

GAHC040016122024



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

Case No. : Arb.P./9/2024

SRK -TK (JV)

a joint venture formed between M/s SRK Construction and Projects Private Limited 6-3-665, Flat No. 501, Lumbini Enclave, Panjagutta, Hyderabad 500082 and TK Engineering Consortium Pvt Ltd Model village Naharlagun, AP 791110 registered office at Model Village, PO and PS Naharlagun, Papumpare District, Arunachal Pradesh and represented by Shri Tara Tech, Son of Late Tech Kerap and working as Director TK Engineering Consortium Pvt Ltd Model village Naharlagun, PO and PS Naharlagun, Papum Pare District, Arunachal Pradesh. 791110

VERSUS

The Chief Engineer (Highways) and 3 Ors
PWD, Arunachal Pradesh, Itanagar 791111

2:The Chief Engineer
Zone V
Age: 0
Occupation :
Ministry of Road Transport and Highways
1 Parliament Street
Transport Bhawan
New Delhi 110001

3:The Regional Officer
Age: 0
Occupation :
MoRT and H Itanagar
House No. 522
Milan Nagar (Gutlung) Tezpur
Assam 784001

4:The Executive Engineer
Age: 0

Occupation :
Naharlagun HW Division
PWD
Arunachal Pradesh
Nirjuli 79111

Advocate for the Petitioner : J Likha, B Pathak

Advocate for the Respondent : Rintu Saikia, SC(Highway),DSGI,Marto Kato

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 19.12.2024

Heard Mr B. Pathak, learned counsel for the petitioner. Also heard Mr. R. Saikai, learned Standing Counsel, Highway, for the respondent Nos. 1 & 4 and Mr M. Kato, learned DSGI, Union of India, for the respondent Nos. 2 & 3.

2. This petition is filed under Section 29-A(4)&(5) of the Arbitration and Conciliation Act, 1996, praying for extension of mandate of the appointed Arbitral Tribunal, comprising of Justice V. N. Khare, Former Chief Justice of India, Justice B. K. Sarma, Former Judge, Gauhati High Court and Mr. Shambhu Singh, Former AS & FA, MoRTH, in respect of the Arbitration Case No. 03/2022.

3. The brief facts of the case are that the petitioner had entered into a contract with the respondents for construction of Double laning of Papu-Yupia-Hoj-Potin road from Km 0.00 to 53.00 in the State of Arunachal Pradesh under SARDP-NE (Package-C: Hoj-Potin section from Km 32.00 to 53.00), vide agreement dated 03.09.2010. Other 2(two) contracts forming part of the same stretch of highway was also carried out by the petitioner and it is contended that the petitioner completed the contract work but there was a failure on part of the respondents to make the corresponding

contractual payment on various grounds.

4. As per the consensus, the Hon'ble Justice V. N. Khare, Former Chief Justice of India, Hon'ble Justice B. K. Sarma, Former Judge, Gauhati High Court and Mr. Shambhu Singh, Former AS & FA, MoRTH, have been appointed in terms of the contract agreement and the order of this Court vide dated 30.03.2022. The first sitting of the Arbitral Tribunal took place on 08.06.2022. Four disputes arising out of the 4(four) different contracts between the parties were registered and numbered as Arbitration Case No. 01/2022, 02/2022, 03/2022 & 04/2022.

5. Since the Arbitration proceedings could not be completed within a stipulated time limit of 12(Twelve) months, a consensus was placed before the Tribunal by all the parties and vide order dated 21.11.2023, the period for completion of proceedings was extended from 23.11.2023 to 23.05.2024, under Section 29-A(3) by the Arbitral Tribunal. Thereafter, when the mandate of the Tribunal was to be exhausted on 23.05.2024, an application was filed for extension of time being Arbitration Petition No. 03/2024, Arbitration Petition No. 04/2024, Arbitration Petition No. 05/2024 and Arbitration Petition No. 06/2024. This Court had extended the mandate of the Tribunal up to 23.11.2024, vide order dated 14.05.2024, in the above arbitration petition.

