

(2011) 11 AHC CK 0329

Allahabad High Court

Case No: Arbitration Petition No. 55 of 2011

M/s. Sight Sound Electronics
(India) Pvt. Ltd. and Another

APPELLANT

Vs

General Manager, Central
Organisation Railway and Others

RESPONDENT

Date of Decision: Nov. 17, 2011

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 11, 11(16)

Citation: (2012) 1 ADJ 102

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Hon"ble Arun Tandon, J.

Heard Sri O.P. Lohia, learned counsel for the applicant and Sri Praveen Kumar Srivastava, learned counsel for respondents-Central Organization Railway Electrification Office.

2. This is an application u/s 11 of the Arbitration and Conciliation Act, 1956 (hereinafter referred to as the "Act, 1956" made by M/s Sight Sound Electronics (India) Pvt. Ltd. through its director for appointment of an arbitrator u/s 11 (6) of the Act, 1956. Notices were issued on the application. Counter-affidavit has been filed on behalf of respondents- Central Organization Railway Electrification (hereinafter referred to as the "CORE").

3. Learned counsel for the parties have admitted before this Court that there is a written contract between the parties. It contains an arbitration clause. Relevant clause of arbitration referred to by both the counsels is quoted herein below:

26. ARBITRATION:

1. (a) For domestic tenderers:

In the event of any question, disputes or difference arising under these conditions or any Special "Conditions of Contract. "Instructions to the Tenderers" or in connection with this contract (except as to any matters the decision of which is specifically provided by these conditions or "Instructions to the Tenderers" or the Special Conditions) the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the Arbitrator, by GM/CORE/Allahabad (INDIA). All proceedings of Arbitration shall be in accordance with the Indian Arbitration & Reconciliation Act, 1996 as amended from time to time. The Gazetted Railway Officer to be appointed as Arbitrator, however, will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servants had expressed views on all or any of the matters under dispute or difference. The award of the Arbitrator shall be final and binding on parties to this contract.

4. It is further not in dispute that under an order dated 21st July, 2011 in respect of the same contract, applicant has been called upon to make payment of a sum of Rs. 79,53,194.34p/-within 21 days of the receipt of the letter. The amount so calculated is with reference to the risk purchase made by the CORE is in respect of the goods, short supplied in terms of the conditions of the contract. Thus a dispute has arisen between the parties to the contract with reference to the contract in question. Such dispute is squarely covered by the arbitration clause quoted herein above.

5. However, learned counsel for the CORE points out that arbitration clause contains an exception clause, namely, "except as to any matter the decision of which is specifically provided by these conditions or Instructions to the Tenderers" or the Special Conditions.

6. On a pointed query being made by this Court, learned counsel for the applicant could not refer to any clause of the Special Condition of contract or conditions or instructions to the tenderers or special conditions, wherein it could be held that the dispute, as has arisen between the parties out of contract has specifically been provided to be decided under the instructions to the tenderer or special conditions.

7. In such circumstances, this Court has no hesitation to hold that the exception clause is not applicable and the dispute giving rise to the present application is not covered by the exception clause.

8. The CORE had failed to appoint an arbitrator despite service of notice dated 4th November, 2010. Hence the present application has been filed.

9. Consequently the applicant is entitled to the relief prayed for.

10. At this stage, learned counsel for the CORE refers to paragraph-2900 of the Special Conditions of Indian Railway Standard Conditions of Contract, which are admittedly binding between the parties, and which reads as follows:

2900. Arbitration

(a) In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters the decision of which is specially provided for by these of the special conditions) the same shall be referred to the sole arbitration of a Gazatted Railway Officer appointed to be the arbitrator, by the General Manager in the case of contracts entered into by the Zonal Railways and Production Units, by any Member of the Railway Board, in the case of contracts entered into by the Railway Board and by the Head of the Organization in respect of contracts entered into by the other Organizations under the Ministry of Railways. The Gazatted Railway Officer to be appointed as arbitrator however will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servant have expressed views on all or any of the matters under dispute or difference. The award of the arbitrator shall be final and binding on the parties to this contract.

(b) In the event of the arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the Court for any reason, it shall be lawful for the authority appointing the arbitrator to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

(c) It is further a term of this contract that no person other than the person appointed by the authority as aforesaid should act as arbitrator and that if for any reason that is not possible, the matter is not to be referred to arbitration at all.

11. With reference to the judgment of the Hon"ble Supreme Court in the case of Union of India and another v. M.P. Gupta, (2004) 10 SCC 504, he submits that only a Gazetted Railway Officer can be appointed by the head of the organization, namely, CORE to act as the arbitrator.

12. In light of the judgment of the Hon"ble Supreme Court of India in the case of Union of India (Supra) and in view of specific condition of the contract between the parties as noticed above, including paragraph-2900 of the Special Conditions of Indian Railway Standard Conditions of Contract, this Court directs that the head of the CORE i.e. respondent No. 1 shall appoint a sole arbitrator, who may be Gazetted Railway Officer satisfying other conditions of Paragraph-2900 of Special Conditions of Indian Railway Standard Conditions of Contract within 30 days from today. The newly appointed arbitrator shall enter into the reference within another period of one month and thereafter the Arbitrator shall make his award within a further period of three months.

13. With the aforesaid, the present application is allowed.