

Chetan Construction Co. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jan-15-2004

Reported in : 2005(1)ARBLR386(Raj); RLW2005(1)Raj103; 2004(4)WLC250

Judge : Gyan Sudha Misra, J.

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

Appeal No. : S.B. Arbitration Application No. 79 of 2002

Appellant : Chetan Construction Co.

Respondent : State of Rajasthan and ors.

Advocate for Def. : Sumitra Goyal, GA

Advocate for Pet/Ap. : Namita Parihar, Adv.

Disposition : Application dismissed

Judgement :

Gyan Sudha Misra, J.

1. This is an application for appointment of an arbitrator in terms of Clause 23 of the Agreement which was executed between the applicant-Construction Company and respondent No. 2-the Additional Chief Engineer, Public Works Department of the Government of Rajasthan while awarding the contract to the applicant.

2. It is an admitted fact that a dispute is existing between the petitioner and the respondent in regard to the determination of the amount which is payable by the respondent to the petitioner for the construction work which had been undertaken and executed by the applicant and hence it is inessential to enter into its intricate details. Suffice it to say, that as per Clause 23 of the Agreement signed by the contesting parties, an arbitrator has to be appointed in the event of existence of a dispute, but the Clause is a conditional one as it is incorporated therein that the dispute first of all has to be referred to the Settlement Committee of the Department which would be constituted consisting of the Administrative Secretary concerned, (ii) Finance Secretary or his nominee not below the rank of Deputy Secretary (iii) Law Secretary or his nominee not below the rank of Joint L.R. (iv) Chief Engineer cum Addl. Secretary of the concerned department. (v) Chief Engineer concerned. However, the procedure for referring the dispute to the Settlement Committee has also been laid down under Clause 23 which stipulates that the Engineer In-charge on receipt of an application from the contractor alongwith the prescribed fee which would be 2% of the amount in dispute not exceeding Rs. one lac shall refer the dispute to the Committee within a period of one month from the date of receipt of the application. For facility of reference, relevant part of the Clause-23 is quoted herein as follows:-

'The Engineer Incharge on receipt of application along prescribed fee (the fee would be two percent of the amount in dispute not exceeding Rs. one lakh) from the contractor shall refer the disputes to the committee within a period of one month from the date of receipt of application.'

3. The dispute which has been raised by the petitioner is based on the premise that although the applicant had submitted the application for referring the dispute to the Settlement Committee on 22.8.2002 and also accompanied the same alongwith a cheque of Rs. 41,634/-, the dispute was not referred to the Settlement Committee inspite of several reminders which were never responded. Hence, the applicant had to take steps for appointment of an arbitrator by filing this application for appointment of an arbitrator by the Court in terms of Section 11 of the Indian Arbitration and Conciliation Act 1996.

4. The applicant having made out a prima facie case in his favour for appointment of an arbitrator, a show cause notice was issued to the respondent in response to which Ms. Sumitra Goyal has submitted that the Settlement Committee constituted by the respondent is already seized of the matter but the applicant has not been cooperating as he has not been appearing before the Committee due to which the matter could not be finally decided. It was further stated that in terms of Clause 23, the dispute could be referred to the Settlement Committee within a period of thirty days from the date of receipt of the application alongwith the prescribed fee of two percent and this fee had to be deposited by the applicant contractor by submitting a cheque which was done only on 28th August 2002 and thereafter the matter was referred to the Committee on 27.9.2002 within a period of thirty days. By way of proof of this assertion the receipt issued by the Department regarding deposit of cheque has also been produced before this Court which has been perused by the counsel for the applicant Ms. Namita Parihar and alongwith it was asserted by her that the applicant had accompanied the application with the cheque, not a chit of paper has been produced before this Court in support of this assertion and thus there is no reason for me to disbelieve the acknowledgment issued by the Department indicating that the cheque towards prescribed fee of the Committee which was Rs. 41,634 in this matter was not received prior to 28.8.2002. It is thus obvious that the respondent while referring the dispute to the Settlement Committee in terms of Clause 23 of the Agreement, duly complied with the provision and this agreement having been duly signed by the applicant contractor, he is clearly bound by the terms and conditions and no case for appointment of an arbitrator by the Court is made out. In fact, it is further stated by the counsel for the respondent that the applicant himself prevented by instructing the Bank not to encash the cheque in favour of the respondent due to which the applicant himself is guilty of violating the terms and conditions of the agreement. Therefore, for this additional reason also his plea for appointment of an arbitrator should not be entertained and it is the committee alone which is entitled to adjudicate the dispute in pursuance of Clause 23 of the Agreement after encashing the cheque deposited towards the prescribed fee.

5. It is therefore, apparent that the controversy that needs to be addressed is whether in terms of the agreement, one month period for referring the dispute

should be counted from the date of the application or it should be counted from the date when the application is complete in all respects-the vital part of which requires the deposit of the prescribed fee of 2% by the contractor before the matter is referred to the Settlement Committee for arbitration. The answer obviously is not far to seek as the same is ingrained in the contractual agreement itself which envisages that the application seeking reference of dispute for arbitration by the Settlement Committee should be accompanied by the prescribed fee of 2% and then if the other contracting party fails to act upon the same and takes no action to refer the dispute to the Settlement Committee constituted by the Department, the Court would intervene and appoint an arbitrator in view of Section 11 of the Arbitration Act of 1996.

6. Having heard learned counsel for the parties and having examined the matter in the light of Clause 23 of the Agreement in its entirety, I find force in the submission of the respondent's counsel that the applicant himself had not complied with the requirement of Clause 23 before 28th August 2002 for although he might have submitted an application for referring the dispute on 22.8.2002, he had not accompanied this application with the cheque towards fee as the cheque was submitted only on 28.8.2002 for which also instruction was issued to the Bank not to encash it. Therefore if the Department took steps to refer the dispute within a period of thirty days calculating it from 28.8.2002 on which date only the entire procedure in terms of the agreement was complete, no fault can be found with the same and hence the plea for appointment of an arbitrator as per Section 11 of the Indian Arbitration & conciliation Act 1996 is not made out at all as it is clearly laid down therein that the Court can appoint an arbitrator only in the event of failing any agreement in this regard. Consequently this application stands rejected and the applicant is directed to instruct the Bank to encash the cheque of Rs. 41,634/- which had been deposited or issue a fresh cheque since the earlier cheque might have lapsed due to efflux of time so that the Settlement Committee can proceed with the matter and adjudicate upon the dispute finally.

7. This application stands dismissed under the aforesaid facts and circumstance.