

(2002) 07 DEL CK 0046

In the Delhi High Court

Case No : Civil Writ Petition No. 4444 of 2002

Union of India (UOI) and Another

APPELLANT

Vs

J.R.C. Grid Engineers P. Ltd.

RESPONDENT

Date of Decision : 26-07-2002

Acts Referred:

Citation : (2002) 07 DEL CK 0046

Hon'ble Judges : Jiwan Dass Kapoor, J;B.A. Khan, J

Bench : Division Bench

Advocate : R.V. Sinha, for the Appellant; Nemo, for the Respondent

Judgement

Khan, (J)

1. Respondent filed AA No. 195/2001 for appointment of an arbitrator. Designated Authority issued notice to petitioner and then appointed retired Judge of this court Hon"ble Mr. Justice R.P. Gupta as an arbitrator to adjudicate the dispute between the parties by order dated 12.2.2002. Petitioner sought review of this order on the ground that agreement between the parties provided for appointment of the serving officer with Engineering degree qualification as an arbitrator. The Authority rejected review petition placing reliance on judgment of the Supreme Court in Konkan Railway Corporation Ltd. and Another Vs. Rani Construction Pvt. Ltd., and holding that petitioner had already forfeited its right to appoint an arbitrator. Hence this petition.

2. The only submission made by Union counsel before us was that designated authority was required to give due regard to qualification required of arbitrator by agreement of parties in terms of Sub-section 8(a) of the Act and since an agreement between the parties provided for an appointment of serving officer with Engineering Degree qualification, Therefore appointment of a retired Judge of High Court as arbitrator was not in order.

The plea appears fallacious on the face of it. Sub-section 8(a) of Section 11 provides as under:

"The Chief Justice or the person or institution designated by him, in appointing an arbitrator, shall have due regard to-- (a) any qualification required of the arbitrator by the agreement of the parties."

3. A perusal of this provision shows that Chief Justice or the designated authority was only required to give due regard to the qualifications required of the arbitrator provided in the agreement of the parties and to other considerations for appointment of an independent and impartial arbitrator. The spirit behind this was to ensure appointment of an independent and impartial arbitrator by also taking into consideration qualifications held by a person in terms of the agreement and other relevant factors. Once this premise was accepted mere agreement of parties to appoint a specially qualified Arbitrator does not mean that no other person even if he possessed inherent element of impartiality or independence coupled with long experience for adjudicating wide range of subjects involving complex facts and questions of law could not be appointed. Moreover, once the party forfeits the right to appoint the arbitrator, it should be left to the wisdom and discretion of the court to decide on the suitability of the Arbitrator to ensure fairness of award.

4. We are fortified by the following observations of the Supreme Court in *Konkan Railway Corporation Ltd. and Anr. v. Rani Construction Pvt. Ltd.* (2002) 2 SCC 404

"Where an appointment procedure has been agreed upon by the parties but a party fails to act as required by that procedure or the parties, or the two arbitrators appointed by them, fail to reach the agreement expected of them under that procedure or a person or institution fails to perform the function entrusted to him or it under that procedure, a party may request the Chief Justice or his designate to nominate an arbitrator, unless the appointment procedure provides other means in this behalf. The decision of the Chief Justice or his designate is final. In nominating an arbitrator the Chief Justice or his designate must have regard to the qualifications required of the arbitrator in the agreement between the parties and to other considerations that will secure the nomination of an independent and impartial arbitrator.

5. It cannot be said in the present case that designated authority had not given due regard to the requirements of this provision or to the terms of the agreement. Nor it can be held that the authority was bound to appoint an arbitrator possessing specific qualifications on such consideration. On both counts petitioner's plea fails and so does the writ petition.