

iqbal Construction Co. Vs. Gas Authority of India Limited

iqbal Construction Co. Vs. Gas Authority of India Limited

SooperKanoon Citation : sooperkanoon.com/705700

Court : Delhi

Decided On : Sep-20-2005

Reported in : 124(2005)DLT456

Judge : Anil Kumar, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 11 and 11(6); Indian Council Arbitration Rules

Appeal No. : Arbitration Petition No. 120/2005

Appellant : iqbal Construction Co.

Respondent : Gas Authority of India Limited

Advocate for Def. : Atul Sharma, Adv.

Advocate for Pet/Ap. : B.K. Dewan, Adv

Judgement :

Anil Kumar, J.

1. The petitioner has filed this petition under Section 11(6) of the [Arbitration and Conciliation Act, 1996](#) for appointment of an arbitrator. The petitioner has pleaded that in response to a notice inviting tender on behalf of respondent to execute the work for construction of township of LPG pipelines from Jam Nagar to Loni via

Delhi and for construction of 34 numbers of residential houses and guest houses-cum-community centre at Ajmer, the petitioner filed a tender which was accepted and the petitioner was awarded the work. The work was to be concluded in 12 months and the date of commencement was 21st December, 2000 and the value of the contract was Rs. 3,45,01,000/-.

2. The petitioner contended that he concluded the work within the stipulated time and the respondent was obligated to make the payment, however, respondent lastly paid an amount of Rs. 1,72,050/- on 26th December, 2003 and thereafter did not make payment of balance sum of Rs. 15,12,055/-. The petitioner also gave the details of other amounts which became due from the respondent and thus claimed Rs. 20,76,920.15 and interest at 18% per annum.

3. Since there was an arbitration agreement between the parties under which the appointing authority for the purpose of arbitration was the Chairman and Managing Director or any other person designated by Gas Authority of India Limited and the Arbitrator had to follow the rules of arbitration of Indian Council of Arbitration, therefore, invoked the arbitration agreement for appointment of an arbitrator vide communication dated 1st March, 2005 to the respondent. The case of the petitioner is that despite invoking the arbitration agreement and claiming for appointment of arbitrator, the respondent have not appointed any arbitrator even after expiry of 30 days and, consequently, the respondent has forfeited its right to appoint the arbitrator and thus the Court should appoint an arbitrator to adjudicate the disputes.

4. The petition is opposed by the respondent contending that the letter dated 1st March, 2005 was replied by the respondent by letter dated 5/6th May, 2005 contending that as per the arbitration clause the disputes or differences arising between the parties out of or relating to the contract or the breach thereof were to be settled in accordance with rules of Indian Council of Arbitration and the petitioner ought to have approached the Council.

5. I have heard the learned counsel for the parties and perused the record.

6. Though the learned counsel for the respondent contended that the disputes and differences had to be settled in accordance with the rules of Indian Council of Arbitration but he was unable to point out as to how the arbitrator was to be appointed by Indian Council of Arbitration in view of the specific stipulation in the agreement that the appointing authority for the purpose of arbitration shall be the Chairman and Managing Director. The relevant clause of agreement is extracted as under for reference:-

'18. 'APPOINTING AUTHORITY' for the purpose of arbitration shall be the Chairman and Managing Director or any other persons so designated by the owner.'

7. It is no more in dispute that Section 11 of Arbitration and Conciliation Act, 1956 requires a party to request other party to appoint arbitrator within thirty days and after the expiry of period of 30 days, the other party loses his right to appoint the arbitrator. This court as a designate of the Chief Justice has only to see that a period of 30 days has expired and to fill the gap left by a party to the arbitration agreement, in not appointing the arbitrator. Reliance can be placed on (2002) 2 SC 388, Konkern Railway Protection Limited v. Rani Construction Pvt. Ltd. in this regard.

8. Consequently on failure of respondent to appoint an arbitrator by the appointing authority in terms of clause 18 of the agreement after 30 days of notice dated 1st March, 2005, the respondent has forfeited the right to appoint the arbitrator. Consequent thereto, this Court as a designate of The Chief Justice, appoint Shri Prem Kumar, Retired Additional District Judge, C-12, Chiragh Enclave, New Delhi-110048, (Phone No. 9313783914 9313783914) as an arbitrator for adjudication of disputes between the petitioner and the respondent. The fee of the Arbitrator shall be Rs. 5,000/- per hearing subject to a maximum fee of Rs. 1,00,000/-.

9. The parties are directed to appear before the learned Arbitrator on 27th September, 2005 at 4.30 pm. A copy of this order be communicated to the Arbitrator. Parties shall also communicate the order to the Arbitrator.

Petition is disposed of.

dusty.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com