
(2010) 08 P&H CK 0346
In the Punjab And Haryana At Chandigarh

Subhash Chander and Company	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

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

Citation : (2010) 08 P&H CK 0346

Hon'ble Judges : Mukul Mudgal, C.J

Bench : Single Bench

Judgement

Mukul Mudgal, C.J.—This petition has been filed by the petitioner company u/s 11(6) of the Arbitration and Conciliation Act, 1996 (for short "the Act), for appointment of a sole Arbitrator to adjudicate upon the disputes between the parties.

2. Clause 24 of the agreement contains the Arbitration Clause which reads as under:

24. Disputes-Arbitration: No claim for payment of an extraordinary nature such as claim for a bonus for extra labour employed in completing the work before the expiry of contractual period at the request of the Deputy Project Director, HOPP, or claims for compensation where work has been temporarily brought to a standstill, through no fault of the contractor shall be allowed unless and to the extent that the same shall have been expressly sanctioned by the Haryana Court under the signature of its Secretaries:

1. If any dispute or difference of any kind whatsoever shall arise between the Governor of Haryana/ his authorised agents and the contractor in connection with or arising out of the contract or the execution of the work that in

(i) whether before its commencement or during the progress of the work or after its completion

(ii) and whether before or after the termination abandonment of branch of the

contract, it shall in the first instance be referred to for being settled by the Deputy Project Director, HOPP and he shall within a period of sixty days after being requested in writing by the contractor to do so, convey his decision to the contractor and subject to arbitration as here-in-after provided such decision in respect of every matter so referred shall be final and binding upon the contractor. In case the work is already in progress, the contractor will proceed with the execution of the work on receipt of the decision by the Deputy Project Director, as aforesaid, with all due diligence whether he or the Governor of Haryana/his authorised agent requires arbitration, as hereinafter provided or not. If the Deputy Project Director, In- Charge of the work has conveyed decision to the contractor and no claim to arbitration has been filled with him by the contractor within a period of sixty days from the receipt of letter communicating the decision, the said decision shall be final and binding upon the contractor and will not be a subject matter of arbitration at all. If the Deputy Project Director fails to convey his decision within a period of sixty days after being requested, as aforesaid, the contractor, may within further sixty days, of the expiry of first sixty days from the date on which request has been made to the Deputy Project Director, HOPP, request the Director of Agriculture that the matter in dispute be referred to arbitration, as hereinafter provided.

2. All disputes or differences in respect of which the decision is not final and conclusive shall at the request in writing of either party, made in a communication sent through registered A.D. post be referred to the sole arbitration of Executive Project Director/ any serving Joint Director, Agriculture, to be nominated by designation by the Director, Agriculture Department, Haryana at the relevant time. It will be no objection to any such appointment that the arbitrator so appointed is a Government servant or that he had to deal with the matters to which the contract relates and that in the course of his duties as a Government servant he had expressed his views on all or any of the matters in dispute. The arbitrator to whom the matter is originally referred being transferred or vacating his office, his successor in office as such shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

In case the arbitrator nominated by the Director Agriculture Department, Haryana is unwilling to act as such for any reason, whatsoever the Director Agriculture Department, Haryana shall be competent to appoint and nominate any other Executive Project Director/Joint Director, Agriculture, as the case may be as arbitrator in place and the Arbitrator so appointed shall be entitled to proceed with the reference.

3. It is also a term of this arbitration agreement that no person other than a person appointed by the Director Agriculture Department, Haryana shall act as arbitrator and if for any reason that is not possible the matter shall not be referred to arbitration at all. In all cases where the aggregate amount exceeds Rs. 25,000/(Rupees twenty five thousand only), the arbitrator must invariably

give reasons for his award in respect of each claim and counter claim separately.

4. The Arbitrator shall award separately giving his award against each claim and dispute raised by either party including any counter claim individually and that any lump sum award shall not be legally enforceable.

3. The existence of arbitration clause and invocation thereof is not in dispute. Learned Addl. Advocate General appearing for the State contended that the State has not appointed the Arbitrator because the petitioner company took four years to deposit the security amount, and as a result of late deposit of security amount, the claim raised has become time barred.

4. After hearing learned Counsel for the State, I am of the view that whether the claim has become time barred or not is itself a question which requires adjudication by the Arbitrator. The State may take that objection before the Arbitrator. Faced with this situation, learned Addl. Advocate General, Haryana very fairly conceded that the State would appoint an Arbitrator as per the arbitration clause not later than two weeks from today.

5. In this view of the matter, the present petition is disposed of with a direction that an Arbitrator be appointed within fortnight from today. The statement of claim shall be filed by the claimant-petitioner within four weeks after the date of appointment which shall be communicated to them by the respondents. Reply, if any, be filed within four weeks thereafter. The parties shall appear before the Arbitrator on 08.11.2010 at 4.00 P.M. or on an agreed date convenient to the parties but not later than a fortnight from the date of exchange of pleadings as directed aforesaid. The Arbitrator shall commence hearing on the date the parties shall appear before him or within a fortnight thereof on a date convenient to him and the parties. The Arbitrator shall dispose of the reference not later than six months from the date of first appearance of the parties.