

**HIGH COURT OF TRIPURA
AGARTALA**

Arb. P. No. 12 of 2023

Sri Arun Kumar Dey

..... Petitioner(s).

Versus

The State of Tripura and another

..... Respondent(s).

For Petitioner(s) : Mr. A. Sengupta, Advocate.

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

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

06/03/2024

Heard Mr. A. Sengupta, learned counsel for the petitioner and Mr. K. De, learned additional Government Advocate for the respondent-State.

[2] Petitioner seeks appointment of an Arbitrator under Clause 22.1 of the agreement dated 03.05.2021 for construction of "*Strengthening & improvement of riding quality of the road from Bishramganj H.Q. (NH-8) to Melaghar (Length=16.00 km) via Nalchar under Inter State Connectivity (ISC) in the State of Tripura under CRIF Scheme*".

[3] Upon hearing the learned counsel for the parties this Court proposed to appoint Hon'ble Mr. Justice Subhasis Talapatra, former Chief Justice of Orissa High Court and former Judge of this Court as an Arbitrator to decide the dispute between the parties by order dated 16.02.2024 which reads as under:

“Heard Mr. A. Sengupta, learned counsel for the petitioner and Mr. K. De, learned additional Government Advocate for the respondent-State.

[2] Petitioner seeks appointment of an arbitrator invoking Clause 22.1 of the agreement dated 03.05.2021 for construction of *"Strengthening & improvement of riding quality of the road from Bishramganj H.Q. (NH-8) to Melaghar (Length=16.00 km) via Nalchar under Inter State Connectivity (ISC) in the State of Tripura under CRIF Scheme"*. According to the petitioner, during execution of the work some disputes cropped up between the parties. The petitioner claimed maintenance bill, refund of EMD, loss of expected profit and expenses of overheads from the respondent No.1. Despite several demand letters, no response has been made. Petitioner has therefore approached this Court under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996 (as amended) for appointment of an independent and impartial arbitrator.

[3] Respondents have filed a counter-affidavit. Respondents do not dispute the execution of the agreement dated 03.05.2021 for an estimated value of Rs.12,90,79,605/-. The duration of work was 12 months. Date of commencement of work was 26.04.2021 whereas date completion of the work was 26.04.2022. There appears to be certain errors in paragraph-5 of their counter affidavit as to the stipulated date of completion of the work. Mr. K. Dey, learned additional Government Advocate, however, has referred to other paragraphs of the counter affidavit where the relevant details of the work and the correspondences between the parties have been referred to. As such, at paragraph-7 it has been stated that the work site was handed over to the agency by the concerned Assistant Engineer on 26.04.2021 and he was requested to start the work vide letter dated 24.08.2021. Statements by the petitioner as to the actual handing over of the site on 20.09.2021, have been refuted. Respondents have, however, alleged that the petitioner agency intentionally delayed to start the work on lame excuses. Several letters were written to the petitioner and a meeting was also held in the Office of the Chief Engineer, PWD(NH) on 30.11.2021 for early execution of the work. In that meeting petitioner had shown his inability to start the work due to his financial crisis though he had no pending payment to be released in this particular work. Further averments in the counter affidavit indicate that the petitioner was asked to repair certain potholes in certain length of the road, in respect of which he arbitrarily claimed Rs.11,75,234/- and did not turn up to sign measurement book. The correspondences between the parties are enclosed at Annexure-R/5 to R/8. As per the respondents, they have rightly invoked clause 54 of the agreement because the petitioner did not show positive attitude to start the work even after elapse of 9(nine) months after issuing of work order. The earnest money has been rightly forfeited.

[4] Mr. K. De, learned additional Government Advocate submits that the contents of the counter affidavit show that the petitioner was responsible for non-execution of the work in the stipulated period. Therefore, the termination is justified.

[5] On a conspectus of the facts drawn from the record and the stand of the respondents, it is evident that there exists a dispute between the parties. Merits whereof are not to be adjudged at the stage of Section 11(6)(a) of the Arbitration and Conciliation Act, 1996 (as amended) since Clause 22 of the agreement provides a mechanism for

settlement of dispute through arbitration. The contention of the petitioner that he had approached the Superintending Engineer and Chief Engineer for referring the dispute to an impartial arbitrator is not specifically disputed.

[6] As such, this court is of the view that the petitioner has made out a case for appointment of an independent arbitrator. I, therefore, propose to appoint Hon'ble Mr. Justice Subhasis Talapatra, former Chief Justice of Orissa High Court and former Judge of this Court as an Arbitrator to decide the dispute between the parties. The Registry is directed to seek consent of His Lordship and a declaration in terms of schedule-VI read with Section 12(1) of the Arbitration and Conciliation Act, 1996. The instant order be communicated to the proposed Arbitrator by the Registry.

Accordingly, list the matter on **07.03.2024** along with the consent and declaration on the part of the proposed Arbitrator."

[4] The proposed Arbitrator Hon'ble Mr. Justice Subhasis Talapatra, former Chief Justice of Orissa High Court and former Judge of this Court has conveyed his consent and also submitted a declaration in terms of Schedule-VI read with Section 12(1) of the Arbitration and Conciliation Act, 1996.

[5] Learned counsel for the parties, therefore, submit that the proposed Arbitrator may be appointed to adjudicate the dispute between the parties.

[6] Accordingly, I hereby appoint Hon'ble Mr. Justice Subhasis Talapatra, former Chief Justice of Orissa High Court and former Judge of this Court, as an Arbitrator to decide 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 for conclusion of proceedings prescribed under Section 29-A of the Arbitration and Conciliation Act of 1996 as amended.

[7] Registry is directed to communicate the instant order along with a copy of the entire pleadings of the instant petition to the learned Arbitrator without any delay.

[8] The instant petition stands disposed of.

(APARESH KUMAR SINGH), CJ

