

GAHC010200092023



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

Case No. : Arb.P./32/2023

BASANTA KUMAR GOGOI
S/O- LATE CHANDRA GOGOI, R/O- SONAIGHULI, KALAPAHAR,
GUWAHATI, DIST. KAMRUP(M), ASSAM

VERSUS

JITU MONI MEDHI
S/O- LATE DHANI RAM MEDHI, R/O- HOUSE NO. 57, SAPTA SWAHID PATH,
SARUMOTORIA, DISPUR, GUWAHATI-06, DIST. KAMRUP(M), ASSAM

Advocate for the Petitioner : MR R SENSUA, G KAUSHIK

Advocate for the Respondent : DR P C MAZUMDAR, MR R KASHYAP, MR T MAZUMDAR

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

20.09.2024

Heard Mr. G. Kaushik, learned counsel for the petitioner. Also heard Mr. T. Mazumder, learned counsel for the respondent.

2] This application is filed by the petitioner Shri Basanta Kumar Gogoi under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying for direction

to appoint an arbitrator in terms of the agreement executed between the petitioner and the respondent dated 04.06.2018.

3] Learned counsel for the petitioner submits that the respondent was running a Bharat Gas Distribution for supply of LPG Cylinders. Because of his inability to effectively run the distributorship, the respondent approached the petitioner to ensure that the distributorship runs efficiently and accordingly, offered a proposal to the petitioner to operate/run/function the day to day business of the LPG distributorship at Dhirenpara, Guwahati in return of monetary contribution to the respondent. The petitioner agreed to the proposal and the agreement dated 04.06.2018 was executed by and between the parties. In the said agreement at Clause-22 it is provided that any dispute, controversy, claim or breach arising out of or in relation to this agreement shall be referred to Arbitrator as per the provisions of the Act. The place of Arbitration shall be Guwahati and the language of the arbitration shall be in English.

4] Pursuant to the execution of the agreement dated 04.06.2018, the petitioner took over the day to day execution of the business of the LPG Cylinders distributorship of the respondent. Subsequently, disputes arose between the parties. It is alleged by the petitioner that the respondent had taken over the distributorship in contravention of the agreement executed by dispossessing the petitioner and further declined to complete the monetary consideration which was earlier agreed upon by virtue of the agreement dated 04.06.2018. Being aggrieved, the petitioner by communication dated 10.03.2023 to the respondent demanded for return of the amount invested by the petitioner to the tune of Rs.1,31,18,605.46/- (Rupees one crore thirty one lakhs eighteen thousand six hundred five point four six only) within 15 days. Since no response was received from the respondent, the petitioner issued

notice dated 03.05.2023 under Section 11 of the Conciliation and Arbitration Act, 1996 calling upon the respondent to appoint an Arbitrator within a period of 30 days from the date of receipt of the notice. The notice was sent by registered post on the same date. As per the tracking report, the letter was shown to be delivered and received by the respondent on 06.05.2023. In spite of the notice being issued, the respondent did not appoint any Arbitrator and being aggrieved, the present petition has been filed.

5] Learned counsel for the respondent, on the other hand, has filed an objection opposing the prayers of the petitioner. He submits that by virtue of the agreement executed between the respondent and Bharat Petroleum Corporation Limited (BPCL) as per Clause 21, the distributor shall not sell, assign, mortgage or part with or otherwise transfer his interest of the distributorship or the right, interest or benefit conferred on him by the agreement executed by and between the respondent and the BPCL authority. He further submits that the BPCL authorities are necessary party and are required to be arrayed as party respondents in the petition.

6] Learned counsel for the parties have been heard and the pleadings on records have been carefully perused.

7] It is seen that as per the agreement dated 04.06.2018 executed to by the parties in the said agreement, it was agreed that the petitioner shall operate/run/function the day to day business of the LPG distributorship at Dhirenpara, Guwahati under the name and style of *Pratima Bharatgas Agency* which belonged to the respondent. In terms of the agreement, the following were agreed upon:

“1. That the total consideration for taking over and running the

LPG Distributorship business of the 1st party situated at Dhirenpara, Guwahati in the name and style of M/S Pratime Bharatgas Agency by the 2nd party is fixed at Rs.1,65,00,000/- (Rupees one crore sixty five laksh) only. The second party has paid an amount of Rs.10,00,000/- (Rupees ten lakhs) today.

2. That out of the aforesaid consideration of Rs.1,65,00,000/- (Rupees one crore sixty five laksh) only 2nd party has already paid an amount of Rs.41,40,000/- (Rupees forty one lakhs fourty thousand) only to the 1st party as per their earlier agreement dated 10.08.2016.

a) That the second party will pay an amount of Rs.10,00,000/- (Rupees ten lakhs) to the first party by 31st July, 2018.

b) That the remaining balance of Rs.1,03,60,000/- (Rupees one crore three lakhs sixty thousand) only will be paid by the 2nd party to the 1st party within December, 2021.

c) The remaining balance of Rs.1,03,60,000/- (rupees one crore three lakhs sixth thousand) will be paid to the first party within December, 202. The remaining balance of Rs.1,03,60,000/- (Rupees one crore three lakhs sixty thousand) will be paid to the first party within December, 2021 by installment of at list minimum Rs.2,00,000/- (Rupees two lakhs) per month starting from August, 2018 till completion of the due amount i.e. Rs.1,03,60,000/- (Rupees one crore four lakhs sixth thousand)."

8] The agreement also contains the arbitration clause being Clause 22 which

reads as under:

“22. Any disputes, controversy, claim or breach arising out of or in relation to this agreement shall be referred to Arbitration as per provisions of Arbitration Act. The place of Arbitration shall be Guwahati in the language of Arbitration shall be in English. The Arbitrator will be a person of choice of both the parties. Award of the Tribunal shall be final and binding on the parties.”

9] Although an objection has been filed by the respondents, however, the existence of the agreement executed by and between the petitioner and the respondent on 04.06.2018 has not been disputed or denied by the respondent. It is also not disputed by the respondent that the notice required under Section 11 of the statute was served on the respondent and he failed to agree for appointment of the sole Arbitrator as per the Clause-22 of the said agreement.

10] During the course of hearing the learned counsel for the respondent does not dispute the contention raised by the petitioner nor does he dispute the fact that no attempt was made to appoint the Arbitrator in terms of the Clause-24. A perusal of the pleadings reveal that disputes have arisen between the parties with regard to the financial arrangements between them in terms of the agreement dated 04.06.2018 executed by and between the parties.

11] Under such circumstances, since the respondent failed to agree for the appointment of an arbitrator, this Court under exercise of Section 11(6) of the Arbitration and Conciliation Act, 1996 is now required to appoint a sole Arbitrator in terms of the agreement dated 04.06.2018. Accordingly, Hon'ble Mr. Justice Dinesh Maheswari, former judge of Hon'ble Supreme Court is appointed to act as an Arbitrator in terms of the Clause-22 of the agreement dated 04.06.2018 to resolve the dispute between the parties subject to absence of any

impediment as mentioned under Section 12 (5) of the Arbitration and Conciliation Act.

If the proposed arbitrator is not able to take up the matter for any reasons, the parties will approach this Court by filing appropriate application.

12] The arbitration petition stands allowed and disposed of in terms of the above order.

13] Parties shall appear before the Arbitrator [Hon'ble Mr. Justice Dinesh Maheswari, former judge of Hon'ble Supreme Court within 3 (three) weeks from the date of receipt of the certified copy of this order.

14] The parties will place a copy of this order before the learned Arbitrator appointed by the Court today.

JUDGE

Comparing Assistant