

Delhi High Court Rajesh Batra vs Ranbir Singh Ahlawat on 8 August, 2011
Author: Vipin Sanghi * IN THE HIGH COURT OF DELHI AT NEW DELHI

• Date of Decision: 08.08.2011

% O.M.P. 396/2011 & I.A. No.8432/2011

RAJESH BATRA Petitioner
Through: Mr. Sandeep Sharma and
Ms.Kanika Singh, Advocates

versus

RANBIR SINGH AHLAWAT Respondent
Through: Mr. H.S. Kohli, Advocate
Mr. Deepak Arora, Arbitrator

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may
be allowed to see the judgment? : No
2. To be referred to Reporter or not? : Yes
3. Whether the judgment should be reported
in the Digest? : Yes

VIPIN SANGHI, J. (Oral) 1. By this petition under Section 34 of the Arbitration and Conciliation Act, the petitioner assails the award dated 12.02.2011 passed by Sh. Deepak Arora, Advocate, sole arbitrator made by him in favour of the respondent and against the petitioner. 2. The parties entered into collaboration agreements dated 24.03.2008 and 30.03.2008. Both these agreements contain a dispute resolution clause, which provides for arbitration by "a mutually appointed arbitrator". The respondent sought to invoke the arbitration agreements and nominated Mr. Deepak Arora, Advocate as the sole arbitrator. Pertinently, there was no mutual consent given to his appointment as the arbitrator, at any stage, by the petitioner. 3. The learned arbitrator assumed jurisdiction on the unilateral nomination made by the respondent, without even bothering that there was no consent to his appointment, given by the petitioner, and started the proceedings by issuing notice to the parties; requiring the respondent to file its statement of claim, and; also requiring the petitioner

to cause appearance before him. 4. The petitioner did not put in appearance despite repeated notices, and for the first time, put in appearance on 01.09.2010. The proceedings recorded by the arbitrator show that the proxy counsel for the petitioner sought time to file their reply. On 11.09.2010, the petitioner filed the Vakalatnama and the proceedings recorded are that the petitioner sought further time to file the reply. The petitioner's defence was, however, struck off by the arbitrator on the same date. 5. On 07.10.2010, the petitioner served a notice on the arbitrator challenging his authority to proceed in the matter, as the arbitrator had not been appointed by mutual consent. The arbitrator replied to the said notice on 11.10.2010. In his reply, he shies away from the petitioner's assertion that there was no mutual agreement between the parties to nominate him as the arbitrator. He states in his reply, and this is so stated by him in court as well, that the respondent had sent a legal notice dated 03.02.2010 informing the petitioner regarding reference of disputes under the two collaboration agreements to the arbitrator, and despite receiving the notice, the petitioner did not raise any objection to the appointment of the arbitrator. Therefore, his stand is that there was an implied consent given to his appointment by the petitioner. 6. Both the learned arbitrator as well as learned counsel for the respondent, who has argued the matter without filing the reply despite opportunity, have submitted that the petitioner did not object to the respondent's nomination of the arbitrator and, consequently, the mutual consent is taken as impliedly granted by the petitioner, to the appointment of the arbitrator. It is also argued that the petitioner participated in the proceedings on 01.09.2010, 11.09.2010 and again 18.09.2010, and did not object to the appointment of the arbitrator. It is argued by learned counsel for the respondent that the plea of the arbitrator having no jurisdiction in the matter was raised only when his defence was struck off by the learned arbitrator. 7. Having heard learned counsel for the parties as well as the learned arbitrator, I am of the view that the impugned award cannot be sustained and is liable to be set aside. The present is a shocking case where the arbitrator assumed jurisdiction without even caring to see that the parties had not appointed him mutually as required by the agreement. 8. It is well settled that an arbitrator derives his authority from the arbitration agreement. Once the arbitrator had noticed that his nomination had been only made by the respondent/claimant, without the consent of the petitioner, before entering upon the reference and issuing notice to the parties, or taking any steps in the arbitration proceedings, he should have ensured that the petitioner also gave his consent to his nomination as the arbitrator. The arbitrator derives no authority or jurisdiction to even issue notice to the parties, either to file their statement of claim, or statement of defence/counter claim, or to appear before him, till his appointment has been made strictly in terms of the arbitration agreement. 9. The fact that the petitioner had put in appearance on a couple of sittings before the so-called arbitrator, to my mind, makes no difference, keeping in view the express language of Section 16(2) of the Act which permits the raising of a plea that the arbitral tribunal does not have jurisdiction till the statement of defence has been filed. In this case, the petitioner had raised the said plea on 07.10.2010 and, admittedly, no statement of claim had been filed by then.

10. Despite being put to notice that his appointment itself is without authority and jurisdiction, the arbitrator brazenly proceeded to conduct the proceedings and passed the impugned award. If such conduct is condoned, it will give encouragement to adoption of such sharp practices and fraudulent conduct. If the respondents stand were to be accepted, one or the other party can play havoc by nominating an arbitrator unilaterally in breach of the agreement, and obtain an award from the arbitrator, who may not command the confidence of both the parties. Accordingly, the impugned award is patently illegal and has been made by the arbitrator without jurisdiction and the same is accordingly set aside. 11. The petitioner has been subjected to unnecessary harassment on account of the completely unjustified and illegal conduct of the respondent and the learned arbitrator. Accordingly, I subject the respondent and the learned arbitrator to costs of Rs.20,000/- to be shared equally by them. Costs be paid within a week. VIPIN SANGHI, J AUGUST 08, 2011 sr