

GAHC010016912023



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

Case No. : Arb.P./7/2023

S R ENGINEERING CONSTRUCTION
GHANSHYAM DAS DHIMAN PARTNER, PO HALLESWAR, DISTRICT
SONITPUR ASSAM

VERSUS

THE COMMANDER WORKS ENGINEER
PO DEKARGAON, TEZPUR, PRESENTLY TENGA-900194

2:THE GARRISON ENGINEER
859 EWS
PIN 913859
CO 99 AP

Advocate for the Petitioner : PETITIONER IN PERSON

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 14.06.2023

Heard Mr. Ghanshyam Das Dhiman, who is appearing as petitioner-in-person on behalf of M/s S.R. Engineering Construction, his partnership firm, the petitioner in this petition. Also heard Mr. H. Gupta, learned CGC for the

respondents.

2. By filing this application under section 11(6) of the Arbitration and Conciliation Act, 1996, the petitioner has prayed for appointment of a sole arbitrator to adjudicate the dispute, which is arising out of the Contract Agreement No. CWE/TEZ/39 OF 1989-90 : CONSTRUCTION OF POWER HOUSE AND ALLIED SERVICES AT RUPA IN REMOTE AREA OF ARUNACHAL PRADESH.

3. The petitioner-in-person submits that the agreement itself does not contain any arbitration clause, but in the agreement, there is a reference to the General Conditions of Contract and in clause-70 thereof, the provisions for appointment of arbitrator for adjudication upon the disputes has been provided. It is submitted that although as per the arbitration clause-70 in the General Conditions of Contract, the arbitration has to be referred to the sole arbitration of an Engineering Officer, but under the facts and circumstances of the case, it would be appropriate to appoint an independent arbitrator.

4. In this regard, the learned CGC, upon receipt of written instruction dated 11.05.2023 from the DCWE (Contract) for CWE has submitted that respondent authorities have no objection if an arbitrator is appointed by this Court. A copy of the said communication is made a part of the record.

5. Considering the arbitration clause-70 contained in the General Conditions of Contract and the clear stand taken by the concerned authorities of the respondents in providing that there is no objection as to the appointment of arbitrator, the Court is inclined to allow this application under section 11(6) of the Arbitration and Conciliation Act, 1996 by appointing Sri (Er.) Jadav Goswami, Surveyor, Valuer, Loss Assessor whose name appears at Sl. No. 14 of the panel of the arbitrators vide this Court's notification no. 47 dated 26.04.2023.

6. However, it has been submitted by the learned CGC that as the contract is for the year 1990, the issue regarding maintainability of the arbitration proceeding be allowed to be raised. Accordingly, the respondents are at liberty to raise the issue regarding maintainability of the proceeding, and the arbitrator shall also adjudicate upon the maintainability of the arbitration proceeding, if so raised by the respondents.

7. The petitioner-in-person shall produce a certified copy of this order before the appointed arbitrator and seek further instruction.

8. Accordingly, this application stands disposed of.

JUDGE

Comparing Assistant