

Sharma and Sons Vs. Engineer-in-chief, Army Headquarters and ors.

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Court : Andhra Pradesh

Decided On : Nov-17-1999

Reported in : 2000(2)ALT587

Judge : A. Gopal Reddy, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 11(6) and 16

Appeal No. : Arbitration Application No. 23 of 1999

Appellant : Sharma and Sons

Respondent : Engineer-in-chief, Army Headquarters and ors.

Advocate for Def. : R.S. Murthy, Adv.

Advocate for Pet/Ap. : K. Venkatesh Gupta, Adv.

Judgement :

ORDER

A. Gopal Reddy, J.

1. This is an application for appointment of an independent arbitrator Under Section 11(6) of the [Arbitration and Conciliation Act, 1996](#) (Act 12 of 1996) (for short 'the Act') for deciding the disputes that have arisen between the petitioner and the respondents relating to the execution of contract entered into by them vide

agreement bearing No. C.A. No. CEHZ/ SEC/07 of 92-93 dated 13-10-1992. The claim in respect of which arbitration is sought is of the value of approximately Rs. 27,40,000-00.

2. In answer to the notice, counter-affidavit is filed by the respondents. It is alleged in the counter that without prejudice to the rights of the respondents, since an arbitrator is appointed on 13-5-1999 vide letter No. 13600/SC/596/E8 by the appointing authority the present application becomes infructuous and may be dismissed by this Court.

3. Without going into the merits of the controversy raised in the application and as the respondents agreed to appoint an arbitrator and in fact the respondents have appointed an arbitrator vide proceedings dated 13-05-1999 by name Mr. M.K. Chitkara, CE. Panel of Arbitrators (Pune) c/o CWE Kirkee Range Hills Road, PO Kirkee, Pune-411 003 as sole arbitrator. By issuing the Letter of Appointment dated 13-05-1999 the respondents referred the disputes as listed at Appendix 'A' to the arbitrator and the claims listed at Appendix 'B' are outside the ambit of arbitration clause and hence they are not referred for arbitration.

4. Learned Counsel for the petitioner argued that whether the claims made by the petitioner can be referable to the arbitration is a matter which has to be decided by the arbitrator and the respondents cannot refuse to refer the said claims made by the petitioner. Apart from the same, the petitioner sought appointment, of an arbitrator by letter dated 26-06-1995 and also reminder was sent on 06-08-1995, 20-01-1997 and 18-10-1997. As the respondents failed to appoint the arbitrator, petitioner filed the present application on 21-04-1999 for appointment of an arbitrator Under Section 11(6) of the Act. Once the petitioner invoked the jurisdiction of this Court, the appointment of arbitrator by the respondents is a nullity and the respondents forfeited their right to appoint an arbitrator. Therefore, the arbitrator cannot be proceeded with the matter and it is only this Court, which can appoint an arbitrator. In support of his contention learned Counsel for the petitioner relied upon the judgment of a learned single Judge of the Bombay High Court in *Naginbhai. C. Patel v. Union of India*, 1999 (2) Arb.L.R. 343 (Bombay).

5. Learned Counsel for the respondents on the other hand contended that once the claims, which are outside the purview of the arbitration the respondents have rightly refused to refer the claims listed at Appendix 'B' to the arbitration and once arbitrator is appointed the petition becomes infructuous.

6. In the case referred above, the Bombay High Court held that thirty days should be reasonable time for appointment of an arbitrator when demand is made for appointment of an arbitrator. That being so no objection can be taken for filing the application Under Section 11(6) of the Act. The purported appointment made by the appointing authority during the pendency of the application is no appointment in the eye of law and it is non-est. A learned single Judge of this Court also in A.A. No. 22 of 1998 dated 27-07-1998 (Ciscons v. Rastriya Pariyojana Nirman Nigam Ltd.,) held that the respondent failed to act as required under the contract to nominate the arbitrator within the specified time and by reason of the specific provisions as laid down in Section 11(6) of the Act read with Sub-section (8) of Section 11 of the Act, that the respondent has forfeited the right to appoint an arbitrator and this Court accordingly appointed a sole arbitrator to adjudicate the matter.

7. In view of the above the appointment of Mr. M.K. Chitkara, C.E. Panel of Arbitrators (Pune), c/o CWE Kirkee, Range Hills Road, PO Kirkee, Pune is hereby declared as non-est in the eye of law and hence he cannot be proceeded with the arbitration proceedings.

8. With regard to the other submissions of the learned Counsel for the respondents that the claims which cannot be referred to the arbitration as they are outside the purview of arbitration is concerned the same has to be decided by the arbitrator, including the jurisdiction to decide the said claims whether they are arbitrable or not as per Section 16 of the Act. In view of the same, the contention of the learned Counsel for the respondents that the claims made in Annexure-B are outside the ambit of arbitration clause is devoid of merits and the contention of the learned Counsel for the respondents is rejected. In view of my conclusion this Court is having ample power to appoint the arbitrator. Accordingly Sri Justice R. Bayapu Reddy is appointed as sole arbitrator to adjudicate the disputes between

the parties to the contract in question. The remuneration is tentatively fixed at Rs. 25.000-00 (Rupees twenty-five thousand only) initially to be paid by the petitioner. There will be no order as to costs.

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