
(2012) 03 SHI CK 0271
In the High Court Of Himachal Pradesh
Case No : Arbitration Case No. 68 of 2011

Shri Kalyan Chand

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

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

Citation : (2012) 03 SHI CK 0271

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Advocate : Sumeet Raj Sharma, for the Appellant; Ruma Kaushik, A.A.G. and Mr. J.S. Rana, Asstt. A.G., for the Respondent

Judgement

Kuldeep Singh, Judge

1. This is a petition u/s 11 (6) of the Arbitration and Conciliation Act, 1996 (for short "Act") for appointment of Arbitrator. It has been stated that the parties entered into an arbitration agreement and agreed to refer all disputes relating to or arising out of the agreement No. 66 for the year 2004-05 relating to the work construction of Primary Health Centre building at Jalag, District Kangra through award letter dated 18.11.2004. It has been stated that Clause 25 of the agreement provides appointment of Arbitrator to be nominated and appointed by the Chief Engineer, Central Zone, HPPWD, Mandi. The Chief Engineer, Central Zone, HPPWD, Mandi has not appointed any Arbitrator to adjudicate the dispute arising between the parties. It has been stated that no qualifications have been prescribed for appointment of any person as an Arbitrator.

2. The work was taken in hand by the petitioner and it was completed by the petitioner. The building in question was executed as per the site requirement and as per Architect design. The work has been measured but the payment has not been made and final bill payment has not been made. The dispute between the parties has arisen on account of the failure on the part of the respondent to pay the final bill and other payment due to the petitioner. The notice dated 8.8.2011

was served to Chief Engineer requesting him for appointment of Arbitrator, but despite that notice, no Arbitrator has been appointed to adjudicate the dispute between the parties.

3. It has been alleged that petitioner has executed the work to the tune of Rs. 29,68,111/- against awarded amount of Rs. 36,38,519/- and the petitioner has been paid less amount. The balance work could not be executed due to fault of the Department. The petitioner has raised claims as under:-

(i) Amount of work executed to the tune of Rs. 29,68,111/- as per information disclosed against the awarded amount of Rs. 36,38,519/- and payment less made on this score and balance of work which could not be executed due to fault of the department and on which 15% anticipated amount is payable on the balance of the amount, which works out to Rs.

(ii) Items which were substituted and not paid as per the terms of the agreement under clause 12 and as per the market rates.

(iii) Item of Epoxy paint executed but not measured and paid along with moulding items.

(iv) 10CC payable and amount due is Rs. 4.20 lacs and only 2.60 lacs paid.

(v) Security amount of Rs. 1.50 lacs.

(vi) Steel recovery wrongly made and an amount of Rs. 1 lac to be paid to the petitioner by the respondent.

(vii) Interest @ 18% on the payment payable but not paid.

(viii) Cost of Arbitration Rs. 50,000/-

4. The claim of the petitioner has been contested by the respondents by filing reply. It has been stated that the dispute is in respect of agreement No. 66 of 2004-05 for the construction of P.H.C. building Jalag and not of agreement No. 15 of 2001-02 for the supply of grit. The petitioner requested for appointment of Arbitrator after a period of two years and is time barred. On merits, it has been stated that the petitioner was awarded work vide letter dated 18.11.2004 for construction of PHC building at Jalag with W.S. and S.I. for Rs. 36,38,519/- with a time limit of one year. The work was required to be completed by 1.12.2005. The petitioner executed the work to the tune of Rs. 29,60,685/- upto 31.12.2009.

5. The final bill could not be finalized for want of approval of huge deviation. The petitioner has not accepted the measurements recorded in the M.B. The Chief Engineer (MZ), HPPWD, Mandi did not appoint the Arbitrator as the bill was ready on 31.12.2009 and petitioner had not accepted the measurements, so the claim of the petitioner deemed to have been waived and absolutely barred and the Government was discharged of all the liabilities in terms of the agreement. The submission has been made for dismissal of the petition.

6. Heard and perused the record. The petitioner has placed on record copy of

agreement, Clause 25 of the agreement provides appointment of Arbitrator. The respondents have not disputed that there is no Arbitration Clause for appointment of an Arbitrator in the agreement. The claim of the petitioner has been disputed on limitation and on merits. It emerges from the petition and the reply filed on behalf of the respondents that there is a dispute between the parties. The defence taken by the respondents regarding the claim of the petitioner will be considered by the Arbitrator on merits and in accordance with law. In view of the above, the petition is allowed. The Superintending Engineer Arbitration, HPPWD, Solan is appointed as Arbitrator to adjudicate the dispute between the parties in accordance with the agreement and law by making reasoned award. The petition stands disposed of.