Shakti Constructions Vs Greater Noida Industrial Development Authority and Others

None

Court: Allahabad High Court

Date of Decision: Nov. 26, 2009

Acts Referred:
Arbitration and Conciliation Act, 1996 â€" Section 11(6)

Citation: (2010) 1 AWC 602

Hon'ble Judges: Bharati Sapru, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Bharati Sapru, J.
This is an application u/s 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) by the

applicant M/s. Shakti Constructions having its office at C-13, Sector Gamma-1, Greater Noida, district Gautam Budh Nagar for the appointment

of an arbitrator in respect of a contract made by the applicant on 14.8.2007 awarded by the Greater Noida Industrial Development Authority (for

short respondent authority) for the construction of roads. The agreement dated 14.8.2007 contains an arbitration clause, i.e., Clauses 32 and 33 of

the said agreement. The applicant has raised a claim of approximately Rs. 96 lakhs.

2. Pleadings have been exchanged in this application. The respondent authority has raised objections in its counter-affidavit saying that they have

made full and final payment of the amount to the applicant under a ""farkati"", i.e., receipts for full and final payment and have also taken objections

with regard to the breach of contract made by the applicant and have also made references to the sewerlines that were not properly laid across

patch of the land.

3. The respondent authority has also raised a plea with regard to the limitation saying that no dispute has been raised by the parties within 30 days

of the full and final payments and the claim is barred by limitation.

From the pleadings which have been exchanged, one thing which is abundantly clear that the disputes have arisen between the parties with regard

to the breach of contract and also with regard to the laying of the sewerlines and it is also clear that there was a delay in the completion of the

project.

4. The applicant attributes the delay to the respondent authority because the authority did not make available necessary length of the pipelines to

the applicant for carrying out work and also in between it has been alleged that the work was stopped on orders being made by the respondent

authority. For all these reasons, the applicant states that he has suffered losses and now he raised a claim of Rs. 96 lakhs approximately.

5. As stated earlier that the respondent authority states that the contractor did not complete the work on time and on its part, the respondent

authority has made full and final payments in one farkati, i.e., receipt sent by the applicant.

6. Therefore, one thing is clear that there is a live dispute. Second thing which is also clear that an application has been filed by the applicant within

three years and therefore the plea of limitation raised by the respondent authority holds no water and the claim has been raised within three years

as stipulated under the provisions of the Act.

7. In so far as the question of the arbitrator under the agreement is concerned, the Clauses 32 and 33 are very clear that the arbitrator was to be

appointed by the Chief Executive within a period of thirty days.

8. The applicant while raising its claim had also filed a writ petition before this Court and by an order passed by this Court on 18.5.2009, the

respondent authority had been asked to appoint an arbitrator for settlement of the claim. When the applicant made a request on 30.5.2009, no

response was made to this request. The request made on 30.5.2009 is on the record of this application as Annexure-6.

9. The applicant has made averments with regard to the making of his request in para 23 of the application but no clear reply has been made in

para 20 of the counter-affidavit.

10. Learned Counsel for the applicant therefore has argued that because the respondent authority has failed to appoint arbitrator within 30 days, it

forfeits its right to appoint arbitrator and now prays that this Court should appoint an arbitrator for the settlement of this dispute.

11. Learned Counsel for the applicant has relied on a decision of the Hon''ble Apex Court in the case of Bharat Sanchar Nigam Ltd. and Another

Vs. Motorola India Pvt. Ltd., for the proposition that if the respondent does not comply with the terms of the arbitration agreement for the

appointment of an arbitrator within the period stipulated under the agreement or before filing of the application u/s 11(6) of the Act, then it forfeits

its right to appoint an arbitrator and then it becomes open to a party to approach the Court for appointment of arbitrator under its jurisdiction u/s

11(6) of the Act.

12. Learned Counsel for the applicant has also relied on the decision of the Hon''ble Apex Court with this regard in the case of Punj Lloyd Ltd. v.

Petronet M.H.B. Ltd. (2006) 2 SCC 638 and also decision of Datar Switchgears Ltd. Vs. Tata Finance Ltd. and Another,

13. Further the learned Counsel for the applicant has also placed a reliance on the decision of the Hon''ble Apex Court in the case of National

Insurance Co. Ltd. Vs. Boghara Polyfab Pvt. Ltd., and has placed a special reliance on the contents of para 49 of the decision wherein the

Hon''ble Apex Court has deprecated the routine exercise made by Government departments and corporations by issuing undated receipts in

advance due to administrative exigencies and accounting necessities whereby the payments are made of even lesser amount than the actual final

amount and on a future date and thereafter these receipts in advance are used as full and final settlements. The Hon''ble Apex Court has held such

a practice is to be deprecated as being unfair, irregular and illegal.

14. Having heard learned Counsel for the. parties and having examined the pleadings in the matter at hand as well as the arguments as advanced by

both the counsel, I am of the opinion that the arguments as raised by the learned Counsel for the applicant has substance and are to be accepted

by this Court. There is a live dispute which is within time and as the respondent authority has failed to appoint an arbitrator before the filing of this

application u/s 11(6) of the Act.

15. I deem it appropriate to appoint Mr. Justice M.C. Jain (retired) Judge of this Court as the sole arbitrator in this matter. The arbitrator so

appointed shall assume charge upon being submitted a certified copy of this order before him. This Court fixes the remuneration of the arbitrator at

Rs. 25,000 per sitting as a bare minimum. The costs of the arbitrator will be borne equally by both the parties.

16. Before I part with this case, I would like to mention that Sri Rahul Agrawal has assisted the Court with his usual finesse and preparedness.

The application is allowed as above.