

**HIGH COURT OF TRIPURA
AGARTALA**

Arb.P. No.11 of 2023

M/S Chita Ranjan Saha, Contractor

..... Petitioner(s);

Versus

The State of Tripura & others

.....Respondent(s)

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate,
Mr. H. Sarkar, Advocate.

For Respondent(s) : Mr. D. Sarma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

09/02/2024

Heard Mr. H. Sarkar, learned counsel for the petitioner and Mr. D. Sarma, learned Additional Government Advocate for the respondents-State.

2. Petitioner approached this Court for appointment of an independent arbitrator invoking Clause 22.2 of the agreement [Annexure-2] between the parties under Section 11(6)(a) read with Section 12 of the Arbitration and Conciliation Act, 1996 as amended.

3. The case of the petitioner is captured in the order dated 14.09.2023 wherein notices were issued upon the respondents to file reply. It is extracted hereunder:

“Petitioner seeks appointment of an Independent Arbitrator by invoking Clause 22.2 of the agreement [Annexure-2]. The work order is dated 28.12.2015 [Annexure-1] under Section 11(6)(a) read with Section-12 of the Arbitration & Conciliation Act, 1996 as amended. The work relates to improvement and up-gradation of the approach road from Fire Brigade Chowmuhani to Agartala Land Custom Station by providing RCC covered drain/ covering of existing drain to the RCC Box Cell along Akhaura Road. Petitioner could not complete the work by the stipulated date that is on or before 11.01.2017 due to delay in handing over the site. He claims admissible dues and loss of profit etc. He has approached the respondent No.3-the Executive Engineer, P.W.D. (R&B), Agartala Division No.1, Netaji Choumohani, PWD Complex, Agartala vide letter dated 20.03.2023 [Annexure-6]. Thereafter, he has approached the Superintending Engineer, 2nd Circle, PWD(R&B), Netaji Choumohani, PWD Complex, Agartala through letter dated 17.04.2023 [Annexure-7] and finally has approached the respondent No.2-the Chief Engineer, PWD (NH), P.N. Complex, Kunjaban, Agartala, vide letter dated 06.05.2023 [Annexure-8] for appointment of an Independent Arbitrator under Section 11(6)(a) read with Section-12 of the Arbitration & Conciliation

Act, 1996 as amended. It is submitted that the Chief Engineer is disentitled to act as an Independent Arbitrator under Section 12 of the Act of 1996.

Learned counsel for the respondent-State is allowed 4(four) weeks time to file counter-affidavit positively.

Learned counsel for the petitioner shall file rejoinder-affidavit within a period of 2(two) weeks thereafter.

Accordingly, list the matter on **22.11.2023.**”

4. Thereafter Counter Affidavit was filed by the respondents contesting the plea. By order dated 22.01.2024, this Court, after hearing the parties and upon consideration of their rival case, proposed to appoint Sri Kripankar Chakraborty, TJS Grade-I Officer (Retd.), resident of Joynagar, Middle Road, Agartala, West Tripura as an arbitrator to adjudicate the dispute between the parties. The proposed arbitrator was asked to submit his consent and declaration in terms of Section 12(1)(b) read with Schedule VI of the Arbitration and Conciliation Act, 1996 as amended. The relevant part of the order dated 22.01.2024 is also extracted hereunder:

“Counter Affidavit has been filed by the respondents contesting the plea. The execution of the agreement in favour of the petitioner is not in dispute. Averments made in so many paragraphs of the Counter Affidavit especially from paragraph 10 to 15 deal with the merits of the dispute. Respondent-department contends that clear and undisputed site of work was handed over to the petitioner on 04.01.2016. Therefore statement to the contrary is not correct. Petitioner had been asked to execute the construction work of RCC covered drain over Akhaura khal in lieu of improvement of road from Fire Brigade Chowmuhani to ICP. He executed work of about 30 meters of RCC covered drain as well as some road maintenance work. The respondents admit that there were certain hindrances like shifting of electric pole, non-removal of unauthorized shop, re-alignment of DWS pipeline, non-shifting of TSECL and TNGCL gas line, etc. As the work was not completed, the department had not taken steps to close the agreement. Petitioner however, after lapse of two years requested for closure of the agreement, though he did not submit any claim that due to change of site of work, he could not complete the work. As such, his claim cannot be considered owing to non-submission of claim during pendency of the work. Respondents also state that a reconciliation meeting was held on 27.04.2023 in the chamber of the Superintending Engineering as a part of the in house mechanism where the department agreed only with respect of claim No.I of payment for the works already executed and yet to be paid. All other claims vide Sl. No.(ii) to (ix) were not within the scope of the agreement and therefore could not be entertained. Based on these averments, learned counsel for the respondents has opposed the plea for appointment of an independent arbitrator to adjudicate the dispute between the parties.

I have considered the submission of learned counsel for the parties and taken note of the pleadings and the terms of the agreement placed from record. The execution of the agreement is not in dispute. The tendered work could not be executed within the time period on which rival parties are making disputed assertions. Clause 22.2 of the agreement provides for appointment of an independent Arbitrator subject to the agency approaching the concerned Executive Engineer, Superintending Engineer and Chief Engineer on non-redressal of his grievances. It appears that the dispute subsists. The merits of the

dispute or any other issue touching the execution of the work cannot be gone into by this Court in exercise of the powers under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996. As such, this Court is of the view that the instant dispute is amenable to arbitration proceedings as agreed between the parties under the agreement in question.

Therefore, this Court proposes to appoint Sri Kripankar Chakraborty, TJS Grade-I Officer (Retd.), resident of Joynagar, Middle Road, Agartala, West Tripura as an Arbitrator to adjudicate the dispute between the parties. The proposed arbitrator is required to submit his consent and declaration in terms of the provisions of Section 12(1)(b) read with Schedule VI of the Arbitration and Conciliation Act, 1996 as amended.

Registry is directed to communicate this order to the proposed arbitrator.

The matter be listed on **09.02.2024** along with his declaration.”

5. The proposed arbitrator has submitted his consent along with declaration which is at Flag-A.

6. Learned counsel for the parties, therefore, submit that this Court may appoint him as an arbitrator to adjudicate the dispute between the parties.

7. In view of the consent and declaration submitted by the proposed Arbitrator, I, hereby, appoint Sri Kripankar Chakraborty, TJS Grade-I Officer (Retd.), resident of Joynagar, Middle Road, Agartala, West Tripura as an arbitrator to adjudicate the dispute between the parties. Learned Arbitrator is requested to take into consideration the Schedule of Model Fees prescribed under Schedule IV and the timeline prescribed under Section 29-A of the Arbitration and Conciliation Act, 1996 as amended.

8. Registry is directed to communicate the instant order along with a copy of the entire pleadings of the instant application to the learned Arbitrator forthwith.

9. The instant petition stands disposed of.

(APARESH KUMAR SINGH), CJ