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IN THE HIGH COURT OF DELHI AT NEW DELHI

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OMP No.13/2003

5th February, 2010

RITES LTD.

...Petitioner

Through: Mr. Anil Seth, Advocate.

VERSUS

SHABIR AHMED & SONS AND OTHERS

....Respondents

Through: Mr. Girish Aggarwal, Advocate with Mr.
Mughda Pandey, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

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JUDGMENT (ORAL)

VALMIKI J.MEHTA, J

1. Only a limited issue is called for decision of this Court in this petition under Section 34 of the Arbitration and Conciliation Act, 1996. What the objector argues is that the Award should not have been passed against the petitioner/RITES inasmuch as the petitioner was only acting as an agent of the

disclosed principal namely the Governor of Uttar Pradesh (U.P.). The petitioner, therefore, contends that the Award which has been passed against the petitioner/RITES could not have been passed and the Award had to be passed against the owner being the disclosed principal namely Governor of U.P.

2. In my opinion, the contention of the counsel for the petitioner is well founded and therefore the objections must succeed. The invitation to tender which is filed at page 42 of the paper book shows that the petitioner was acting for Governor of U.P. The relevant portion of this notice inviting tender reads as under:

“2. Sealed Tenders are received by General Manager (CP) RITES for and behalf of the Governor of Uttar Pradesh for works detailed in the table-I in connection with the Upgradation of Technical Institutions in Uttar Pradesh (A World Bank aided project)”.

3. The letter of Award dated 8.11.1996 was also issued in this case signed for and on behalf of the Governor of U.P. The relevant portion of this letter of Award reads as under:

No.ALMORA/GGP/1

Dated: 08.11.96

LETTER OF AWARD

M/S Shabir Ahmed & Sons.
Bhatkota Road,
Pithorgarh-262501(UP)

Sub: **Construction of Institute Building 42-Bedded Hostel Residence & External Services for Govt. Girls Polytechnic, Almora.**
Tender No. ALMORA/GGP/1.

Ref.

- i) Our Notice Inviting Tender No. RITES/CM/UPP/44 dated 10.09.95 and Corrigendum to NIT No. RITES/CM/UPP/44 dated 29.09.95.
- ii) Our letter No. Almora/GGP/1 dated 29.09.95.
- iii) Your offer for the subject work opened on 12.10.1995 along with the complete set of tender documents comprising of Addendum/Corrigendum.

Vol I- Instructions to Bidders and General and special Conditions
of Contract (Section 1,2,3 (A) and 3(B))

Vol.II-(Section-4A) Technical Specifications (Civil)

Vol.II-(Section-4B) Technical Specifications (Electrical)

Vol.II-(Section-6) Bill of Quantities

Vol.III-Format for Qualification, other Information and
Appendices (Section 5,7,8 and 9)

- (iv) Our letter No. Almora/GGP/1/464.c dated 18.10.95.
- (v) Your letter No. SAS/125/85696 dated 17.11.95.
- (vi) Documents submitted by you received in RITES Office on
13.12.95 comprising two (2) sheets.
- (vii) Documents submitted by you received in RITES Office on
14.12.95 comprising four(4) sheets.
- (viii) Documents submitted by you received in RITES Office on
27.12.95 comprising three (3) sheets.
- (ix) Our letter No. Almora/GGP/1/850 dated 16.01.96
- (x) Your letter No. NIL dated 31.01.96
- (xi) Your letter No. SAS/95-96 dated 25.01.96

- xii) Our letter No. Almora/GGP/1/945 a dated 22.02.96
- xiii) Our telegram No. Almora/GGP 1 dated 26.02.96
- xiv) Your letter No. Nil dated 27.02.96
- xv) Your letter No. Nil dated 01.03.96
- xvi) Your letter No. SAS/180/95-96 dated 29.02.96
- xvii) Our Telegram of Acceptance No. Almora/GGP/1 dated 08.03.96
- xviii) Our Express Telegram No. Almora/GGP/1 dated 15.4.96
- xix) Your letter No. SAS/5/96-97 dated 19.04.96
- xx) Our letter No. RITES/UPP/LKO/ALMORA/GGP/1/812-15 dated
16.09.96

RITES are pleased to issue you this letter of Award on behalf of Governor of Uttar Pradesh for the above mentioned work for acceptance of your bid at that rates stated in the Price Bid Document submitted by you at a total contract price of Rs.2,43,23,290.00(Rupees Two Crores Forty Three Lakhs Twenty Three Thousand Two Hundred Ninety and Paise Fifty only). (Final) figures as per detailed Price Bid Document attached herewith.”

