

The Border Security Force (hereinafter to be referred as the 'BSF') had awarded a contract for construction of a school building at its Campus at Jalalabad, Firrozpur (Punjab) to respondent No. 1. Respondent No. 1 in turn had awarded a sub-contract to the petitioner for execution of certain works in relation to construction of the building in the BSF Campus Jalalabad, Firrozpur (Punjab) and two agreements in that regard were executed between the petitioner and respondent No. 1 and they are work order No. 78-A/WP-6/RNN/04 dated 09.02.2004 and work order No. 270A/WP-06/RNN/04 dated 05.05.2004. Both these agreements contained an arbitration clause which provide for adjudication of disputes between the parties under the above referred agreements through the process of arbitration.

3 Ms. Saroj Bidawat appearing on behalf of the petitioner has contended that the work awarded under the first work order was completed by the petitioner to the entire satisfaction of respondent No. 1 and according to her there is no dispute between the parties under the said work order. It is submitted that the disputes and differences have arisen between the parties only in respect of second work order dated 05.05.2004 for the adjudication of which a request has been made for appointment of an arbitrator.

4 Mr Pathak appearing on behalf of the respondents has not

disputed the existence of the arbitration agreement and the disputes and differences between the parties under the work order dated 05.05.2004. However, Mr. Pathak has contended that the respondents have already appointed an arbitrator after receiving notice of the present petition in terms of arbitration agreement between the parties and therefore he has contended that the present petition may be dismissed as having become infructuous. However, Ms. Saroj Bidawat appearing on behalf of the petitioner, on the other hand, has contended that since the arbitrator was appointed by the respondents after receiving notice of the present petition, that appointment according to her is of no consequence because the respondents have lost their right to appoint the arbitrator of their choice after filing of the present petition. She has placed reliance on two judgments of the Hon'ble Supreme Court in ***ACE Pipeline Contracts (P) Ltd. Vs. Bharat Petroleum Corporation Ltd. (2007) 5 SCC 304*** and ***Union of India Vs. Bharat Battery Manufacturing Co. (P) Ltd. (2007) 7 SCC 684.***

5 It is not disputed by the counsel appearing on behalf of the respondents that the appointment of arbitrator was made by the respondents only after receiving the notice of the present petition. In view of the law laid down by the Hon'ble apex Court in the abovementioned judgments referred and relied upon on behalf of

the petitioner, the respondents have lost their right to appoint an arbitrator of their choice. Hence the arbitrator for adjudication of disputes between the parties under the work order dated 05.05.2004 has to be appointed by the Court.

6 In view of the above and having regard to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, Mr. D.S. Paweriya, former Additional District & Sessions Judge (Mobile No. 9810433390, Chamber No. 49, Tehsil Building, Tis Hazari, Delhi-110054) is hereby appointed as the sole arbitrator for adjudicating the disputes and differences between the parties under the work order dated 05.05.2004. The fee of the learned arbitrator is fixed at Rs. 25,000/- to be shared equally by both the parties. The parties are directed to appear before the learned Arbitrator for further directions at 4.00 P.M. on 7.3.2008.

7 A copy of this order be sent to the learned arbitrator forthwith for information.

8 The present petition stands disposed of accordingly.

February 29, 2008
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S.N.AGGARWAL
[JUDGE]