

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Arbitration Case No. 54 of 2015 (O&M)

Date of Decision: 21.10.2015

Ankush Engineers & Contractors (Pvt.) Ltd.

..Petitioner

versus

Union of India and others

..Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.

Present : Mr. D.K.Singal, Advocate, for the petitioner.
Mr. Puneet Jindal, Sr. Advocate with
Mr. Siddhant Kant, Advocate, for the respondents.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

This is an application under Section 11(6) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') for appointment of a sole arbitrator to adjudicate upon the disputes between the parties.

2. The main agreement is admitted. The arbitration clause is also admitted.

3. The respondents have forfeited the right to appoint an arbitrator. Disputes and differences arose between the parties. The petitioner addressed a letter dated 17.02.2014 to the Deputy Chief Engineer *inter-alia* stating that it had been raising the issues regarding the disputes from time to time but that there had been an inadequate response from his office and that some of the claims had been rejected in an arbitrary manner. The petitioner also alleged that it had not been paid the amounts due under the contract. A list of claims was enclosed. The respondents by a letter dated 19.02.2014 replied to the said letter denying the petitioner's allegations.

4. The petitioner, therefore, by a letter dated 13.03.2014 invoked the arbitration clause. The respondents admittedly did not appoint an

arbitrator till the petitioner filed this petition on 17.12.2014. The respondents, therefore, had forfeited their right to appoint the arbitrator. The respondents purported to appoint the arbitrator by its letter dated 14.05.2015 i.e. more than a year after the petitioner had invoked the arbitration agreement and more than five months after the petition was filed.

5. The power to appoint an independent arbitrator in such circumstances was considered by the Supreme Court in *North Eastern Railway and others v. Tripple Engineering Works* 2014(9) SCC 288. The Supreme Court considered an identical clause relating to arbitration.

Paragraph-10 of the judgment reads as under:-

“10. In the present case Clauses 64(3)(a)(ii) and (iii) of the general conditions of contract do not prescribe any specific qualification of the arbitrators that are to be appointed under the agreement except that they should be Railway Officers. As already noticed, even if the arbitration agreement was to specifically provide for any particular qualification(s) of an arbitrator the same would not denude the power of the Court acting under Section 11(6), in an appropriate case to depart therefrom. In Singh Builders Syndicate [Union of India v. Singh Builders Syndicate, (2009) 4 SCC 523] pendency of arbitration proceedings for over a decade was found by this Court to be a mockery of the process. In the present case, admittedly the award in respect of disputes and differences arising out of Contract No. CAO/CON/722 is yet to be passed. Though the appellant Railways has in its pleadings made a feeble attempt to contend that the process of arbitration arising out of the said contract has been finalised, no material, whatsoever, has been laid before the Court in support thereof. The arbitration proceedings to resolve the disputes and differences arising out of Contract No. CAO/CON/738 has not even commenced. A period of nearly two decades has elapsed since the contractor had raised his claims for alleged wrongful termination of the two contracts. The situation is distressing, and to say the least disturbing. The power of the Court under the Act has to be exercised to effectuate the remedy provided thereunder and to facilitate the mechanism contemplated therein. In a situation where the procedure and process under the Act has been rendered futile, the power of the Court to depart from the agreed terms of appointment of arbitrators must be acknowledged in the light of the several decisions noticed by us.

The judgment supports the petitioner's case.

6. Mr. Puneet Jindal, learned Senior counsel appearing on behalf of the respondents, however, submitted that in the facts and circumstances of the case, the arbitration clause ought in any event to be adhered to as there was no delay on the respondents' part in appointment of the arbitrator.

7. I do not agree. As I mentioned earlier, the petition was filed more than nine months after the petitioner invoked the arbitration agreement. Till then the arbitrator had not been appointed. Moreover, the purported appointment was also made more than five months after the petition was filed.

8. In the circumstances, Mr. Justice N.K.Sodhi, former Chief Justice of Karnataka High Court, is appointed as sole arbitrator to adjudicate upon the disputes between the parties.

9. The petition is accordingly disposed of.

21.10.2015
'ravinder'

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE