
(2005) 10 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 282 of 2003

Vidhyawati Construction Co.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 17-10-2005

Acts Referred:

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

Citation : (2006) 2 ARBLR 487 : (2006) 1 MPLJ 88

Hon'ble Judges : Shantanu Kemkar, J

Bench : Single Bench

Advocate : V.R. Rao, for the Appellant; Sanjay Yadav, for the Respondent

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.

The applicant has filed this application u/s 11(6) of the Arbitration and Conciliation Act, 1996 (for short "the Act") seeking appointment of the arbitrator.

As per the applicant, pursuant to the invitation of tenders for the work of repair to service building and staff quarters at Upper Line Loco Area and Bajarang Colony under Zone No. III at Jabalpur and road side station Bheraghat, Adhartal, Deori and Ghosalpur and duty bunk in level crossing, the applicant had submitted his tender. The applicant's said tender was accepted by the first respondent on 06.10.1997, and it was awarded the construction work as per the contract agreement dated 21.05.1999. The said work was completed by the applicant within the extended date for completion of work.

The applicant contends that part of the amount of bills of the work done has been paid to it, but the respondents did not pay the entire amount and, therefore, the claim was put forward by it before the respondents. The applicant alleges that in spite of several letters and reminders the respondents neither paid the balance amount as claimed nor released the security deposit. In the circumstances, the applicant sent a letter dated 30.07.2002 seeking appointment

of arbitrator as per the Arbitration Clause No. 64 in the agreement dated 21.05.1999, but the said request was also not acceded to by the respondents.

The respondents filed their reply. They contend that as per Clause 63 of the contract agreement, the claims made by the applicant having been specifically excluded from the purview of the arbitration clause, are not referable to the arbitration. They also contend that the applicant having signed no claim certificate in favour of the respondents it is not open for it to claim any amount from the respondents. In support the respondents relied on Clause 43(2) of the contract agreement and also drawn my attention to a copy of the final bill signed by the applicant having a printed endorsement--"I have no other claims outstanding against the central railway for work done or for repairs or material supplied or on other account and the payments of the bills shall be final in respect of the work to which agreement Work Order No. JBP/W/139/R/type-I&II/Qtrs./JBP/128, dated 21.05.1999". Thus it is contended that having received the final payment without any protest the matter cannot be referred to the arbitrator. In support of their contention the respondents relied on the judgment of this Court in case of Nanakchand Shriram Sohani v. Union of India and Ors. 1992 (2) JLJ 205 and judgment of the Supreme Court in case of General Manager Northern Railways and Another Vs. Sarvesh Chopra, .

Per contra the applicant relied on the judgments of the Supreme Court in case of Konkan Railway Corporation Ltd. and Another Vs. Rani Construction Pvt. Ltd., and in case of Hythro Power Corporation Ltd. Vs. Delhi Transco Ltd., and a Division Bench judgment of this Court in case of Ramsharan and Ramdayal Dau Co. v. Hindustan Steel Ltd. 1980 JLJ 689. Placing reliance on the judgments, the applicant contends that the nominee of the Chief Justice exercising the jurisdiction conferred u/s 11 of the Act functions in an administrative capacity. He is not supposed to discharge functions which are adjudicatory in nature. The arbitrability of the claims can only be gone into by the arbitrator appointed by him. The applicant further contends that the judgments on which reliance has been placed by the respondents are distinguishable on facts. It is argued that the said judgments are under the Arbitration Act of 1940 and are not authority on the jurisdiction of this Court u/s 11 of the Act. It is contended that in view of the judgments of the Supreme Court in cases of Konkan Railway Corporation and Hythro Power Corporation interpreting the scope of Section 11 of the Act, the questions raised by the respondents about the arbitrability of the claim can also be gone into by the arbitrator and in the circumstances it is open for the respondents to raise all contentions before the arbitrator. In Ramsharan vs. Hindustan Steel Ltd. (supra), the Division Bench of this Court has held that--"accord and satisfaction does not put to an end to arbitration clause. The question whether there has been full and final settlement of the claim under the contract is itself a dispute arising from or in relation to or in connection with the contract which can be decided by the arbitrators".

Having regard to the aforesaid legal position the objection of the respondents

that the matter need not be referred to the arbitration is rejected. It will be open for the respondents to raise all the aforesaid objections before the arbitrator.

On appreciating the contentions raised by the parties it reveals that the parties entered into a contract agreement and when the dispute arose the applicant issued notice to the respondents seeking arbitration for its claim and even after receipt of such notice the respondents have not taken any step for appointment of the arbitrator.

In this view of the matter the application is allowed. Shri Justice S. Awasthy a retired Judge of this Court is appointed as arbitrator in this case.

A copy of this order with letter of request be sent to Shri Justice S. Awasthy a retired Judge of this Court by the Registrar (Judicial).