

Ram Kumar Contractor Vs. Ntpc Ltd. and ors.

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SooperKanoon Citation : sooperkanoon.com/705590

Court : Delhi

Decided On : Dec-19-2003

Reported in : 2004(109)AWC934; 109(2004)DLT478; 2004(75)DRJ369

Judge : H.R. Malhotra, J.

Acts : [Arbitration Act, 1940](#) - Sections 5, 11 and 12

Appeal No. : OMP 26 of 2001

Appellant : Ram Kumar Contractor

Respondent : Ntpc Ltd. and ors.

Advocate for Def. : S.K. Taneja, Sr. Adv. and ; Rajesh Gupta, Adv.

Advocate for Pet/Ap. : K.K. Jagia and; Jasbir S. Malik, Advs

Disposition : Petition dismissed

Judgement :

H.R. Malhotra, J.

1. This is a petition made under the Provisions of Sections 5, 11 and 12 of the [Arbitration Act, 1940](#) seeking revocation of the authority of respondent No. 4 as the sole Arbitrator and for the appointment of an independent and impartial Arbitrator to act as sole Arbitrator between the parties.

2. The facts as taken out from the petition are as under:

3. The petitioner and respondent No. 1 entered into an agreement for running a canteen within the premises of respondent No. 1 for a period of three years. The license deed executed between the parties contained various terms and conditions on the basis of which the said canteen was to be operated. This license deed also contained an arbitration Clause No. 44 which reads as under:

'That in the case of dispute between the parties arising out of or in connection with meaning or operation of license the same shall be decided by a sole Arbitrator to be appointed by the General Manager, BTPS and there shall be no objection that Arbitrator to be appointed by the General Manager, BTPS and there shall be no objection that Arbitrator so appointed is an employee of NTPC and that he has to deal with the matter to which the license relates and that in the course of his duties as such he has expressed views on all or any of the matters in dispute.'

4. Respondent No. 1 terminated the arrangement with the petitioner with effect from 7.6.1991. Since the petitioner termed such termination as illegal, therefore, the dispute arose between the petitioner resulting respondent No. 1 in appointing an Arbitrator who has been arrayed as respondent No. 3 in this petition. The sole Arbitrator namely Shri Ray was appointed on 25th May, 1993. The Arbitrator entered upon the reference but could not conclude the proceedings. This led the petitioner to file petition in the High Court under Sections 5, 11 and 12 of the [Arbitration Act, 1940](#) seeking revocation of the authority of respondent No. 3 and for the appointment of an independent and impartial Arbitrator in his place. However, during the pendency of the proceedings respondent No. 3 himself requested respondent No. 1 vide letter dated 17th January, 1997 to relieve him of the obligations to act as an Arbitrator. Respondent No. 1 while acting on the request of respondent No. 3, appointed respondent No. 4 as a substituted Arbitrator.

5. The petition which was already pending in the High Court was disposed of on 17th March, 1990 primarily on the ground that since during the pendency of the petition another Arbitrator was appointed and as such nothing survived in that petition and was accordingly disposed of.

6. The petitioner has again moved this Court by filing petition under Sections 5, 11 and 12 of the Arbitration Act.
7. The respondent has contested this petition by filing a reply thereto seeking dismissal of the petition on the ground inter alias that the Provisions of Sections 5, 11 and 12 are not applicable to the present case as the previous Arbitrator was not appointed by the order of the Court but in terms of the contract particularly Clause 44 of the license Deed.
8. It has been further stated in the reply that it is not that the earlier Arbitrator was removed because of misconduct on his part, but he himself had made request to respondent No. 2 which request was acceded to and in his place Mr. Dutta was appointed. The petitioner has filed rejoinder to the reply of the petitioner.
9. I have carefully gone through the pleadings and have also considered the authorities as mentioned by the petitioner in the petition itself. The short question which arises for consideration is whether respondent No. 1 can appoint another Arbitrator in place of one appointed earlier without the leave of the Court. Having heard the learned Counsels for both the parties and also after perusing the provision of Sections 5, 11 and 12 of the [Arbitration Act, 1940](#), I am of the view that this is not a case which would come within the ambit of Section 5 of the [Arbitration Act, 1940](#) nor it can be said that the Provisions of Sections 11 and 12 would be applicable to the case in hand. None else except the Arbitrator himself withdrew his nomination. Even otherwise reading of arbitration Clause 44 goes to show that discretion was left to respondent No. 1 to appoint sole Arbitrator and that the petitioner was to remain bound by such appointment. thereforee, it can be safely inferred from the reading of Clause 44 that no contrary intention was expressed in the arbitration agreement that respondent No. 1 would have to seek leave of the Court for making appointment of substituted Arbitrator. More so, it cannot be said that the authority of the Arbitrator was revoked by either of the parties. Instead it was a volition act of the Arbitrator by withdrawing of his own and not by way of revocation by any of the parties. thereforee, Section 5 can have no application to the instant case.

10. Similarly the provision of Sections 11 and 12 shall have no application to the case in hand as it was not a case where intervention of the Court for appointment of a substituted Arbitrator was essential.

11. The authorities cited by learned Counsel for the petitioner in the petition itself have no bearing on the instant case as the facts of the case before me are entirely different than the facts of the cases cited in the petition.

12. Consequently no fault can be attributed to the petitioner in appointing another Arbitrator particularly when earlier Arbitrator had himself expressed his inability to proceed with the arbitration. Even otherwise the petitioner had not assailed the appointment of a substituted Arbitrator and perhaps for that reasons his earlier petition which was akin to the present petition was dismissed with the observations that for the appointment of another Arbitrator nothing survives in that petition. The present petition must fail as well, it being devoid of any substance. Dismissed as such. No order as to costs.