

interstate Constructions Vs. Npcc Limited

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Court : Delhi

Decided On : Oct-11-2004

Reported in : 2004(3)ARBLR421(Delhi); 114(2004)DLT746

Judge : Vikramajit Sen, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 42

Appeal No. : OMP No. 214/2002

Appellant : interstate Constructions

Respondent : Npcc Limited

Advocate for Def. : Santosh Kumar, Adv.

Advocate for Pet/Ap. : S.K. Puri, Sr. Adv.,; Ravi Srivastava and; Neeraj Yadav

Disposition : Petition allowed

Judgement :

Vikramajit Sen, J.

1. The grievance of the Petitioner is that due to the obdurate approach of the Chairman-cum-Managing Director of the Respondent and the Arbitrator appointed by him, who is also an employee of the respondent its claim in arbitration has been thwarted for several years. It is in these circumstances that the present Petition

has been filed with the prayer for terminating the mandate of the Arbitrator and for the appointment of a fresh Arbitrator.

2. At the threshold learned counsel for the Respondent has taken an objection that this Court does not possess territorial jurisdiction to entertain this Petition. Reliance has been placed by learned counsel for the Respondent on Patel Roadways Ltd. vs . Prasad Trading Company, : [1991]3SCR391 , and the decision of the Hon'ble Division Bench in B.B. Verma vs . NPCC Ltd., : 80(1999)DLT498 and two decisions delivered by me in Famous Construction vs. NPCC Ltd. in Suit No.615 of 1996 and Nellicka Cane Corporation vs . State Trading Corporation of India and Anr., : 82(1999)DLT396 . Very recently I had occasion to consider this very question in Cement Corporation of India versus S.Sultan & Another in Suit No.2357-A/1997. After a detailed study of the decision of the Hon'ble Supreme Court in Hakam Singh vs . Gammon (India) Ltd., : [1971]3SCR314 , ABC Laminart vs A.P. Agencies, : [1989]2SCR1a , Patel Roadways (supra) and B.B. Verma (supra) I had, without adverting back to my judgments in M/s. Famous Construction (supra) and Nellicka Cane Corporation (supra) declined to exercise territorial jurisdiction in that case. In Cement Corporation of India (supra) I had found that no part of the cause of action had arisen in New Delhi and therefore there was no justification for the invocation of the jurisdiction of this Court. The factual matrix, however, is totally different in the present case and is compounded by the attitude of the Chairman-cum-Managing Director of a Public Sector Undertaking, which, as I see it, is totally against the tenets of justice.

3. Learned counsel for the Respondent relies on Special Conditions of Work Order, Clause 9.06 of which reads thus:

9.06 The tender shall be submitted to the Corporation in double sealed covers super scribing 'Tender for foundations for Main Plant Building Turbo Generator, Foundation, Boiler & ESP Area. Foundations, Trenches, Tunnels etc. for Stage-II of Ramagundam Super Thermal Power Project. The full name, postal address and telegraphic address of the tenderer shall be written on the bottom left hand corner of the sealed cover the tender envelope shall be addressed to:

'The Unit Officer

N.P.C.C. Limited

Ramagundam Unit

in agar Post

in agar Dist.

Pin: 505 215 AP

Forwarding letter to the tender with its enclosures if any shall also be enclosed in the envelope containing the tender documents. All future correspondence shall be made on the above address only.

4. In response thereto it is submitted by learned counsel for the Petitioner that the final decision in respect of this Works Order was to be taken at New Delhi by the Senior Engineer (CS) Contract Services, RTF, NTPC Ltd., 4th Floor, Hemkunt Tower, New Delhi. The Tenders received in Andhra Pradesh as per the internal arrangement between the NTPC and NPCC (Respondent herein) were to be forwarded to New Delhi. Viewed from any perspective the Respondent would not be in a position of disadvantage if Courts in New Delhi exercise jurisdiction.

