
Sanjeev Prashar - Petitioner @HASH Executive Engineer and another

Arbitration Case No. 92 of 2015.

Court: High Court of Himachal Pradesh

Date of Decision: June 24, 2016

Acts Referred:

Arbitration and Conciliation Act, 1996 - Section 11

Citation: (2016) ILRHP 2194

Hon'ble Judges: Dharam Chand Chaudhary, J.

Bench: Single Bench

Advocate: Mr. Vivek Singh Thakur, Advocate, for the Petitioner; Mr. Shrawan Dogra, Advocate General with Mr. Virender Verma, Additional Advocate General, for the Respondents

Final Decision: Dismissed

Judgement

Mr. Dharam Chand Chaudhary, J.(Oral) - In this petition, a prayer has been made for appointment of Arbitrator.

2. The petitioner is a Government contractor. He was awarded the work namely, (C/o SNP (SH):- RCC Trough on ground & on pedestal for

distribution system of distributor D-2 from RD 5210/0 to 2140 Mtr. i/c road crossing at RD, 500, 1300 and 1800 of LBC (CZ). He entered into

an agreement after negotiation conducted on 8th June, 2011. He failed to complete the work within the stipulated period, therefore, the

respondent-department has levied penalty upon the petitioner @ 10% of the contract amount vide Annexure Ab-10. He preferred an appeal and

the Superintending Engineer has reduced the amount of penalty from 10% to 5% and the petitioner was informed accordingly vide order Annexure

Ab-11 dated 24.01.2013. It is thereafter final settlement was made in the matter of payment of final bill to the petitioner on 27.07.2013.

3. It has now been claimed that no penalty could have been imposed upon the petitioner-contractor as the delay in execution of the work was not

attributed to him but to the respondent-department, as the site was not handed over to him well in time. The petitioner, therefore, has disputed the

levy of penalty upon him to the tune of Rs. 6,19,862/- and 1% of the cost of awarded work i.e. Rs. 1,23,972/-. The respondent-department has

deducted the amount of penalty so levied and made the final payment.

4. The grouse of the petitioner is that this amount should have not been deducted from his bill. He has, therefore, approached this Court for

appointment of Arbitrator under Section 25 of the contract agreement Annexure Ab-1 to resolve the dispute between the parties, he raised in this

petition and also the legal notice Annexure Ab-15.

5. In reply, the stand of the respondent-department is that the payment of final bill was made to the petitioner on 27.07.2013 and now after the

expiry of 90 days of the settlement of final bill, he is not entitled to invoke the provisions contained in Clause 25 of the contract agreement.

6. The petitioner in rejoinder has further come forward with the version that since the time was extended by the respondent-department on

27.03.2014 vide Annexure Ab-14, therefore, he has served the respondent with legal notice well before the expiry of the period of 90 days.

7. On hearing Mr. Vivek Singh Thakur, learned counsel for the petitioner and Mr. Virender Verma, learned Additional Advocate General on

behalf of the respondent-State as well as going through the record of the case, it would not be improper to conclude that the prayer for

appointment of Arbitrator has been made by the petitioner beyond the period of 90 days. In terms of Clause 25 of the agreement in case the

Contractor fails to demand the appointment of Arbitrator in respect of any claims in writing within 90 days of receiving the information from the

Government that the bill is ready for payment, his claim for appointment of Arbitrator will be deemed to have been waived and absolutely barred.

Admittedly, the petitioner-Contractor has received the payment of final bill on 27.07.2013. The explanation as set forth, no doubt, is that he was in

need of money as he has to make the payment of wages to labour, however, the same is hardly of any help to him because the payment of final bill

has been received by him without any protest. Much has been said qua the extension granted vide letter Annexure Ab-14. The perusal of this

document reveals that, no doubt, the extension of time was granted in his favour, however, for the past period i.e. w.e.f 4.1.2012 to 25.7.2013

viz., the period before the payment of final bill was made to him. Merely that such sanction has been granted ex-post facto and conveyed to him

after the payment of final bill cannot be taken to arrive at a conclusion that he has approached for appointment of Arbitrator within the period of

limitation. No doubt, the amount of penalty imposed upon him has been adjusted by the respondent-department while sanctioning the final bill and

making the payment to him, however, such dispute cannot be raised beyond the period of 90 days from the date of receipt of final payment.

Therefore, there is no merit in the present petition and the same is accordingly dismissed of course with liberty reserved to the petitioner to resort

to any other and further remedy, if available to him in accordance with law.