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**(2000) 12 DEL CK 0005**

**In the Delhi High Court**

**Case No : AA No. 28/99**

Sh. Ayub Ali

APPELLANT

Vs

Union of India and Ors

RESPONDENT

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**Date of Decision :** 06-12-2000

**Acts Referred:**

**Citation :** (2001) 3 AD 489 : (2001) 91 DLT 366 : (2001) 58 DRJ 245 : (2001) 2 RAJ 185

**Hon'ble Judges :** Jiwan Dass Kapoor, J

**Bench :** Single Bench

**Advocate :** Mr. G. Lal Adv, for the Appellant; Mr. Kamaldeep, for the Respondent

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## **Judgement**

J.D. Kapoor, J.—This is a petition u/S 11 (2) and (6) of Arbitration and Conciliation Act, 1996 for appointing a sole arbitrator with regard to the disputes mentioned in the petition in para 9 (1-8) as the respondent has failed to appoint an Arbitrator inspire of a notice and reminder.

2. The sole defense of the respondent is that the petitioner's demand for arbitration is hopelessly time-barred. The reliance is placed upon clause 25 of the Arbitration agreement. The relevant extracts of the clause are as under:

"It is also a term of the contract that the contractor (s) do/does not make any demand for arbitration in respect of any claim(s) in writing within 90 days of receiving the intimation from the Government that the final bill is ready for payment the claim of the contractor(s) will be deemed to have been waived and a barred and the Government shall be discharged and released of all liabilities under the contract in respect of these claims."

3. The Counsel for the petitioner contends that the period of 90 days should be computed from the date of intimation of the last and final bill which in this case was never done as the last bill was paid on 22.03.1991 withholding the amount of Rs. 2000/- for quality control observations. Till date the petitioner has not received any other bill accept the bill dated 22.03.1990.

4. As against this the Counsel for the respondent-Government contends that the period of 90 days should be computed from the date of the aforesaid bill as in substance this was the final bill and if at all the amount of Rs. 2000/- was withheld for quality control observations, the duty was cast upon the petitioner No.2 to make a request for the said payment. Admittedly the petitioner never made such a request. The amount of the final bill was Rs. 61,314/-.

5. Now, after 9 years of having received the aforesaid bill that the petitioner has sought the invocation of the clause for arbitration by stretching the argument that the final bill has not been received as yet and the bill in question whereby the amount of Rs.2000/- was withheld for quality control observations cannot be deemed a final bill.

6. Learned counsel for the petitioner has placed reliance upon Ram Nath Mehra and Sons Vs. Union of India, while canvassing his contention that the limitation for arbitration is available from the intimation of the final bill.

7. In the above referred case the Government wrote to the contractor on 21.04.1977 that the final bill in his favor was ready in its office for payment. On 11.05.77 the Government wrote another letter to the Contractor in which it was said that the Government had a right to recover the limited damages in accordance with the provisions of the agreement as to what was not completed in time. In the said case the Government withheld its final bill of sum of Rs. 16,141/- on account of other claim for damages for delay in the completion of the work. On 11.05.77 the Government ascertained the damages to the tune of Rs. 12044/-. The government had withheld certain other amounts also.

8. As is apparent from the above facts the difference involved in the instant case sticks out for miles. After having received the bill in question which in substance was the final bill though Rs.2000/- out of Rs. 616314/- was withheld for quality control observations, the petitioner went into soporific slumber and did not contact the respondent as to the payment of Rs. 2000/- for nine long years.

9. In M/s. Ram Nath Mehra's case it was observed the object of the clause 25 as referred above is to give finality to the final bill if not challenged within 90 days by demanding arbitration. While referring to the letters and the decisions taken by the Government in the above referred case it was observed that if no decision was taken on certain issues and certain matters were left outstanding it could not be said that the final bill in this sense of the word had been prepared. In the above referred case the first decision was taken on 11.05.2000 and the Government took as many as three decisions when it refunded the contractors various amount on three different dates.

10. Thus it was in view of the aforesaid letters of the Government and various decisions taken from time to time by the Government that in M/s. Ram Nath Mehra's case it was held that nothing became final in the true sense of the word and, Therefore, the bill sent by the Government at first instance could not be deemed as final bill.

11. However, in the instant case not a scintilla of intimation was given by the Government at any point of time as to its decision with regard to the substantial amount of the bill towards the work done by the petitioner and since the paltry amount of Rs. 2000/- was shown having been withheld for quality control observations, the inescapable inference is that petitioner deemed and accepted bill in question as final bill and waived his right to recover amount of Rs. 2000/- having been withheld towards quality control observations. This is demonstrated by highly in-different, casual and cavalier attitude of the petitioner by not demanding arbitration within 90 days of the said bill. It boggles one's mind that the person would sit silent for 9 long years and would neither approach the Government for payment of Rs. 2000/- which was not towards any substantial items or damages or deficiencies nor did he ask for the arbitration and one fine morning woke up and invoked the arbitration clause. Ineluctable inference is that the petitioner had for all practical purposes deemed and accepted the bill in question as final bill which even otherwise was a final bill in substance and for man of average ken.

12. The foregoing reasons persuade me to disallow the application as it is utterly wanting in merit and is also hopelessly time-barred. Petition is hereby dismissed.