

Vs. Union of India

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SooperKanoon Citation : sooperkanoon.com/1059124

Court : Kolkata

Decided On : Jan-04-2012

Judge : Sanjib Banerjee

Respondent : Union of India

Judgement :

AP No.628 of 2010 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE M/S.IDEAL ENGINEERING WRIGHTS Versus UNION OF INDIA BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE Date :

4. h January, 2012.

MR.AYAN BANERJEE,ADVOCATE FOR PETITIONER MRS.RANJANA GUHO, ADVOCATE FOR RESPONDENT The Court : Though the petitioner had submitted that the petitioner would accept the appointment of an arbitrator by the relevant appointing authority and the same was recorded in the order dated August 11, 2011, the petitioner approached the court on the next available working day and retracted from such position.

However, since this matter was pending for a decision on a legal issue with two other matteRs.the petitioners retraction was not immediately recorded.

In this request under section 11 of the Arbitration and Conciliation Act, 1996, the respondent has taken two objections.

The respondent says that the petitioner should have explored the possibility of a reconciliation between the parties before making a request for an arbitral reference.

The respondent also says that the petitioner should have sought the constitution of the arbitral tribunal under a particular proforma that was applicable.

The arbitration agreement is contained in Clause 25 of the general conditions governing Central Public Works Department contracts.

The relevant clause does not require any attempt at reconciliation nor is the invocation of the arbitration agreement subject to any attempt at reconciliation.

The clause does not specify that the request for constitution of an arbitral tribunal would be in a particular format.

The respondent has not been able to demonstrate that either the general conditions governing the contract or the specific contract between the parties contained any particular format under which the petitioner was required to apply to the appointing authority for constituting an arbitral tribunal.

Neither ground urged on behalf of the respondent appeals.

No other objection has been raised either in the affidavit or in couRs.of the hearing.

The petitioner made a request for the appointment of an arbitrator by a letter dated September 14, 2010.

The present request under section 11 of the 1996 Act was filed on November 9, 2010.

In such view of the matter, and since a period of more than thirty days which has not come to be accepted as the reasonable time had elapsed from the date of the request being made to the appointing authority and the present request being carried to the Chief Justice of this Court or his designate, the appointing authority cannot be permitted to appoint an Arbitrator.

Accordingly, A.P.No.628 of 2010 is directed to be placed before the Honble the Chief Justice for constituting an arbitral tribunal in accordance with the arbitration agreement between the parties to adjudicate upon the disputes covered thereby.

There will be no order as to costs.

Urgent certified photocopies of this order, if applied for, be given to the parties subject to compliance with all requisite formalities.

(SANJIB BANERJEE, J.) sb.A.R(C.R.)

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