

2011 CLC 863

[Lahore]

Before Nasir Saeed Sheikh, J

Messrs MUHAMMAD SIDDIQUE CHAUDHRY AND COMPANY through Managing Partner-Petitioner

Versus

HIGHER EDUCATION COMMISSION through Project Director----Respondent

Writ Petition No.24720 of 2010, decided on 25th November, 2010.

Constitution of Pakistan---

---Art. 199---Constitutional petition---Maintainability---Petitioner sought release of security amount deposited with authorities in respect of contract between the parties---Validity---Constitutional petition was not competent against a letter of legal advisor of Government functionary---Petitioner himself invoked arbitration clause of the contract under which arbitration proceeding were pending---Legal Advisor of authorities had informed the petitioner that he could claim the security amount after withdrawing the arbitration proceedings---Petition was dismissed in limine for not being entertainable under constitutional jurisdiction of High Court.

Messrs Airport Support Services v. The Airport Manager, Quaid-e-Azam International Airport, Karachi and others 1998 SCMR 2268 ref.

Riaz Karim Qureshi for Petitioner.

ORDER

NASIR SAEED SHEIKH, J.--- Messrs Muhammad Siddique Chaudhry and Company undertook the construction/renovation Of HEC Human Resource Development and Training Resource Development and Training Centre 55-R-II, Gulberg-III, Lahore through a contract.

2. It is contended by learned counsel for the petitioner that it has completed contractual job and the building has been taken over by the respondent, however the amount of security which has been deducted from its running bills was required to be released in three instalments out of which two instalments have already been received by the petitioner. In order to get release of the third instalment the petitioner served a legal notice dated 21-10-2010 to the respondent which was followed by a reminder dated 5-11-2010 both of which- notices are annexed with the instant writ petition as Annexures "B" and "C" respectively. The notice dated 21-10-2010 has been replied

by the Legal Advisor of the respondent through Annexure "D" dated 3-11-2010 in the following manner:

Malik Law Associates

Ref. No. _____

Dated. 3-11-2010

To

Mr. Riaz Karim Qureshi, Advocate, Qureshi Law Associates
14-Dev Samaj Road, Lahore

Dear Sir,

"Your notice dated 21-10-2010 sent on behalf of Messrs Muhammad Siddique Ch. & Company Lahore has been placed in my hands with the instructions to reply you as under;--

(1) That the last instalment of the security is due but the same was withheld because your clients have invoked the arbitration clause of the contract and the matter is now pending arbitration and the arbitrators have been nominated by both the parties and the matter is likely to be decided by the arbitrators in the near future.

(2) That if your client is very eager to get the last instalment of the security money, he may be advised to withdraw the arbitration petition and the last instalment of the security money would be immediately released.

You are therefore requested to apprise the actual position to your clients and if still they decide to resort to legal action, the same would be contested and defended at the risk and cost of your clients.

(Sd.)
Malik Anwar Mukhtar"

3. Feeling aggrieved by the reply dated 3-11-2010 of the Legal Advisor of the respondent, the instant writ petition has been instituted with the prayer directing the respondent to release, the 3rd instalment of the security amount lying with the respondent.

4. It is contended by the learned counsel for the petitioner that the reply dated 3-11-2010 of the Legal Advisor of the respondent has the effect of compelling the petitioner to withdraw the arbitration proceedings which are pending in respect of the dispute raised by the petitioner itself by invoking arbitration clause. The learned counsel relied upon the judgment reported as Messrs Airport Support Services v. The Airport Manager, Quaid-e-Azam International Airport, Karachi and others (1998 SCMR 2268) to contend that the petitioner has a right to the release of the security amount notwithstanding the pendency of the arbitration proceedings.

5. I have considered the arguments of the learned counsel for the petitioner.

6. It is not denied by the learned counsel for the petitioner that in respect of the same contract the petitioner has itself invoked the arbitration clause and Arbitrators have been appointed and the arbitration proceedings are in progress. The judgment relied upon by the learned counsel for the petitioner is distinguishable on its own facts. In the reported judgment the writ petitioner Airport Support Services applied for allotment of accommodation in the Office Block at Jinnah Terminal Complex of the Airport Manager of Civil Aviation Authority and Room No.5038 at the Jinnah Terminal and it was allotted to the writ petitioner of the case and license agreement was executed for further allocation of office space in addition to the room already allotted to the petitioner. The General Manager Commercial, CAA addressed a communication to the Director of the Quaid-e-Azam International Airport that it has come to the notice of the Headquarter Civil Aviation Authority that the petitioner/appellant had unauthorisedly sublet the license to some other party and an inquiry was directed in the matter. It was discovered that unauthorised money-changing business was taking place at the spot by the sub-lettee and the license ,agreement was accordingly terminated which was later on restored but "ultimately the Acting Director of the CAA again recommended the termination of the license agreement of the petitioner in the said case. A writ petition was instituted challenging the termination of the agreement and an objection was raised in the writ petition proceedings by the respondents that there was an arbitration clause incorporated in the agreement therefore the writ petition was not competent. The learned High Court dismissed the writ petition on the ground that the existence of an arbitration clause amounted to availability of an alternate remedy therefore writ petition is not competent. The matter was appealed against before the honourable Supreme Court of Pakistan wherein the honourable Supreme Court held that the termination of license agreement of the licensee by the CAA without show-cause notice was not sustainable however on account of the appellant's own conduct that the writ petition instituted in the High Court was not verified and affirmed by the licensee firm but it was instituted by the signatures of Managing Director of the sub-lettee who was also a previous CAA Contractor whose antecedents were not entirely without blemish. The Supreme Court of Pakistan thus did not interfere in the matter and dismissed the Civil Appeal through reported judgment.

7. In the case in hand the petition cannot get benefit of the law laid down and reported in the judgment cited by the learned counsel for the petitioner. In the first instance the petitioner itself addressed a legal notice to the respondent which has been replied by the Legal Advisor of the respondent through reply dated 3-11-2010. No writ petition is competent against a letter of a Legal Advisor of Government functionary. In any case the petitioner has itself raised the dispute with respect to the contract in question through invoking arbitration proceedings in which Arbitrators have been appointed and the arbitration proceedings are pending which fact has not been denied by the learned counsel for the petitioner. The Legal Advisor of the respondent has just intimated the petitioner that since the arbitration proceedings in respect of the contract in question have been itself invoked by the petitioner and the same are pending, either the petitioner may wait for the arbitration proceedings decision or first withdraw the arbitration proceedings and then claim the release of the 3rd instalment.

8. In exercise of my jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, I do not consider it a fit case to interfere. The writ petition is not entertainable is therefore dismissed in limine.

A.R.K. /M-77/L

Petition dismissed.