

GAHC010013162023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.P./6/2023

MEGHALAYA ENGINEERS AND AGENCIES
REP. BY ITS PROP SRI SANJAY SHARMA, S/O- LATE JAY PRAKASH
SHARMA, C/O- NEW JB COMPLEX 1ST FLOOR FLAT NO 103 JP AGRAWALL
ROAD SANTIPUR KAMRUP METRO ASSAM

VERSUS

THE UNION OF INDIA AND 2 ORS
THROUGH THE SECRETARY, MINISTRY OF DEFENCE, NEW DELHI-110010

2:THE COMMANDER
WORKS ENGINEER
AIR FORCE
JORHAT
AIR FORCE
JORHAT

3:THE CHIEF ENGINEER
AIR FORCE
ELEPHANT FALLS CAMP
AIR FORCE
ELEPHANT FALLS CAMP
PO NONGLYER
SHILLONG 79300

Advocate for the Petitioner : PETITIONER IN PERSON

Advocate for the Respondent : DY.S.G.I.

BEFORE

HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 22.06.2023

Heard the petitioner-in-person. Also heard Mr. C.K.S. Baruah, learned CGC appearing for the respondents.

2. At the outset, Mr. K.M. Haloi, learned legal aid counsel prayed for exempting his appearance in the matter on the ground that the petitioner-in-person has lost faith on him. The cause assigned by the petitioner-in-person is not appreciated. Moreover, as the petitioner-in-person is found to be an owner of a firm and doing contract/construction business, the Court does not find the petitioner to be entitled for any legal aid counsel.

3. Be that as it may, on the prayer made by Mr. K.M. Haloi, learned legal aid counsel, he is exempted from appearing in the matter any further.

4. This is an application filed under section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of independent arbitrator. It is projected that by letter dated 31.10.2022, a request was made by the petitioner to the Chief Engineer (AF), Shillong Zone for appointment of arbitrator, which was not done. Hence, this application.

5. The petitioner was awarded with contract for renewal/replacement of condemned furniture and provision of furniture against certain works under GE(AF), Jorhat Schedule 'B' Part-III (Trade pattern furniture), bearing CA No. CWE (AF)/JOR/36(C) of 2018-2019. Apparently, the date of completion had lapsed that the progress of work was not satisfactory, hence, compensation notice dated 14.12.2019 was issued by the authorities and after some correspondence, the work was cancelled vide letter dated 18.11.2021.

6. The Court is inclined to observe that there are deficiencies in this application filed by the petitioner-in-person, because all the documents appended to this application is not verified as a matter of record. Moreover, there is no statement with regard to Annexures-P5 to P8 in this arbitration petition, nor there is any verification in the affidavit filed in support of this petition in respect of these documents.

7. The learned CGC has referred to the affidavit-in-opposition filed on behalf of respondent no.2, which does not address the letter dated 31.10.2022 (Annexure-P1 to the writ petition), by which request for appointment of arbitrator was made. Moreover, by referring to the documents annexed to the affidavit-in-opposition filed by the respondent no.2, it is submitted that the respondents have a panel of serving officers for appointment of arbitrators. It is projected that there was a subsequent amendment to the contract and the petitioner was called upon to come and sign the amended agreement, which was not done.

8. Therefore, as existence of arbitration clause in the contract agreement has not been denied, the Court is not inclined to dismiss this application on technical grounds.

9. Be that as it may, as the petitioner-in-person has been able to show that the request for appointment of arbitrator was made by letter dated 31.10.2022, but arbitrator was not appointed by the respondents, the Court is inclined to appoint Sri Mrinmoy Kumar Bhattacharjee, Retired District & Sessions Judge, Flat No. 5C, Protech Harkanan, Ganesh Mandir Path, Noonmati, Near Noonmati Ganesh Mandir, Guwahati-781020, Mobile: +919435173963, whose name appears at Sl. No. 6 of the panel of the arbitrators vide this Court's notification no. 47 dated 26.04.2023 as the Sole Arbitrator in the matter of

dispute between the petitioner-in-person and the respondents.

10. The petitioner-in-person shall move the Sole Arbitrator in an appropriate manner as provided under the Arbitration and Conciliation Act within a period of 15 (fifteen) days from today by providing a certified copy of this order before the Sole Arbitrator so appointed by the Court.

11. It is clarified that this Court has not examined the claim on merit and/or about its maintainability, which are left open to be decided by the learned arbitrator.

JUDGE

Comparing Assistant