

Court No. - 21

Case :- WRIT - C No. - 41500 of 2023

Petitioner :- Ajay Kumar Walia

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Kumar Ankit Srivastava

Counsel for Respondent :- C.S.C., Vivek Mishra

Hon'ble Manoj Kumar Gupta, Acting Chief Justice

Hon'ble Kshitij Shailendra, J.

1. The instant petition has been filed challenging the order dated 03.11.2023 passed by the Executive Engineer, Nagar Nigam, Saharanpur informing the petitioner that his contract for execution of certain civil works has been cancelled in pursuance of an order dated 02.11.2023 issued by the Commissioner, Nagar Nigam and security amount has been forfeited and he has also been debarred for one year.

2. Learned counsel for the Nagar Nigam points out that under the contract, there is an Arbitration Clause and it is open for the petitioner to avail the said remedy. It is urged that the instant petition is not maintainable in view of the Arbitration Clause.

3. It is not disputed that under Clause 23, it is open for the parties to get all questions, dispute or differences arising under or out of or in connection with the contract to be settled through mutual discussion and consultations. In case, there is no resolution, the dispute would be referred to the sole Arbitrator by either party. The Arbitrator would be nominated by the Chief Executive Officer, Saharanpur Smart City Limited and the arbitration proceedings have to be conducted as per provisions of The Arbitration And Conciliation Act, 1996.

4. Counsel for the petitioner submitted that the contract has been cancelled on the ground that the petitioner could not execute it within specified time frame. He submits that during the period of contract, there was heavy rainfall on account of which, the contract could not be executed within time frame.

5. In our opinion, the decision on the above issue requires leading of evidence and its appreciation. The petitioner has efficacious remedy of seeking arbitration in terms of Clause 23 of the

Agreement, therefore, we decline to examine the challenge and leave it open for the petitioner to avail the remedy of arbitration or such other remedy as may be advised.

6. The petition stands **disposed of**.

Order Date :- 14.12.2023

Jyotsana

(Kshitij Shailendra, J.) (Manoj Kumar Gupta, A.C.J.)