

Arm Construction Co. Vs. Union of India

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Court : Delhi

Decided On : Apr-09-1979

Reported in : 1980RLR307

Judge : Sultan Singh, J.

Acts : [Arbitration Act, 1940](#) - Sections 20

Appeal No. : Suit Appeal No. 1084A of 1977

Appellant : Arm Construction Co.

Respondent : Union of India

Advocate for Pet/Ap. : P.N. Kumar,; S.R. Yadav,; Kadambani and;

Judgement :

Sultan Singh, J.

(1) [PETITIONER contracted with Railway for constructing a certain building. Work was completed on 20.9.76. Petitioner was allowed payment of final bill only after he had given 'No claim Certificate' under clause 43 (2) of General Condition of Contract. Petitioner then by letter dt. 31.8.77 asked respondent to appoint an arbitrator and refer to him, his 19 claims. Respondent refused to do this on the plea that petitioner had given 'No claim Certificate' Along with final bill. Petitioner applied to Court u/s 20 of Arbitration Act. Respondent took the same plea, to

which petitioner replied that the certificate was obtained under pressure and that the respondent after the final bill had made certain unjustified deduction.] After above details. Judgment para 3 onwards is:

(2) Under clause 64 of the General Conditions of contract in the event of any dispute or difference arising between the parties as to the construction or operation of the contract or the respective rights and liabilities of the parties or any matter or any account, the contractor may demand in writing that dispute or difference be referred to arbitration is to specify the matters in question, dispute or difference and only such dispute or difference of which the demand has been made is referred to arbitration. Admittedly on 31st August, 1977 the petitioner required the General Manager, Northern Railway, New Delhi to act as arbitrator or, appoint another person to act as such for adjudication of the 19 disputes mentioned therein which are covered by the arbitration clause.

(3) The main defense of the respondent is that the petitioner has given a 'No claim certificate' and therefore the petitioner is not entitled to invoke the arbitration clause. It appears that the petitioner signed the printed form of 'No claim certificate' on the final bill pertaining to the contract. The respondent in its reply did not refer to the various claims stated by the petitioner in his said letter dated 31st August, 1977 but on the contrary relied only upon the 'No claim certificate' given on the final bill. There is no plea in the written statement that the payment of this bill has been made. On the contrary the general plea is that no amount is due to the contractor and the entire amount has been paid to the contractor-petitioner. The entire claim of the petitioner amounts to Rs. 1,92,000.00. During arguments a question was put to the counsel for the respondent whether the plea regarding entire payment means that a sum of Rs. 1,92,000.00 as claimed by petitioner-contractor has been paid to him. There was no answer to it and the only answer was that the entire payment had been made. In paragraph 4 of the petition the petitioner has stated that security deposit has not been paid back to him. In the reply there is no plea that the security deposit has been refunded to the petitioner. From the pleadings it appears that there are disputes which require adjudication by the arbitrator. When the petitioner-contractor raised 19 claims against the railways no reply was given to him whether those claims are tenable or not or

whether any payment with respect to any claim has been made or when the petitioner filed the present petition u/s 20 of the Arbitration Act and referred all the claims in the letter dated 31st August, 1977 attached to the petition the respondent did not specifically deny that these claims were either satisfied or that the petitioner was not entitled to raise such claims. From the pleadings of the parties it is also clear that 'No claim certificate' was not issued by the petitioner after receipt of payments from which unjustified deductions were made. Under the circumstances 'No claim certificate' as given on the final bill and referred to by the respondent in its reply dated 3rd October, 1977 is of no use and the present petition u/s 20 of the Arbitration Act is not barred within the meaning of clause 43 (2) of the General Conditions of Contract. This clause is as under :

'43.2 Signing of 'No claim' certificate- The Contractor shall not be entitled to make any claim whatsoever against the Railway under or by virtue of or arising out of this contract, nor shall the Railway entertain or consider any such claim, if made by the Contractor, after he shall have signed a 'No claim' certificate in favor of the Railway in such form as shall be required by the Railway, after the works are finally measured up'.

(4) The petitioner in his replication has stated that the question whether the said 'No claim certificate' on the final bill was given under pressure became a matter of dispute which is to be decided by the arbitrator and not by the court. I, therefore, hold that 19 disputes detailed in petitioner's letter dated 31st August, 1977 (Annexure AA) and the question whether 'No claim certificate' was obtained by the respondents under pressure, would be the disputes, for adjudication by the arbitrator.