
(1993) 10 DEL CK 0018
In the Delhi High Court
Case No : Suit No. 2270 of 1991

Uttam Wires and Machines Pvt. Ltd.

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 06-10-1993

Acts Referred:

Citation : (1994) 1 ARBLR 98 : (1993) 52 DLT 383

Hon'ble Judges : P.N. Nag, J

Bench : Single Bench

Advocate : S.K. Khurana, for the Appellant;

Judgement

P.N. Nag, J.

(1) By this petition under Sections 33(8) & 20(4) of the Arbitration Act, 1940, the petitioner has prayed for an appointment of any person as an arbitrator in contract dated 27-3-1973 in accordance with law to adjudicate the disputes as specified in paragraph 7(a) and (b) of this petition .

(2) The relevant facts relating to the filing of this petition are that the petitioner Uttam Wires and Machines (P) Ltd. had filed a Suit No. 1489-A of 1987 relating to the present contract dated 27-3-1973. Vide order dated 19-7-1989 this Court disposed of the suit directing the respondents to file the arbitration agreement and appoint an arbitrator in accordance with the law. The decision in the said suit No 1489-A/87 has been reported in Uttam Wires and Machines (P) Ltd. Vs. State of Rajasthan and Another, State of Rajasthan filed an appeal (FAO (OS) 227/89) against the aforesaid decision dated 19-7-1989 which was also dismissed vide Division Bench order dated 13-1-1992 passed by G.C. Mittal, Chief Justice, and SatPal, J., with the result, the order dated 19-7-1989 passed in Suit No. 1489-A/87 has attained finality.

(3) In spite of requests of the petitioner for the appointment of an arbitrator ,the respondent has refused to appoint an arbitrator. Even the notice dated 29-7-1989 issued and served on the respondent by the petitioner for the

appointment of an arbitrator within 30 days, was ignored.

(4) The stand taken by the respondent in para 11 of the written statement is that under Clause 6 of the agreement, the matter had to be decided by the Government and it was, in terms, not an arbitration clauses. The State Government ,Therefore, did not appoint any arbitrator to resolve the alleged disputes as stated by the plaintiff. In other words, in spite of the order dated 19-7-1989 passed in Suit No. 1489-A/87 and notice dated 29-7-1989, no action has been taken by the respondent to appoint an arbitrator and this Court ,Therefore, has every right to appoint any person as an arbitrator.

(5) It may be mentioned here that the above objection was taken by the respondent in the written statement filed in Suit No. 1489-A/87, which was duly considered and rejected by this Court. The refusal by the respondent to appoint an arbitrator in spite of the Court's order is arbitrary.

(6) Counsel for the petitioner submits that a retired Judge of the Delhi High Court may be appointed as an arbitrator for adjudication of the disputes referred to in this petition, particularly para 7(a) and (b) of this petition. Nobody has appeared on behalf of the respondent.

(7) I have considered the matter. I am of the firm view that since the respondent has failed to appoint an arbitrator, in spite of the order dated 19-7-1989 passed in Suit No. 1489-A/87 and notice dated 29-7-1989, this Court gets jurisdiction to appoint an arbitrator, and the respondents have abdicated their power to appoint an arbitrator.

(8) In the light of above discussion. I appoint Shri S.N. Sapra, retired Judge of the Delhi High Court as an arbitrator to adjudicate the disputes enumerated in the petition, particularly in para 7(a) and (b) of the petition in accordance with law. The fee of the arbitrator will be decided by the arbitrator himself, which shall be borne by both the parties proportionately, Suit stands disposed of. In the facts and circumstances of this case, I make no order as to costs. Arbitrator appointed.