5. By letter dated 27.2.1996 the Petitioner had requested the Chairman-cum-Managing Director, NPCC, Nehru Place, New Delhi to appoint an arbitrator. By his Officer Order dated 7.10.1997, issued from New Delhi, the said functionary had appointed Respondent No.2, Additional General Manager, NPCC Limited, Chennai Sector to act as the Sole Arbitrator. The arbitration proceedings were scheduled to be held, not in Faridabad, not even in New Delhi, and not even in Andhra Pradesh but inexplicably at Chennai. It may be contended that the intention in making this appointment was not to cause harassment and inordinate expense to the Petitioner/Claimant, but I am not convinced if this is why it happened. The reason was to put the Claimant to maximum disadvantage. I may also refer to Section 42 of the [Arbitration and Conciliation Act, 1996](#) which stipulates that the first Court which has been approached in relation to the arbitration dispute that Court and no other Court shall exercise jurisdiction. This is obviously to restrict all disputes to one Court alone. Extrapolating these statutory

provisions to the case in hand since the Chairman-cum-Managing Director has appointed the Arbitrator at New Delhi in terms of his letter dated 7.10.1997, the objection as to the territorial jurisdiction of this Court is facile and mala fide. Every Court in India is expected to apply the law to the facts which are presented before it. It cannot be expected that Courts in Delhi would be favorable towards one particular party and Courts in Andhra Pradesh would be inimical towards the same party.

Wherever objections pertaining to territorial jurisdiction are to be dealt with therefore, it is with the objective that one party should not steal a march over the other by invoking the jurisdiction of that Court and that the adversary should not be put in a detrimental state either monetarily or administratively. When these factors are kept in mind it is clear to me that the attitude of the Chairman-cum-Managing Director in appointing Respondent No.2, who was posted at Chennai, was largely if not entirely to harass the Petitioner. The appointing authority should be always mindful that he discharges a fiduciary duty towards the adversaries, and while nominating an Arbitrator the effort should be to facilitate and not frustrate the adjudication. My attention has also been drawn to a request made by the Claimant/Petitioner for the production of certain documents which were admittedly in the possession of the NPCC. Instead of passing a simple direction/order requiring the NPCC to produce those documents or copies thereof the Sole Arbitrator has required the Claimant to travel from New Delhi to Andhra Pradesh solely to carry out an inspection of the documents. The Arbitrator has totally unjustifiably labelled these Bills as confidential. Neither the Chairman nor the Arbitrator has been able to rise above the interests of their employer. It is this type of conduct and dealing which sometimes compels a Court to override clauses in an agreement which waive objections as to impartiality of the Arbitration on the grounds that he is an officer of one of the parties to the dispute. If they cannot act impartially they should recuse themselves and not violate the solemn trust reposed in them. Although this point has been raised by the Claimant in his letter dated 14.11.1997 it has not been canvassed before me.

6. In view of the fact that the final decision had to be taken by the Chairman-cum-Managing Director at New Delhi, and since the appointment of the Arbitrator was

made from New Delhi it cannot be predicated that no part of the cause of action has arisen in New Delhi. The cases mentioned above are, therefore, clearly distinguishable. Furthermore, the attitude that has been exhibited by the Chairman-cum-Managing Director as well as a high functionary of the NPCC, that is, Respondent No.2 would compel me to overlook strictly procedural objections which are calculated to defeat the ends of justice.

7. In these circumstances the Petition is allowed. The Authority of Respondent No.2 as the Arbitrator is set aside. It has been mentioned by learned counsel for the Respondents that Respondent No.2 is now posted to Gauwahati and that a fresh appointment may have to be made by the Chairman-cum-Managing Director. As stated at the commencement, the Claims of the Petitioner have been thwarted and held at bay for these several years. I find no reason or justification to permit any further delay. Keeping the biased and partial attitude of the Chairman-cum-Managing Director in perspective I appoint Shri A.S. Chandhiok, the President of the High Court Bar Association as the Arbitrator and fix his Fees at the nominal sum of Rs.20,000/- to be borne equally by the parties. The Arbitrator appointed by me shall, I am certain, discharge this onerous duty cast on him to the best of his ability. The arbitral proceedings shall be held at New Delhi at the convenience of the Arbitrator. This Petition is allowed with exemplary costs of Rs.20,000/- to be paid by the Respondent to the Prime Ministers' Relief Fund.

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