

Punjab-Haryana High Court

Joginder Singh & Co. vs Union Of India on 20 May, 1998

Equivalent citations: (1998) 119 PLR 839

Author: V Aggarwal

Bench: V Aggarwal

ORDER V.S. Aggarwal, J.

1. This is an appeal filed by M/s. Joginder Singh and Co., hereinafter described as "the appellant", directed against the order passed by the learned Sub Judge 1st Class, Amritsar, dated 21-5-1979. By virtue of the impugned order, learned trial court dismissed the application filed by the appellant under Section 20 of the Indian Arbitration Act, 1940 (for short "the Act").

2. Relevant facts are that the appellant claimed that there was an agreement between the parties dated 12-2-1975. The appellant was appointed as a contractor for unloading, dumping of coal, cake and cinders from the wagons into open trucks, box type wagons or into the bins. The agreement was for a period from 1-1-1975 to 31-12-1975 at Amritsar shed. The appellant has performed his duties to the best of his capacity in accordance with the agreement. A dispute arose between the parties and in accordance with the arbitration clause, he requested for appointment of the arbitrator. The appellant even served a notice on 8-9-1977 and 19-9-1977 for reference of the dispute to the arbitrator but it had no effect. Therefore, an application under Section 20 of the Act has been filed.

3. In the reply filed, respondent Union of India contested the claim. It was contended that the petition is liable to be rejected. There was no valid and subsisting arbitration agreement between the parties and that the appellant is estoppel from filing the petition.

4. Learned trial Court framed issues and held that the Civil Court at Amritsar has jurisdiction to entertain the application. It was further held that the petition is properly signed and verified. The trial court held that there was arbitration agreement but the applicant was estoppel from raising the plea which has become time barred. With these findings, particularly that the petition has become barred by time and the appellant is estoppel from raising the claim, the application was dismissed. Aggrieved by the same, the present appeal has been filed.

5. To appreciate the controversy in question, one can conveniently reproduce Clauses 30 and 33 of the Arbitration Agreement which has been placed on the record and was not subject matter of any controversy. It reads as under :

"30. During the currency of this contract all claims by the contractor against the Railway Administration must be preferred within three months of the date of the transaction and all objections to disallowance by the Chief Accounts Officer must be raised within 3 months of the disallowance. On termination of the contract, both parties must put forward all claims within six months of the termination of the contract. No claims put forward by either party will be considered after these period.

If the contractor does not claim against the Railway Administration for payment in respect of service rendered under the contract within the above mentioned periods, he shall be deemed to have waived his right to any payment in respect thereof, provided always that nothing hereinafter shall entitle the contractor to sue for payment for services rendered under this contract, the intention being that the only remedy as regards claims made by him not admitted shall be to refer the same for arbitration under Clause 33 thereof.

33. If any dispute, difference or controversy shall at any time arise between the contractor on the one hand and the President Union of India or the said Railway Administration on the other hand touching the contract for the work or as to the quality or description of or payment for the same, or as to the true construction, meaning and intent of any point of condition of the same or as to the manner of executing the work, or as to the true intents, meanings, interpretation, construction or effect of the clauses of the contract, specification or drawings or any of them or the incidents or consequences of the contract or specifications or drawings or any of them or as to anything to be done omitted or suffered in pursuance of the contract or specifications or as to the mode of carrying out the contract into effect, or as to the breach or alleged breach of the contract, or as to any claim on accounts of such breach or alleged breach or as to obviating or compensating for the commission or any such breach or as to any other matter or thing whatsoever connected with or arising out of the contract and whether before during the progress or after the completion of the work such question, difference or dispute shall be referred to the arbitrator who shall be a Railway Officer to be appointed by the General Manager for the time being of Northern Railway Administration and his decision in writing shall be final, binding and conclusive. If the sole Arbitrator appointed above resigns his appointment or vacates his office or is unable or unwilling to act for any reason whatsoever or dies, the General Manager may appoint a new arbitrator to act on his place in accordance with the provisions of the above clause as the case may be such arbitrator as the case may be shall be entitled to proceed with the reference from the stage at which it was left by the previous arbitrator."

On the strength of the same, it was urged that the claim was within time because it has been filed within three years of the dispute and the notice having been served. To this extent, the appellant's contention, indeed, cannot be ignored and has substance. Article 137 of the Limitation Act would apply and the period of limitation would start from the date claim is asserted. Herein, after a short span of serving notice dated 8-9-1977, the petition had been filed on 25-10-1978. It was, therefore, well within time. Reference in this connection may be made to the decisions of the Supreme Court in the case of Major (Retd.) Inder Singh Rekhi v. Delhi Development Authority (AIR 1988 SC 1007 = 1988(2) Arb. LR 270), wherein it was held that the period of limitation is to be computed from the date the claim is asserted and it is to be calculated in accordance with Article 137 of the Arbitration Act. Similarly, in the case of S. Rajan v. State of Kerala and another (AIR 1992 SC 1918), same view prevailed with the Supreme Court. It was again reiterated that right to apply accrues when differences arises between the parties. In the present case, as already noted above, the claim was filed well within the period of three years and, therefore, was in time.

6. Learned trial court had referred to Clause 30 of the Arbitration Agreement and held that the claim had not been preferred within six months of the termination of the contract and, therefore, right to

claim appointment of arbitrator has been lost. Reference has also been made to Clause 30 above. It has been mentioned that if claim is not laid within six months of the termination of the contract the right as such would be waived. The attention of the Court has been drawn to the fact that this is for the arbitrator to decide and not for the Court to adjudicate. This contention of appellant's counsel must prevail. Supreme Court in the decision rendered in the case of The Vulkan Insurance Co. Ltd. v. Maharaj Singh and another (AIR 1976 SC 287), while relying upon the earlier decision in the case of Wazir Chand Mahajan v. Union of India (AIR 1967 SC 990), held as under :

"..... if the differences which had arisen between the parties was the one to which the arbitration clause applied then the application under Section 20 of the Act could not be dismissed on the ground that the claim would not ultimately succeed either on facts or in law. The matter will have to be left for the decision of the arbitrator"

A Division Bench of the Delhi High Court in the case of Ved Prakash Mithal v. Union of India and others (AIR 1984 Delhi 325 = 1985 Arb. LR 443), also in similar circumstances held as under :

"Is this a good reason ? Now a Division Bench of this Court in Jai Chand Bhasin v. Union of India (AIR 1983 Delhi 508 = 1983 Arb. LR 199), (Sachar and Khanna, JJ.) has held that this question falls within the province of the arbitrator to whom the dispute shall be referred Whether the demand for arbitration has been made within the stated time and whether the claim should be deemed to have been waived in terms of the clause is essentially a question for the arbitrator to decide. The Court is not concerned with it at this stage. The court has only to see that there are disputes and those disputes are to be referred to arbitration as per agreement between the parties and the arbitrator can decide those questions."

The position herein is identical. If the claim has been raised or not is to be adjudicated by the arbitrator and not by the Court. Therefore, to this extent, learned trial court was in error in holding that because it has been filed after six months it is deemed to have been waived. It is for the arbitrator to adjudicate.

7. For these reasons, the appeal is accepted and the impugned order is set aside. It is directed that the learned trial Court in accordance with the agreement will make a reference to the arbitrator. It is directed that arbitration agreement be filed and matter be referred to the arbitrator. The parties are directed to appear before the learned trial Court on 4-6-1998.

8. Appeal accepted.