
(2009) 09 DEL CK 0243
In the Delhi High Court
Case No : A.A. No. 166 of 2009

Sarvesh Chopra Builders Pvt. Ltd.	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6), 11(8), 14

Citation : (2009) 09 DEL CK 0243

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Kirti Uppal and Sanjeet Singh, for the Appellant; Asish Mohan, for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Sahai Endlaw, J.—The counsel for the respondent Union of India/Railways states that reply is ready and will be filed in the course of the day. The reply has been taken on record in the court and be kept on the file. The counsels have been heard.

2. The petitioner has preferred this application u/s 11(6) read with Section 14 of the Arbitration Act, 1996 for appointment of an independent sole arbitrator. The arbitration clause is in terms of Clause 63-64 of the General Conditions of Contract of the Railways whereunder when the claims are for more than 5 lacs, as they are in the present case, the arbitration is of the panel of three arbitrators being the gazetted Railways Officers; the manner of appointment of the said Arbitral Tribunal is also provided therein.

3. The case has a chequered history and as contended by the counsel for the petitioner, the petitioner has had to approach this Court several times, last being Arbitration Petition No. 98/2008 decided on 22nd May, 2008. Vide that order the name of Shri J.R. Meena, Gazetted Railway Officer as a nominee of the petitioner, was ordered to be included in the Arbitral Tribunal and in view of the long

pendency of the matter it was further directed that the Arbitral Tribunal shall try to dispose of the proceedings preferably by the end of December, 2008. This petition has been preferred in March, 2009 inter alia on the ground that the tribunal has failed to act without undue delay. It was contended that inspite of the order aforesaid of this Court the arbitration proceedings have not commenced as yet.

4. The respondent railways has in its reply stated facts as to why the Arbitral Tribunal could not meet; it is stated that the tribunal being of the Gazetted Railways Officers, the said officers were held up in their other official duties of pressing nature. It is further informed that the Arbitral Tribunal has now issued directions for the petitioner to file the claim but which the petitioner did not file perhaps for the reason of institution of this petition. The counsel for the respondent/railways states that the Arbitral Tribunal is willing to conclude the arbitral proceedings within such reasonable time as may be fixed by this Court.

5. The counsel for the petitioner though has contended that in the facts and circumstances he has become entitled to the appointment of an independent arbitrator under the provision of Section 11(8)(b) of the Act but for the sake of expediency and subject to the Arbitral Tribunal completing the proceedings within the time ordered by this Court, he is willing to proceed with the Arbitral Tribunal as constituted.

6. Upon inquiry it is informed that considering the nature of the claims, the period of nine months would be reasonable time for conclusion of the arbitral proceedings.

7. Accordingly, this petition is disposed of with the direction that the arbitral proceedings be definitely concluded on or before 30 June, 2010. It is clarified that even if any member of the Arbitral Tribunal is unable to continue as the arbitrator he shall be substituted immediately in accordance with the procedure/law and the same shall not be a ground for seeking extension of the time aforesaid. It is further clarified that if it is found that the Arbitral Tribunal for reasons not attributable to the petitioner does not conclude the proceedings within the time aforesaid, the petitioner shall become entitled to seek appointment of a sole independent arbitrator.