

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.4891 of 1996
Date of decision:28.01.2015

Haryana State Co-operative L/C Federation Ltd.

....Petitioner

Versus

Haryana State Electricity Board & another

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: None.

G.S.Sandhawalia J. (Oral)

Challenge in the present revision petition is to the order dated 14.06.1996, whereby the Sub-Judge, 1st Class, Chandigarh, came to the conclusion that there was an arbitration agreement *inter se* the parties and therefore, the respondent-Board was held entitled to appoint an Arbitrator. It was further held that the petitioner had failed to execute the work as per the terms and conditions of the allotment of the work and therefore, the petition filed under Section 33 of the Indian Arbitration Act, 1940 (for short, the 'Act'), seeking a declaration that there is no existence of an arbitration agreement, was held not maintainable. The Court at Chandigarh was held to have jurisdiction since the office was situated of the Board at Manimajra, at that point of time.

The Trial Court, while considering the evidence, had come to the conclusion that the tenders were invited for the construction of the houses at the PTP Colony at Panipat and the petitioner had submitted the tender vide Exhibit P2 and the validity of the tender had been extended. The acceptance of the tender was conveyed to the petitioner by way of telegraphic message but the petitioner had failed to execute the work on account of which, the Arbitrator had been appointed. CWP No.10409 of 1991 had also been filed by the petitioner before

A perusal of the record would go on to show that vide telegram dated 05.01.1989 (Exhibit P3), construction of the 27 number Category IV and 20 number of Category III and double storey residences at PTPP colony, Panipat had been allotted to the petitioner on the amended rates in pursuance to the tender dated 08.06.1988. The conditions and acknowledgement receipts and for starting the work and the detailed allotment letter was to follow. It was brought to the notice of the respondent-Board that the validity period of the tender had expired earlier on the issue of the allotment letter and the telegram and similarly, on 09.05.1989 (Exhibit P5), the petitioner sought an assurance from the Board regarding the payment of compensation for escalation of prices, material and labour. They, accordingly, put the condition that if the request of the Federation was accepted, then they would take the work and start construction.

A formal allotment letter was issued on 09.08.1989 and on 22.12.1989 (Exhibit P6), the petitioner sent a letter asking for refund of the earnest money and it was mentioned that the Federation had not executed any work at the site and they had no concern with the measurement. In view of the dispute arising, the Board appointed an Arbitrator on 07.07.1993 (Exhibit R1). On 08.07.1993, the Chief Engineer (Construction), who was appointed as the Arbitrator, issued notice to both the parties vide letter dated 13.09.1993 (Exhibit P7) and fixed the preliminary hearing on 24.09.1993. An application was filed on 24.08.1993, taking the plea that the offer of tender had never been accepted in time and no written contract had been executed and the arbitration clause contained that unsigned agreement could not be relied upon as there was no binding contract.

The Federation, thereafter, filed an application under Section 33 of the Act to seek a declaration that there existed no arbitration agreement between the parties. The ground taken was that the tender was to remain valid for a period

of 120 days, w.e.f. 01.06.1988 and the amount of ₹20,000/- was deposited as earnest money and it could only be accepted upto 31.10.1988. The offer of the Federation was not valid, thereafter. It was mentioned that a writ petition had been filed before this Court for refund of the earnest money along with interest, which is still pending. The appointment of the Chief Engineer (Construction) was, thus, challenged being illegal.

The Board, in its written statement, took the plea that the Federation had submitted to the jurisdiction of the Arbitrator by their act and conduct and they were estopped to challenge. It was mentioned that they had undertaken the work and same plea had been taken before the Arbitrator. On account of the failure, negligence and non-execution, huge loss of ₹57.78 lacs had occurred for which a claim petition had been filed along with interest and litigation expenses. The factum of no contract being executed was denied and it was pleaded that a legally binding contract between the parties had come into existence by the petitioner's own act and conduct and acquiescence. In the replication, there was no specific denial that the work had not been undertaken, as pleaded in the reply.

