

(1985) 11 DEL CK 0016
In the Delhi High Court
Case No : Suit No. 553A of 1985

Suresh Kumar Mehta

APPELLANT

Vs

Food Corporation of India

RESPONDENT

Date of Decision : 21-11-1985

Acts Referred:

Citation : (1986) 2 ARBLR 41 : (1986) 29 DLT 523

Hon'ble Judges : M.K. Chawla, J

Bench : Single Bench

Advocate : R. Lakhanpal and V.K. Vaishnav, for the Appellant;

Judgement

M.K. Chawla, J.

(1) In a petition u/s 20 of the Arbitration Act for the issuance of directions to defendants to file the original agreement and in furtherance thereof to make appointment of an Arbitrator, the case set up by the petitioner Shri Suresh Kumar Mehta, Government Contractor in brief, is that he entered into a contract with the defendants for the execution of the work mentioned below :

1. Construction of labour office-cum labour shed at Fsd Nagpur. 2. Strengthening of roads and drains in old complex at Fsd Nagpur. 3. Construction of Transit platform at Fsd Nagpur. 4. Construction of first floor over the existing accommodation at Fsd Nagpur.

(2) That proper agreements were executed between the parties for the execution of the aforesaid work/contracts. The works awarded to the plaintiff were executed and completed in all respects. That it was one of the terms of the contract that any dispute which may arise in relation to the aforesaid contracts was required to be adjudicated upon in terms of the Arbitration Clause.

(3) It is the case of the plaintiff that the execution of the work was delayed because of failures on the part of the defendants in fulfilling their obligations viz. issue of stipulated materials at the appropriate time, making available the

complete site free of hindrances and issue of drawings, decisions, designs etc. at the appropriate time so as to enable the plaintiff to complete the work within the contracted period. Because of the prolongation of the work the plaintiff suffered losses/damages on account of establishment and rise in prices, which damages are payable to the plaintiff under the Provisions of Section 73 of the Contract Act. In these circumstances when the amounts due to the plaintiff were not released, this resulted in the disputes which are required to be adjudicated upon in terms of Arbitration clause embodied in the contracts/work orders. The plaintiff ultimately invoked the provisions of arbitration clause and sought reference from Defendant No. 2 for appointment of an Arbitrator but they have not cared to nominate anyone, hence the present petition for reference of disputes mentioned in paragraph-7 of the petition to an Arbitrator to be appointed by respondent No. 2 with a direction to make and publish his award within four months from the date of entering upon the reference.

(4) The respondents in their reply did not dispute the fact of the petitioner having been granted the contract for the execution of the work mentioned in the petition and the execution of the agreement between the parties which contained an Arbitration clause. They have, however, taken up the stand that the present petition is barred by limitation and is not maintainable because of the petitioner having withdrawn his earlier petition from the Court of second Jt. Civil Judge Nagpur. It is also alleged that the work was delayed because of the fault of the contractor and none of the disputes mentioned in the petition arises out of the contract or required to be gone into by an Arbitrator.

(5) In the rejoinder the petitioner controverted the plea raised by the respondents in their reply and reiterated the facts stated in the plaint.

(6) After hearing the learned counsel for the parties at length, I am of the opinion that the petition is liable to be accepted forthwith. There is no dispute that proper agreements for the execution of four contracts by the petitioner were entered into between the parties. All these contracts contained an Arbitration clause. The disputes mentioned in paragraph 7 of the petition do arise out of these contracts and can only be adjudicated upon by an Arbitrator as to which party is at fault, is also the subject matter of the decision of the Arbitrator.

(7) It may be that originally the petitioner filed four suits in support of the claim arising out of the four contracts against the respondents in the Court of the second Jt. Civil Judge Senior Division Nagpur which were later on withdrawn on 19-2-1985. This fact by itself is not enough to hold that the present petition is not maintainable as it is the admitted case of the parties that this Court as well as the Court at Nagpur had jurisdiction to entertain the petition. Learned counsel for the respondents has not been able to establish on record as to how the present petition can be held to be barred by limitation. The copies of the documents filed on record clearly show that the petitioner has been writing letters and reminders to the respondents for the appointment of an Arbitrator for deciding their claim. Last in the series is the letter dated 14-7-1983. In spite of

these letters and reminders the respondents did not care either to acknowledge the same or to appoint an Arbitrator as per the terms of the contract containing an Arbitration clause. Once the respondents admit the execution of the work as per the terms of the contract containing an Arbitration clause, there is no scope for them to file any opposition to the petition u/s 20 of the Arbitration Act.

(8) As a result of the above discussion. I hereby allow the petition and direct respondent No. 2, the Managing Director of the Food Corporation of India, to appoint an Arbitrator within two months from today, to enter upon the reference and decide the claim of the petitioner as mentioned in paragraph 7 of the petition. The learned Arbitrator shall also be at liberty to entertain and decide the counter claim if the respondents care to file any before him. The learned Arbitrator shall make and publish his award within four months from the date of entering upon the reference.