
(1997) 11 DEL CK 0076
In the Delhi High Court
Case No : S.No. 2832-A/95

Tomar Detective Security (P) Ltd.

APPELLANT

Vs

New Delhi Municipal Committee

RESPONDENT

Date of Decision : 26-11-1997

Acts Referred:

Arbitration Act, 1940 — Section 20

Citation : (1997) 11 DEL CK 0076

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : Sh. Muneesh Malhotra, for the Appellant;

Final Decision : Dismissed

Judgement

K.S. Gupta, J.—Petitioner filed petition u/s 20 of the Arbitration Act alleging that it is engaged in the business of providing security to the Government, semi-Government and private institutions. Respondent invited tenders through Press on December 23, 1993 for award of work for providing security at its buildings for the calendar year commencing from March 10, 1994. Pursuant to the tender submitted by the petitioner the work was awarded by the respondent to the petitioner and an agreement was executed between them on April 8, 1994. It is alleged that Rs.4,39,162.29 towards the arrears of revised rates of minimum wages. Rs.36,96,549.95 towards unpaid bill for the months of May, 1995 to July 1995. Rs.1,92,384.31 towards deduction of provident fund Rs.1,22,185.55 towards deduction of E.S.I., Rs.50,000/- towards earnest money, Rs.5,18,665/- towards security amount and Rs.19,101/- towards Income Tax surcharge @ 15% were recoverable by the petitioner which the respondent has failed to pay despite repeated demands. It is stated that in view of clause 31 of the aforesaid agreement dated April 8, 1994 dispute in regard to payment of aforementioned amounts is to be referred to sole arbitrator to be appointed by the President/Administrator of the respondent which the President/Administrator has failed to appoint despite service of letter dated August 28, 1995. It is prayed that the

arbitration agreement be ordered to be filed in court and the dispute be referred for adjudication by an arbitration.

2. In the written statement it is not disputed that work for providing security was awarded to the petitioner and an agreement was entered into between the parties on April 8, 1994 as alleged. However, it is stated that under clause 2(b) of the said agreement to payment on account of escalation charges due to revision in wages by the Government, is to be made by the respondent to the petitioner. Liability to pay Rs.4,39,162.29p on that account is emphatically denied. It is stated that the petitioner had practically severed all relations with the employees and the respondent thus had to take over the work of supervision, control and wage disbursement to the petitioner's employees on petitioner's behalf from May, 1995 to October, 1995 in accordance with Labour Regulation and Abolition Act, 1970. As regards claim towards deducted amount of E.S.I. and P.F. of Rs.1,92,384.31 and Rs.1,22,185.55 respectively, it is alleged that since the petitioner failed to submit proof of deposit of said amounts with the respective authorities, the amounts were withheld by the respondent. It is alleged that as per terms of the contract, security deposit is refundable after submission of no dues certificate from the Office of the Labour Commissioner. Govt. of NCT of Delhi. Petitioner had not submitted the requisite no dues certificate till date. It is stated that as per the prevailing practice respondent had been deducting surcharge @ 15% p.a. on the income tax under the provisions of Income Tax Act.

3. By the order dated August 6, 1996, respondent was proceeded ex parte and the petitioner was permitted to lead ex parte evidence on affidavits.

4. By way of evidence petitioner has filed the affidavit of D.S.Tomar, managing director of the petitioner company.

5. Dispute in regard to payment of the dues referred to in para No.19 of the petition is sought to be referred to arbitration under clause 41 of the arbitration agreement dated April 8, 1994 executed between the parties. that clause provides as under:-

"In case of any dispute with regard to the interpretation of any clause of this Agreement, the same shall be referred to the sole arbitration of person appointed by the President/Administrator, NDMC and if there be no President/Administrator, the Administrative Head of NDMC, at the time of such appointment. It is also a term of this contract that no person other than any person appointed by the President or Administrative Head of NDMC should act as arbitrator whose decision in this behalf will be final and binding on both the parties."

6. Obviously, aforesaid clause refers to appointment of an arbitrator by the President/Administrator or the Administrative Head of NDMC, as the case may be, in the event of dispute having arisen between the parties regarding interpretation of any clause of the agreement. It does not provide for appointment of arbitrator for adjudicating upon the dispute of the nature referred

to in para No.19 of the petition. Learned counsel for the petitioner on being confronted with this situation invited my attention to a decision in Bindra Builders Vs. Delhi Development Authority, . However, this decision does not help the petitioner. Section 20 would apply only where there is an arbitration agreement to refer the differences/disputes between the parties to arbitration. Since the aforesaid clause 31 does not cover the dispute referred to in para 19 of the petition, present petition as not legally maintainable and deserves to be dismissed.

7. Petition is, Therefore, dismissed. No order as to costs.