

GAHC010087702023



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

**Case No. : Arb.P./16/2023**

M/S MEGHALAYA ENGINEERS AND AGENCIES  
REPRESENTED BY ITS PROPRIETOR SRI SANJAY SHARMA, S/O LATE JAY  
PRAKASH SHARMA, C/O NEW J.B. COMPLEX (1ST FLOOR), FLAT NO. 103,  
J.P. AGARWAL ROAD, SANTIPUR, GUWAHATI-781009, DIST-KAMRUP (M),  
ASSAM

VERSUS

THE UNION OF INDIA AND 2 ORS.  
THROUGH THE SECRETARY, MINISTRY OF DEFENCE, NEW DELHI-110010.

2:THE GARRISON ENGINEER (I) (P)  
AIR FORCE  
TEZPUR.

3:THE CHIEF ENGINEER  
AIR FORCE  
ELEPHANT FALLS CAMP  
PO - NONGLYER  
SHILLONG-793009  
MEGHALAY

**Advocate for the Petitioner** : PETITIONER IN PERSON

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

**BEFORE**  
**HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

**ORDER**

**28.05.2024**

**1.** Petitioner in person is present, while Mr. A.K. Dutta, learned CGC appears

for the respondents.

**2.** By filing this petition under Section 11(6) read with Section 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Arbitration Act'), the petitioner prays for appointing an Arbitrator to adjudicate upon the dispute between the parties.

**3.** According to the petitioner, as many as 5 (five) Arbitrators have been appointed by the respondent no.3. However, the arbitration proceedings have not proceeded beyond filing of statement of the case by the petitioner. He submits that the five earlier Arbitrators having been transferred out from the office of the Chief Engineer, Air Force, Elephant Falls Camp, Shillong, the arbitration proceedings has come to a standstill, as they are no longer working as Arbitrators. The petitioner thus prays for appointment of an independent Arbitrator, as the earlier five Arbitrators have failed to discharge their functions in disposing of the arbitration case between the parties.

**4.** Mr. A.K. Dutta, learned CGC appearing for the respondents admits that the five Arbitrators appointed earlier, have not discharged their duties as Arbitrators fully, as they have been transferred out to other places. He submits that as there is an arbitration clause in the contract agreement executed between the parties, the respondents have no objection if an Arbitrator is appointed by this Court, in terms of Section 11(6) read with Section 15 of the Arbitration Act.

**5.** I have heard the learned counsels for the parties.

**6.** In the case of ***Datar Switchgears Lts. Vs. Tata Finance Ltd. &***

***Another***, reported in ***(2000) 8 SCC 151***, the Supreme Court has held that an aggrieved party can approach the Chief Justice of the High Court for appointment of an Arbitrator, if the Arbitrator fails to discharge his functions as an Arbitrator.

**7.** In view of the admitted position by the parties that the earlier five Arbitrators have failed to discharge their functions and there is no objection for appointment of a new Arbitrator, this Court appoints Sri Mrinmay Kumar Bhattacharjee, retired District Judge, Assam, as an Arbitrator, to decide the dispute between the parties. Sri Mrinmay Kumar Bhattacharjee is also in the re-constituted Panel of Arbitrators made by the Gauhati High Court, vide Notification No.29 dated 21.05.2024.

**8.** In view of the above, the parties shall appear before Sri Mrinmay Kumar Bhattacharjee within a period of 3 (three) weeks from today and the parties shall thereafter satisfy themselves with regard to whether the Arbitrator falls under any of the categories specified in the 7<sup>th</sup> Schedule of the Arbitration Act in terms of Section 12(5) of the Arbitration Act.

**9.** The Arbitration petition is accordingly disposed of.

**JUDGE**

**Comparing Assistant**