitration shall be maintainable unless the contractor furnishes to the satisfaction of the AGM/DGM(IA) in charge of the work a security deposit of a sum determined accordingly to details given below and the sum so deposited shall on the termination of the arbitration proceedings be adjusted against the cost if any awarded by the arbitrator against the claimant party and the balance remaining after such adjustment in the absence of any such cost being awarded the whole of the sum will be refunded to him within one month from the date of the Award.

9.... Neither party shall be entitled to bring a claim for arbitration if the appointment of such arbitrator has not been applied within 6 months:

a) Of the date of completing of work as certified by the AGM/DGM (IA) in charge
OR

b) Of the date of abandonment of the work OR

c) Of its non commencement within 6 months from the date of abandonment or written orders to commence the work as applicable.

d) Of the completion of the work through any alternative agency of means after with drawl of the work from the contractor in whole or in part and/or its recession.

e) Of receiving an intimation from the AGM/DGM (IA) in-charge of the work that final payment due to or recovery from the contractor had been determined which he may acknowledge and/or receive

Whichever of (a) to (e) above is latest.

5. In terms of Clause 25 A (9) of the Agreement, a Contractor was to raise dispute within 6 months of the payment of the final bill in terms of Clause (7) (3) of the Clause 25-A of the Agreement. The Petitioner has raised the dispute within 6 months i.e. on 21.11.2007 after the payment of the final bill on 19.6.2007. Such request for settlement of the dispute was addressed to Deputy General Manager, an authority mentioned in Clause 25A(1) of the Agreement. In terms of the said Clause the specified authority was to decide the claim raised by the Petitioner within 60 days. No decision has been taken or communicated to the Petitioner nor so mentioned in the reply. It was, thereafter, the Petitioner has requested the Managing Director to appoint an Arbitrator on 25.1.2008 which is in terms of Clause 25A (1) of the Agreement. Thus, Respondents has failed to appoint an Arbitrator in terms of Clause 25-A (1) of the Agreement.

6. I do not find any merit in the argument raised by learned Counsel for the Petitioner that the condition of pre-deposit of the security amount is unwarranted. Once, the Petitioner has agreed for the deposit of the security amount prior to raising of the dispute, such condition has to be satisfied by the Petitioner.

7. Keeping in view the entire facts and circumstances of the case, Mr. A.S. Narula, learned Additional District Judge, (retd.) H. No. 512, Phase II, Mohali is appointed as an Arbitrator subject to the condition that the Petitioner shall deposit the security amount as per sub Clause (7) of Clause 25-A of the Agreement within one month from today.

8. Learned Arbitrator may fix his fee with the consultation of the parties with liberty to the parties to seek directions, if any required, in the matter of fee.

Disposed of.