XXXXXXXXXXXXX

Thanking you,

Yours faithfully,
Sd/-

(Lt. Col. Arun Kumar)
General Manager (CP)
On behalf of Governor of
Uttar Pradesh

The aforesaid facts make it more than clear that the contract which was entered into between the respondent No.1 and the Governor of U.P. acting through the petitioner/RITES.

4. The counsel for the petitioner has drawn my attention to an application dated 20.5.2002 filed by it before the Arbitrator and which application was allowed by the Arbitrator vide his order dated 28.5.2002 and which order reads as under:

“NO: RITES:CP:ARB::ALMORA:GM(Survey) Sole Arbitrator
DT: 28.05.2002

From
Arbind Kumar,
Sole Arbitrator
GM/Survey
Room No.707, Sidhartha Building,
Nehru Place,
New Delhi 110 0 19.

In the matter of Arbitration regarding construction of Institute Building 42 Bedded Hostel, residences & External Services of Govt. Girls Polytechnic Almorcontract agreement No. RITES/CM/UPP/Agreement/Almora/GGP/1 dt. 17.12.96.

M/s Shabir Ahmed & Sons
Bhatkote Road,
Pithoragarh-262 501

Claimant

AND

1) M/s RITES Ltd.,
Project Office,
1st Floor, Lekhraj Market-III,
Indira Nagar,
Lukhnow 226 016

Respondent No.1

2) The Director
U.P.Technical Education Department,
Kanpur.

Respondent No.2

Whereas M/s RITES through GM(P), 302 Vishal Bhawan, 95, Nehru Place, New Delhi-11 0019 on behalf of the Governor of Uttar Pradesh represented by the Director U.P Technical Education Department Rawatpur, Kanpur had

entered into contract with M/s Shabir Ahemad & Sons, Bhatkote Road, Pithoragarh-262 501 for construction of above referred buildings.

Whereas a request has now been made to me by M/s RITES Ltd., Project Office, 1st Floor, Lekhraj Market-III, Indira Nagar, Lucknow that M/s RITES were the Consultants/agency for execution of the work who carried out Project Management for & on behalf of and the contractor has no objection that employer be impleaded as party. Under the circumstances, the Director U.P. Technical Education Department, Rawatpur, Kanpur have been impleaded as respondent No.2 in the case.

Since the Director U.P. Technical Education Board, Rawatpur, Kanpur has been made respondent no.2 therefore, he is directed to send his representative for attending the hearing fixed on 12th June 2002 at 11.00 hrs. in the office of the undersigned. I also direct RITES Ltd. to send you the requisite statement of claims, pleadings in defence for the reference of respondent no.2.

Thanking you,

Yours faithfully,

(Arbind Kumar)
Sole Arbitrator &
General Manager (Survey)”

5. The aforesaid facts makes it more than clear that the contractual relationship was between the respondent No.1 who performed the work and the Director U.P. Technical Education Department, Rawatpur, Kanpur through Governor of U.P., who awarded the work. Petitioner/RITES was only acting for and on behalf of the disclosed principal, namely, the Governor of U.P.

6. Sections 226 and 230 of the Contract Act, 1872 are relevant and the same read as under:

“226. Enforcement and consequences of agent’s contracts- Contracts entered into through an agent, and obligations arising from acts done by the agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into the acts done by the principal in person.”

“230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal- In the absence of any contract to that effect an agent

cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary- Such a contract shall be presumed to exit in the following cases:-

- (1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;
- (2) where the agent does not disclose the name of his principal;
- (3) where the principal, though disclosed, cannot be sued.”

7. These Sections 226 and 230 make it more than abundantly clear that once there is a disclosed principal, an agent incurs no liability and takes no benefit, both of which liability and benefit is only of the disclosed principal.

8. The Award in this case in spite of the Governor of U.P. being made a party, has been passed against the petitioner/RITES/agent whereas the owner of the work is admittedly the Director U.P. Technical Education Department, Rawatpur, Kanpur through Governor of U.P., respondent No.2 in the present case.

9. In my opinion, the Award is therefore wholly illegal and needs to be modified in terms of the law under Section 34 of the Arbitration and Conciliation Act, 1996. I, therefore, while sustaining the Award with respect to the relevant findings given therein order that the Award will be an Award against the respondent No.2 i.e. the Director U.P. Technical Education Department, Rawatpur, Kanpur through Governor of U.P. and not against the present petitioner. Respondent No.2 obviously has not in any manner challenged the Award or filed any objections thereto and none has appeared for the respondent No.2 during the course of hearing of the present objections.

10. With the aforesaid observations, the objection petition is allowed and disposed of to the extent mentioned above by modification of the Award, leaving the parties to bear their own costs.

VALMIKI J.MEHTA, J

February 05, 2010

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