

(2002) 02 GAU CK 0046

In the Gauhati High Court

Case No : Arbitration Petition (ARB) No. 1 of 2002

Shrolen Son Marbaniang

APPELLANT

Vs

North Eastern Electric Power Corporation Ltd. and Others

RESPONDENT

Date of Decision : 19-02-2002

Acts Referred:

Citation : (2002) 2 GLT 369

Hon'ble Judges : R.S. Mongia, C.J

Bench : Single Bench

Advocate : P.C. Markanda, A.K. Goswami and R. Markanda, for the Appellant;
None appeared, for the Respondent

Judgement

R.S. Mongia, C.J.—In response to notice inviting tenders by Respondent North Eastern Electric Power Corporation Ltd. Shillong (in short NEEPCO), the Petitioner and some other contractors had submitted their tenders for construction of civil works of Dikrong Power House under Ranganadi Hydro Electric Project in Amnachal Pradesh. The Petitioner's firm of contractor was given the order for construction of the aforesaid project and an agreement was entered into on 1.5.95 between the parties. There is a Clause of arbitration in the agreement. The construction work is still going on. Some disputes have arisen between the parties and correspondence having been made between them but finding no solution the Petitioner contractor firm by letter/notice dated 30th July, 2001 addressed to General Manager (C) Contracts, NEEPCO Ltd., Shillong wrote that "on receipt of his letter you shall be well advised to take action at your end for appointment of an arbitrator within 30 days, failing which, as per settled law laid down by the Supreme Court, you shall lose the right to appoint an arbitrator. In terms of Clause 66, I appoint Mr. Bulan Chandra Borgohain, resident of Guwahati as my nominee arbitrator. This may be treated as the final notice."

2. As per the averments made in the petition, the said letter/notice was duly received by the addressee. However, no action thereafter has been taken and no arbitrator has been nominated by the Respondent NEEPCO. As per the Clause

66(D) of the agreement, arbitration is to be effected by an arbitration board consisting of two members. One selected by the Corporation i.e. NEEPCO and the other by the contractor. So far as the contractor/Petitioner is concerned, he has already nominated Sri Bulan Chandra Borgohain, Usha Nagar, P.O. Assam Sachivalaya, Dispur, Guwahati-6 as their nominee arbitrator.

3. The learned Counsel for the Petitioner has cited the Apex Court judgment in Konkan Railway Corporation Ltd. and Another Vs. Rani Construction Pvt. Ltd., to contend that if the party fails to nominate an arbitrator despite having been served with a notice of 30 days, this Court can consider to nominate an arbitrator dispensing with the requirement of the notice from this Court. Reference may be made to observations made in Paragraph 17 of the judgment which are as follows:

17. There is nothing in Section 11 that requires the party other than the party making the request to be noticed. It does not contemplate a response from other party. It does not contemplate a decision by the Chief Justice or his designate on any controversy that the other party may raise even in regard to its failure to appoint an arbitrator within the period of thirty days. That the Chief Justice or his designate has to make the nomination of an arbitrator only if the period of thirty days is over, does not lead to the conclusion that the decision to nominate is adjudicatory. In its request to the chief justice to make that appointment the party would aver that this period has passed and ordinarily, correspondence between the parties would be annexed to bear this out. This is all that the chief justice or his designate has to see. That the chief justice or his designate has to take into account the qualifications required of the arbitrator by the agreement between the parties (which, ordinarily, would also be annexed to the request) and other considerations likely to secure the nomination of an independent and impartial arbitrator also cannot lead to the conclusion that the chief justice or his designate is required to perform an adjudicatory function, that the word "decision" is used in the matter of the request by a party to nominate an arbitrator does not itself mean that an adjudicatory decision is contemplated.

4. From the correspondence and the averments supported by an affidavit, I am satisfied that the Respondent NEEPCO was duly served a notice for nominating an arbitrator to go into the disputes as raised by the Petitioner. This was done by the letter/notice dated 30th July, 2001. More than 30 days have elapsed since then and nothing has been done by the Respondent NEEPCO to nominate an arbitrator.

5. In the aforesaid circumstances, I hereby appoint one of the arbitrators from the panel of arbitrators maintained by the Indian Council of Arbitrators. I appoint the person whose name appear at serial No. 770 of the panel i.e. Capt. Pradeep Kumar, Oil India Ltd. Duliajan.

6. Copy of this order be immediately sent to Capt. Pradeep Kumar at Duliajan and Mr. Bulan Chandra Borgohain, Guwahati for their information. They would

immediately appoint a third arbitrator as presiding arbitrator expeditiously, but not later than one month from the date of receipt of the copy of this order. If for any reason they do not agree to the name of the third arbitrator (presiding arbitrator), the Petitioner would be at liberty to approach the appropriate forum.

7. So far as to their fees and the fee of the third arbitrator (Presiding arbitrator) is concerned, that may be settled in consultation with the parties taking into consideration the tariff fixed by the Indian Council of Arbitrators.

8. The address of the parties are given below:

M/s. Shrolenson Marbaniang,

Having its registered office

at SMS Complex, TSS Road, Police

Bazer, Shillong-1.

The Chairman and Managing Director,

North Eastern Electric Power

Corporation Ltd.

Brookland Compound, lower New

Colony, Post Box No. 79,

Shillong-793003.

9. The Petitioner is directed to send a copy of the petition as well as copy of this order to both the arbitrators by registered post.

10. The petition stands disposed of.