6. Mr. B. Pathak, learned counsel for the petitioner while narrating the stages of the proceedings, submits that the extended period of 6 (Six) months up to 23.11.2024, the proceedings could not be completed, although, evidence is complete and the cases are now in the stage of final hearing.

7. He submits that the proceedings have consumed time primarily due to the fact that voluminous documents are involved and also due to the fact that certain jurisdictional objections under Section 16 were initially required to be addressed and

decided by the Tribunal. The evidence stage of the matter also took time as 4 different cases were to be taken up while recording the evidence. Thereafter, an issue relating to fees payable to the arbitrators as per 4th Schedule was also required to be decided.

8. Mr. Pathak, learned counsel submits that the prolongation of the matter is also bonafide, due to the fact as many as 4 connected disputes are being adjudicated by the same Tribunal comprising the same arbitrators. The sittings of the Tribunal also had to be alternatively held at both Guwahati and New Delhi. He further submits that there has been continuous and bonafide effort on part of the parties and also on part of the Arbitral Tribunal to cause expeditious adjudication of the disputes raised, and the time consumed in between, is purely due to genuine reasons and the same was unavoidable. Therefore, he prays that further 6(six) months may be extended to complete the arbitral proceedings by the Arbitral Tribunal.

9. Mr. R. Saikia, learned Standing Counsel, Highway, for the respondent Nos. 1 & 4, has no objection for extension of further 6(six) months period.

10. Mr. M. Kato, learned DSGI, for the respondent Nos. 2 & 3, fairly submits that, although the respondents have filed the affidavit objecting the extension of time on the ground of fee structure exceeding the ceiling limited as provided under 4th Schedule of the Act, in the facts and circumstances, further extension of 6(six) months would be required as the issue of fee structure would be decided in appropriate stage of the proceedings or before the appropriate forum.

11. I have considered the submissions of the learned counsel for the parties and also perused the grounds.

12. As noted hereinabove, the petitioner has sought for extension of 6(six) months' time which has been allowed by this Court on 14.05.2024, extending the mandate of the Tribunal up to 23.11.2024, in the Arbitration Petition No. 03/2024, Arbitration Petition No. 04/2024, Arbitration Petition No. 05/2024 and 06/2024.

13. After the extension for further 6 (six) months by this Court, it is seen that the proceedings were conducted and further cross-examination of witnesses took place in the month of August, 2024, and after completion of cross-examination, the affidavit(s) were exchanged and same was taken on record by Arbitral Tribunal on 08.11.2024.

14. It is also noticed that the Arbitral Tribunal was also required to decide upon the extent of fees payable to the arbitrators, in view of the application filed by the respondents as in total fee payable to the Arbitral Tribunal cannot exceed the ceiling limit in terms of the 4th Schedule of the Arbitration and Conciliation Act, 1996 and the order passed on 18.11.2024, by the arbitrators.

15. Having considered the facts and circumstances as noted hereinabove, it appears that the proceedings have consumed time primarily due to the fact that voluminous documents are involved and also due to the fact that certain jurisdictional objections under Section 16 were initially required to be addressed and decided by the Tribunal. As reflected in the petition, the evidence stage of the cases also took time as 4 different cases were to be taken up. Therefore, I am of the considered view that the time consumed despite continuous and bonafide effort on part of the parties, appears to be genuine and unavoidable which is a sufficient ground for extension of mandate of the appointed Arbitral Tribunal in terms of the provisions of Section 29-A(4)&(5) of the Arbitration and Conciliation Act, 1996. Accordingly, the appointed Arbitral Tribunal, comprising of Justice V. N. Khare, Former Chief Justice of India, Justice B. K. Sarma, Former Judge, Gauhati High Court and Mr. Shambhu Singh, Former AS & FA, MoRTH,

in respect of the Arbitration Case No. 03/2022, is hereby extended for a period of 6(six) months with effect from 23.11.2024 up to 23.05.2025.

16. The Arbitration Petition stands allowed and disposed of in terms above.

JUDGE

Comparing Assistant