

**Singhal Builders Vs. Executive Engineer**

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**Court :** Rajasthan

**Decided On :** Aug-18-2006

**Reported in :** RLW2007(1)Raj747

**Judge :** Shiv Kumar Sharma, J.

**Appellant :** Singhal Builders

**Respondent :** Executive Engineer

**Disposition :** Application allowed

**Judgement :**

**Shiv Kumar Sharma, J.**

1. Heard rival submissions.

2. In this application under Section 11 of Arbitration and Conciliation Act, 1996 the applicant seeks to appoint independent arbitral tribunal.

3. Clause 23 provides as under:

If any question, difference or objection whatsoever shall, arise in any way in connection with or arising out this instrument or the meaning of operation of any part thereof or the rights, duties or liabilities of either party, then save in so far as the decision of any such matter as herein before provided for and been so

decided, every such matter consisting a total claim of Rs. 50,000/- or above, whether its decision has been otherwise provided for and whether it has been finally decided accordingly, or whether the contract should be terminated or has been rightly terminated shall be referred for decision to the empowered standing committee which would consist of the following:

- (i) 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 (Member Secretary)

The Engineer in Charge on receipt of application along prescribed fee (for 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.

4. It is contended by the applicant that on August 31,2004 the applicant served a notice for demand of justice to the respondent to refer for decision to the Standing Committee in terms of Clause 23 of the contract. He also deposited the requisite charge on September 10, 2004 by way of demand draft. Again on December 18, 2003 the applicant served a notice of the due amount of Rs. 3,42,435/- including the amount of Rs. 2,79,579/- which was not paid to applicant and on April 30, 2002 Rs. 45,121 from fourth running bill and Rs. 17,735 from fifth running bill was wrongly deducted. The respondent failed to refer the matter within thirty days to the Standing Committee. Again the notice was sent on March 10, 2005. In response to the notice dated March 10,2005 Executive Engineer informed the applicant's counsel that Standing Committee was constituted under Clause 23 and the meeting was held on March 10, 2005. The applicant contended that since the information about the constitution of the Committee was not communicated to him and matter was not referred to the Committee within thirty days, independent arbitrator is required to be appointed.

5. The respondent filed reply to the application. In reply to para 12 of the application it was averred as under:

That the contents of the para No. 12 of the Misc. Application (Arbitration) are denied. However it is submitted that the standing committee has been constituted and further the Addl. Chief Engineer, vide its letter dated March 7, 2005 has informed the all members of the standing committee including

(1) Director Marketing.

(2) Chief Account Officer, Board.

(3) Superintending Engineer, Board, Div. Jaipur.

(4) HLA Rajasthan State Agriculture Marketing Board.

Informing that in the case of M/s. Singhal Builders, Bharatpur for the disposal of his grievances, the Standing Committee (consisting of above) will hear the case in the meeting hall of dated 10.3.2005 at 4.30 PM. Hence it was requested to be present on dated 10.3.2005. Thus much above goes to reveal that the allegation of the petitioner is unfounded and baseless. Therefore the petitioner cannot be granted incentive for his non corporation & default on his part.

6. It is canvassed by learned Counsel for respondent that after the matter was referred to committee this Court should not interfere in the matter. Reliance is placed on SBP and Co. v. Patel Engineering Ltd. 2006 (1) WLC (SC) Civil, 1 wherein their Lordships of the Supreme Court summing up their conclusion in para 46 indicated thus:

(vi) Once the matter reaches the arbitral tribunal or the sole arbitrator the High Court would not interfere with orders passed by the arbitrator or the arbitral tribunal during the course of the arbitration proceedings and the parties could approach the court only in terms of Section 37 of the Act or in terms of Section 34 of the Act.

7. Reliance is also placed on Rite Approach Group Ltd. v. Ropsoboron Export 2006 (1) WLC (SC) Civil 175, wherein their Lordships of Supreme Court indicated

that Whenever there is a specific clause conferring jurisdiction on particular court to decide the matter then it automatically oust the jurisdiction of other court.

8. Having scanned the material on record I notice that information about constitution of Standing Committee pursuant to Clause 23 was never communicated to the applicant. Even according to averments of para 12 of the reply it appears that the applicant was not amongst those persons who were informed about the meeting of March 10, 2005.

9. In *R.S. Avtar Singh and Co. v. India Tourism Development Corporation Ltd.* (2003) 2 Arbitration Law Reporter 503 (Delhi), it was indicated that the order of appointment of the Arbitrator would be taken to have been made when communicated and received by the Arbitrator and the concerned party.

10. Since in the instant matter appointment of standing committee was not, communicated to the applicant, it cannot be held that Clause 23 was complied with by the respondent. The ratio indicated in *SBP & Co. v. Patel Engineering Ltd.* (supra) and *Rite Approach Group Ltd. v. Rosoboron Export* (supra) is not applicable to the facts of the instant case. The proceedings drawn by the Committee, not validly constituted, were against the principles of natural justice and do not come in the way of appointment of independent arbitrator.

11. For these reasons, I allow the application and appoint Hon'ble Justice S.C. Mittal (retired) as sole Arbitrator. The Arbitrator shall fix his fee and the terms for disposal of the dispute in the circumstances so warranted.

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