The issue, thus, that arises for consideration, is that in the absence of any formal agreement having been entered into whether the Trial Court was justified in rejecting the application for declaration that there existed no arbitration agreement.

The case of the Board before the Arbitrator was also that once there was an acceptance on behalf of the Federation and the Contractor had acted upon the same as per condition No.5 of the notice inviting tender (Exhibit P1). The Contractor had kept on visiting the site after 24.01.1989 and made arrangement for allotment of labourers for construction purposes. It had taken up the work and after taking up the work on 11.02.1989, the respondent-Contractor had done

in the SMB of the Board on 28.06.1989 and the arbitration clause contained in clause No.75, which could be invoked by the Board.

A perusal of Exhibit P3 would go on to show that a telegram was sent to the petitioners that the work was allotted to them and they were to start the work and the detailed allotment letter was to follow. One Chetan Dass, Junior Engineer, RW2 was also examined, who, in his statement, has deposed that he had to take the measurement and get it noted in the measurement book. He produced the original and photocopy of the same was brought on record as Exhibit R2. The pendency of the writ petition was denied by Parminder Pal Singh, PW1, the witness of the petitioner-Federation, on the ground that the writ had not been filed through him. However, in cross-examination, he admitted that some work has been done and thereafter, clarified that no work was executed at Panipat and there were many other works which might have been done. It is, thus, apparent that in pursuance of the tender, the same had been accepted by starting construction for the Board.

The stand of the Board also before this Court, in CWP No.10409 of 1991, was that the Federation had refused to execute the work wherein the petitioner had challenged the forfeiture of ₹20,000/-, deposited and the writ petition was dismissed on 02.02.2011, on the ground that disputed questions were involved and also due to the non-appearance on behalf of the Federation.

The Apex Court in **Jugal Kishore Rameshwardas Vs. Mrs. Goolbai Hormusji 1955 AIR (SC) 812** held that it was not necessary that the agreement should be signed by the parties and the terms were reduced to writing and the agreement of the parties thereto is established. Similarly, a three Judges Bench in **Union of India Vs. A.L.Rallia Ram 1963 AIR (SC) 1685**, held that it was not a condition that a formal agreement was to be incorporated by both the parties and

J.K.Jain & others Vs. Delhi Development Authority & others 1995 (6) SCC

571, it was held that in the absence of formal agreement, all that was necessary was that from the documents in hand that the parties had agreed to submit to arbitration process, by signing the tender forms. The relevant para reads as under:

“7. It is true that there must be an arbitration agreement, to confer jurisdiction on the Arbitrator to hear and decide the dispute. Where there is no such agreement there is an initial want of jurisdiction. That is why it has been impressed by Courts that one of the essential ingredients of submission to arbitration is that the parties should agree that the dispute should be determined by an Arbitrator. Where there is an arbitration clause in a contract, it amounts to two contracts into one, one relating to the execution of the work entrusted in the manner prescribed and the other how to resolve the dispute in event any such dispute arises in respect of the said contract. Whenever one party to the dispute asserts that there is an arbitration agreement by which the parties had agreed to refer the dispute to an Arbitrator which is disputed and challenged by the other party to the agreement, it has to be examined and determined. To constitute "an arbitration agreement" it is not necessary that there should be a formal agreement or that the terms should all be contained in one document. All that is necessary that from documents it must appear that parties had agreed to submit present or future differences to arbitration.”

Thus, in the abovesaid circumstances, once categorical evidence has come on record that work was allotted and carried out partly, to some extent, it would not be justified for the Federation to submit that there was no arbitration agreement *inter se* the parties and the Arbitrator would have no jurisdiction to enter upon in reference. Accordingly, in view of the factum of work having been partly executed, the Trial Court was well justified in dismissing the application filed under Section 33 of the Act, on the ground that the plea taken that there was no arbitration agreement *inter se* the petitioner and the respondents, was not

Accordingly, finding no merit in the present revision petition, the same is, hereby, dismissed.

28.01.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE