

**HIGH COURT OF TRIPURA
AGARTALA**

Arb. P. No.9 of 2023

M/s N.G. Bhattacharjee Construction Co.

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

For Petitioner(s) : Mr. H. Sarkar, Advocate,
Mr. A. Baidya, Advocate.

For Respondent(s) : Mr. K. Dey, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

23/11/2023

Heard learned counsel for the parties.

[2] Petitioner seeks appointment of an Independent Arbitrator by invoking Clause-22 of the agreement [Annexure-2] which provides for settlement of disputes. The work order is dated 03.07.2015. According to the petitioner, due to delay in handing over the site, work could not be completed by the stipulated date that is on or before 17th October, 2016 in terms of the agreement. Petitioner has made partial execution of work. He has sought refund of the security deposit and the payment of contractual dues. He has approached the respondent No.3-the Executive Engineer, P.W.D. (Water Resource), Division No.III, Udiapur, Gomati District vide letter dated 31st December, 2022 [Annexure-11]. Thereafter, he has approached the Superintending Engineer, PWD (Water Resource), Circle No.III, Udaipur, Gomati District vide letter

dated 7th February, 2023 [Annexure-12] and finally has approached the respondent No.2-the Chief Engineer, PWD, (Water Resource), Malanchanibash, Kunjaban, Agartala vide letter dated 27th March, 2023 [Annexure-13] for appointment of an Independent Arbitrator under Section 11(6)(a) read with Section-12 of the Arbitration & Conciliation Act, 1996 as amended.

[3] Respondents have filed a counter affidavit pursuant to the order dated 14th September, 2023 *inter alia* taking the following stand:-

(i) That the instant case is barred by law of limitation since the work was completed on 15.07.2016 and the first & final bill were also prepared on 20.03.2017. The arbitration petition has been filed on 08.09.2023 (04.08.2023).

(ii) Petitioner had himself made a request for closure of the agreement vide letter dated 22.08.2017 [Annexure R/3] and also undertaken that they shall not claim any damages sustained by them in near future for not able to execute further works. As such, the petitioner has waived his right to seek any claim through arbitration.

(iii) Petitioner has not followed the two-tier procedure prescribed for invoking the arbitration Clause No.22 as the dispute was to be first referred to and settled by the Engineer-in-Charge within a period of twenty days on being requested by the contractor. On the failure of the Engineer-in-charge to give notice of his decision in writing within a period of twenty days on the request of the contractor or if the contractor is dissatisfied with

the decision of the Engineer-in-Charge, he was supposed to approach the Superintending Engineer for decision on the dispute. If the Superintending Engineer fails to give notice of his decision within a period of thirty days or if the contractor is dissatisfied with the decision of the Superintending Engineer, then the matter was to be referred for arbitration as detailed under Clause-22. Such procedure has not been strictly followed as the first request made by the petitioner before the respondent No.3-the Executive Engineer, P.W.D. (Water Resource), Division No.III, Udiapur, Gomati District vide letter dated 31st December, 2022 [Annexure-11]. Thereafter, he has approached the Superintending Engineer, PWD (Water Resource), Circle No.III, Udaipur, Gomati District vide letter dated 7th February, 2023 [Annexure-12] and finally has approached the respondent No.2-the Chief Engineer, PWD, (Water Resource), Malanchanibash, Kunjaban, Agartala vide letter dated 27th March, 2023 [Annexure-13] much after the closure of the agreement and the undertaking given by the petitioner.

(iv) The petitioner is responsible for the delay in executing the work. The allegations relating to delay in handing over of the site is not correct. Petitioner's new power of attorney was appointed by him in the month of December, 2015.

(v) The earnest money deposit and security deposit have already been released as detailed in the paragraph 12 of the counter affidavit. However, since no application was made, the balance amount of Rs. 50,680/- could not be released.

[4] Learned counsel for the respondent-State submits that since the petitioner has not followed the procedure agreed between the parties for invoking the arbitration clause and there is a specific undertaking by the petitioner not to seek any damages for loss the petitioner is not entitled to seek reference of the so called dispute for arbitration. It is also reiterated that the agreement was closed at the instance of the petitioner.

[5] Clause 22 of the agreement at Annexure- 2 contains the arbitration clause, which is extracted hereunder:

“22. Settlement of disputes:

22.1 If any dispute or difference of any kind whatsoever arises between the department and the Contractor in connection with, or arising out of the Contract at stage, whether during the progress of the works or after their completion and whether before or after the termination, abandonment or breach of the Contract, it shall in the first place, be referred to and settled by the Engineer-in-charge who shall, within a period of twenty days after being requested by the Contractor to do so, give written notice of his decision to the Contractor. Upon receipt of the written notice of the decision of the Engineer-in-Charge the Contractor shall promptly proceed without delay to comply with such notice of decision.

22.2 If the Engineer-in-Charge fails to give notice of his decision in writing within a period of twenty days after being requested or if the Contractor is dissatisfied with the notice of the decision of the Engineer-in-Charge, the Contractor may within fifteen days after receiving the notice of decision appeal to the concerned Superintending Engineer of Department who shall after affording opportunity of being heard shall give notice of his decision within a period of thirty days. After Superintending Engineer has given written notice of his decision to the Contractor and no claim to arbitration, has been communicated to him by the Contractor within a period of fifteen days from receipt of such notice the said decision shall remain final and binding on both side. If the Superintending Engineer fails to give notice of his decision, as aforesaid within a period of thirty days after being requested as aforesaid, or if the Contractor be dissatisfied with any such decision, then and in any such case the contractor within thirty days after the expiration of the first named period of thirty days as the case may be,

require that the matter or matters in dispute be referred to arbitration as detailed below:-

SETTLEMENT OF CLAIMS:

All disputes or difference arising of or relating to the Contract shall be referred for the adjudication as follows:

- a) Claims up to a value of Rupees 50,000/-
 - Superintending Engineer of another circle in the same department.
- b) Claims above Rs.50,000/-
 - Another Chief Engineer or Arbitrator appointed by the Chief Engineer of the same department.

The arbitration shall be conducted in accordance with the provisions of Indian Arbitration and Conciliation Act 1996 or any statutory modification thereof.

The arbitrator shall state his reasons in passing the award.

A reference for adjudication under this clauses shall be made by the contractor within six months from the date of intimating the contractor of the preparation of final bill or his having accepted payment whichever is earlier. Only contracts executed in Tripura shall have jurisdiction for any suit arising out of this contract. More particularly no suit shall be instituted or entertained in any court outside the State arising out of contract.”

[6] Learned counsel for the petitioner then submits that the respondents may be directed to release the balance security deposit.

[7] Having considered the submissions of the learned counsel for the parties and the stand of the respondents, it is clear that the agreement at Annexure-2 was closed at the instance of the petitioner with an undertaking not to seek any damages for loss. The petitioner has also not followed the procedure agreed between the parties under Clause-22 before invoking jurisdiction of this Court for appointment of an arbitrator. As such, the claim for entering into the reference for settlement of disputes through an independent arbitrator cannot be entertained. Petitioner is at liberty to make an

application before the competent authority for release of the balance security deposit.

[8] Accordingly, the instant petition is dismissed. Pending application(s) if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

