

Arbitration Case No. 120 of 2011 Vs. Executive Engineer, Huda Division, Karnal

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Court : Punjab and Haryana

Decided On : Feb-01-2013

Appellant : Arbitration Case No. 120 of 2011

Respondent : Executive Engineer, Huda Division, Karnal

Judgement :

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH Arbitration Case No.120 of 2011 Date of Decision:

01. 02.2013 Bhangnawala Addarsh Coop. L/C Society. ...Petitioner Versus Executive Engineer, HUDA Division, Karnal ..Respondents CORAM: HON'BLE MR. JUSTICE A.K.SIKRI, CHIEF JUSTICE.

1. Whether Reporters of local papers may be allowed to see the judgment ?.

2. Whether to be referred to the Reporters or No.?.

3. Whether the judgment should be reported in the Digest?. Present : Mr. Jagdish Manchanda, Advocate, for the petitioner. Mr. Raman Gaur, Advocate, for the respondent. **** A.K.SIKRI, CHIEF JUSTICE The petitioner society has filed this petition under Section 11 of the Arbitration & Conciliation Act, 1996 (for short the Act) praying for appointment of an Arbitrator to adjudicate the disputes between the parties in terms of the arbitration agreement between the parties.

2. As per the petitioner society, the respondent invited the tender for allotment of work of construction of workshop building at New Bus Stand, Kaithal supply and laying granular sub base stone metal 53mm to 22.4 mm construction of pavement with design mix M-40 as per design and specification and all the works contingent thereto.. As per tender filled, the above said work was allotted to the petitioner society vide memo No.4340 dated 02.03.2009. Arbitration Case No.120 of 2011 - 2- 3. It is further alleged by the petitioner that as per the terms and conditions of the contract, department inserted one condition No.24 for Item No.6 of DNIT HSR item No.10.69 including the cost of additional material to achieve the strength of design mix M-40 i.e. admixture, surface and screed plasticizer vibrator, mobile batching plant, fly ash and tipper- cum-loader, polythene sheet, dowel bar plastic sponge etc. nothing extra shall be paid for this item.

. The Chief Architect, Haryana, Department of Architecture, Sector-17, Chandigarh sent a letter along with print of layout plan for approval to the Transport Commissioner, Haryana, Chandigarh vide letter dated 22.05.2009.

4. It is further alleged that the petitioner deposited a sum of ` 1,40,000/- with the Executive Engineer, HUDA Division, Karnal as earnest money for the execution of the above said work but the work could not be started within this stipulated period on account of unavoidable circumstances and the petitioner pointed out these difficulties to the respondents stating that it was beyond its control. Even the meetings between the parties were held. It is not necessary to go into all these details. Some disputes also arose on certain terms of the contract which are not required to be stated in this petition. It is suffice to say that the respondent ultimately sent a letter dated 14.07.2010 intimating the petitioner that it had failed to start and complete the work and accordingly action under Clauses-II and III-C of the contract conditions was initiated against the petitioner and the work was allotted to Shri Milkhi Ram, contractor. It was also mentioned that total amount of ` 51.80 lacs was required to be recovered from the petitioner. The petitioner made a representation there against on 03.04.2011. However, as it evoked no response by virtue of clause 25-A of the contract which is in the nature of Arbitration Case No.120 of 2011 -3- arbitration agreement, the petitioner sent a notice to the respondent for appointment of the Arbitrator. However, the respondent did not

appoint the Arbitrator within 30 days or till the date of filing of the present petition. In these circumstances, this petition is filed under Section 11 of the Act for appointment of the Arbitrator by the Court on the ground that the respondent has forfeited its right to appoint the Arbitrator in view of the judgment of the Apex Court in Datar Switchgears Ltd. Vs. Tata Finance Ltd. and (2000) 8 SCC 151.

5. Reply is filed by the respondents wherein the allegations on- merits are traversed and denied by putting blame on the petitioner for failure to complete the work within time and justifying their action of the termination of the agreement at the risk and costs of the petitioner. It is not denied that the matter is governed by arbitration agreement contained in clause 25-A of the agreement. Thus when there are disputes which are to be settled through arbitration, it was incumbent upon the respondent to appoint the Arbitrator which it failed to do so. Therefore, it is not for this Court to appoint the Arbitrator.

6. Accordingly, this petition is allowed and Mr.Vinot Jain, Karnal, retired District & Sessions Judge, # 1, Chaman Garden, Railway Road, Karnal, is appointed as Arbitrator to adjudicate upon the disputes between the parties. He shall be paid fee as per the schedule fixed by this Court. (A.K.SIKRI) CHIEF JUSTICE 01 02.2013 'ravinder'

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