
(2004) 08 DEL CK 0033
In the Delhi High Court
Case No : ARBP 143 of 2003

Sethi Construction Company APPELLANT
Vs
Gangotri Enterprises Pvt. Ltd. and Others RESPONDENT

Date of Decision : 02-08-2004

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2004) 3 ARBLR 453 : (2004) 113 DLT 696

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : B.L. Chibber, for the Appellant; Deepak Dhyan and S.K. Taneja
Rajesh Gupta, Puneet Taneja and Amit Kumar, for the Respondent

Final Decision : Allowed

Judgement

R.C. Jain, J.—This is an application u/s 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) made on behalf of the petitioner M/s Sethi Construction Company seeking the appointment of an independent arbitrator.

2. Relevant facts leading to the filing of the present application are that respondent no.1 M/s Gangotri Enterprises Pvt. Ltd. (in short GEL) had entered into an agreement with the National Thermal Power Corporation Ltd. (in short NTPC) dated 01.7.1998 for the construction of Notre Dame School Building at BTPS, Badarpur, New Delhi. M/s GEL in turn entered into an agreement with the petitioner dated 31.8.1999. Clause 5 of the agreement dated 31.8.1999 provided that all the disputes arising out of and between the parties i.e. M/s GEL and M/s Sethi Construction Company shall be brought before the Deputy General Manager (Civil), NTPC, Badarpur for settlement or arbitration and shall be within the jurisdiction of Delhi Court. It appears that disputes/differences had arisen between the petitioner and M/s GEL/NTPC, the petitioner, M/s Sethi Construction Company earlier filed a petition being A.A.No.129/2001 in this Court against the NTPC and its officers seeking appointment of an arbitrator within the meaning of

Section 11(6) of the Act. The said petition was disposed of by a learned single Judge of this Court vide order dated 9.7.2002, thereby holding that the petitioner was not entitled to maintain the said petition against the NTPC in as much as there was no privity between the petitioner and the NTPC. The Court found that the petitioner was employed as a piece rate worker by M/s GEL and consequently the NTPC was not at all concerned with the underlying contract/agreement dated 31.8.1999 under which the petitioner had sought to invoke arbitration and appointment of an arbitrator. The said order has become final, not being challenged by any of the parties. It is pertinent to note that M/s GEL was not arrayed as a party in the said proceedings.

3. In the present petition, the petitioner has arrayed General Manager, NTPC as respondent no.2 and Deputy General Manager (Civil), NTPC as respondent no.3 besides impleading M/s GEL as respondent no.1. It may be noted at once that the petition is silent as to why the petitioner chose to array respondent no.2 as a party in the present petition as no averment or allegation of any overt action or inaction has been made against him. So far as respondent no.3 is concerned, the assertion of the petitioners that he has failed to take action on his representation.

4. Respondent no.1, M/s GEL has not filed any reply to the petition but learned counsel representing respondent no.1 has opposed this petition on the ground that claims of the petitioner are against the NTPC and not against M/s GEL and so respondent no.1 is not a necessary party and is at best is proforma party and is not answerable for the claims sought to be raised by the petitioner. Reply / opposition has been filed on behalf of respondents no.2 and 3 therein stating that there is no privity of contract between them and in any case no cause of action has arisen in favor of the petitioner and against these answering respondents.

5. I have heard Mr. B.L. Chibber, learned counsel appearing for the petitioner; Mr. Daleep Dhyani, learned counsel appearing for respondent no.1 and Mr. S.K. Taneja, learned senior counsel appearing for respondents no.2 and 3.

6. It may be noticed at the outset that the petitioner has not disclosed any cause of action nor any relief has been sought against respondent no.2 i.e. General manager, NTPC, Badarpur and, Therefore, this Court is of the clear opinion that respondent no. 2 has been improperly arrayed as a party and needs to be deleted from the array of respondents. So far as respondent no.3 is concerned, the only averment made against him is that he has failed to act on the representation dated 27.9.2002 sent by the petitioner to him for settling certain outstanding disputes. Assuming that the said respondent no.3 has failed to act in terms of clause 5 of the agreement dated 30.8.1999, he can be termed as a proper party in that sense. However, no further relief can be granted by this Court even against him.

7. Learned counsel for respondent no.1 has invited the attention of this Court to certain correspondence exchanged between him and the NTPC and more

particularly the letter dated 5.2.2001 issued by the NTPC to respondent no.1 and copy endorsed to the petitioner. This communication undoubtedly contains averments to the fact that on 30.8.1999 M/s GEL had entered into an agreement with M/s Sethi Construction Company and pursuant to that agreement running account bills were directly paid by the NTPC to M/s Sethi Construction Company. However, in the very next paragraph it was explained that the said agreement was an agreement and arrangement purely between M/s GEL and M/s Sethi Construction Company and there was no liability on the part of the NTPC to deal with said M/s Sethi Construction Company in any manner whatsoever. This position has been fully reinforced by the decision of this Court dated 9.7.2002 in A.A.No.129/2001. On the face of this position, it does not lie in the mouth of respondent no.1 to again contend that the petitioner had any agreement or privity with the NTPC and M/s GEL is neither necessary nor proper party and not answerable to the disputes sought to be raised by the petitioner. This Court has, Therefore, no hesitation in holding that respondent no.1 is the only relevant and necessary party in regard to the disputes raised by and sought to be settled by the petitioner in terms of the agreement dated 31.8.1999 on the premises that respondent no.3 has failed to act on the representations of the petitioner dated 27.9.2002 and 29.1.2003. This Court is of the clear opinion that in exercise of its powers u/s 11(6)(c) of the Act, an arbitrator needs to be appointed to settle the disputes between the parties i.e. the petitioner and respondent no.1.

8. In the result, this petition is allowed and Mr. Prem Kumar, a retired Additional District and Sessions Judge, Delhi is appointed as the sole arbitrator to settle the dispute between the parties. He shall be entitled to fix his own fee not exceeding Rs. 50,000/-. Fee shall be equally shared by the petitioner and respondent no.1 initially subject, of course, to the ultimate outcome of the proceedings. Parties are directed to appear before the named arbitrator on 9th August, 2004 at 4.00 P.M.

9. A copy of the order be sent to the named arbitrator forthwith.