

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.3022 of 2014(O&M)
Date of Order: 19.02.2018

General Manager, Northern Railway and others

..Petitioners

Versus

M/s Pritam Chand and Sons

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nitin Kumar, Advocate,
for the petitioners.

Mr. Dheeraj Mahajan, Advocate,
for the respondent.

ANIL KSHETARPAL, J (Oral)

General Manager, Northern Railway has filed this revision petition against the order passed by the learned Additional District Judge, dated 26.10.2013, reversing the order passed by the learned trial Court.

I have heard learned counsel for the parties at length and with their able assistance gone through the paper book.

It is not disputed before this Court that as per the procedure prescribed under the General Conditions of Contract, respondent-contractor was initially to move an application to the railway administration within 180 days from presenting his final claim on the disputed matters. Clauses 63 and 64 of the General Conditions of Contract are extracted as under:-

63. Matters Finally Determined By The Railway :

All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the

contract, shall be referred by the contractor to the Railway and the Railway shall, within a reasonable time after receipt of the contractor's representation, make and notify decisions on all matters referred to by the contractor in writing provided that matters for which provision has been made in Clauses 18, 22(5), 39, 45 (a), 55, 55-A(5), 61(2) and 62(1) (xiii)(e)(b) of the General Conditions of Contract or in any Clause of the Special Conditions of the Contract shall be deemed as 'excepted matters' and decisions thereon shall be final and binding on the contractor; provided further that 'excepted matters' shall stand specifically excluded from the purview of the arbitration clause and not be referred to arbitration.

64.(1) Demand For Arbitration :

64.(1) (i) In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within a reasonable time, then and in any such case, save the "excepted matters" referred to in Clause 63 of these Conditions, the contractor, after 90 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration."

It is the contention of learned counsel for the petitioners that admittedly in this case contractor has not complied with the aforesaid requirement as provided in the General Conditions of Contract issued by the railway administration. Learned counsel for the petitioners has also relied

upon the judgment passed by the Hon'ble Supreme Court reported as *M/s Shetty's Construction Pvt. Ltd. v. M/s Konkan Railway Corpn. Ltd., (1999) 8 SCC 604*, interpreting Clauses 62 and 63 of the General Conditions of Contract to conclude that the contractor is bound to follow the procedure laid down therein. He has submitted that, hence, the first appellate court has committed an error in reversing the order passed by the learned trial Court.

On the other hand, learned counsel for the respondent has pointed out that the Hon'ble Supreme Court even after finding that the contractor has not followed the procedure as prescribed under the General Condition of Contract, however, permitted the petitioner to follow the procedure as provided under the aforesaid clauses. He submits that once the Hon'ble Supreme Court permitted the contractor in that case, therefore, respondent herein should also be permitted.

Respondent-contractor was awarded contract on 30.07.1990. Formal contract was entered into on 04.04.1991. As per the original terms and conditions, the contractor was required to complete the contract within a period of 6 months, which was later on extended. It is the stand of the railway administration that the work was never completed. It is further not in dispute that the respondent-contractor for the first time moved an application before the railway administration only on 17.01.1994, which was declined on 07.07.1994.

Keeping in view the aforesaid undisputed facts, this Court is of the opinion that the contractor was not justified in directly filing a petition under Section 20 of the Arbitration Act, 1940, as held by the Hon'ble Supreme Court in *M/s Shetty's Construction Pvt. Ltd.*(supra). However,

the respondent-contractor shall be at liberty to take steps as prescribed under the General Conditions of Contract.

With the aforesaid observations, the revision petition is allowed and the order under challenge passed by the learned first appellate court is set aside.

February 19, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No