

GAHC010204402023



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

Case No. : Arb.P./37/2023

PURBANCHAL BUILDTECH PVT. LIMITED AND ANOTHER
A PRIVATE LIMITED COMPANY REGISTERED UNDER THE
COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT HOUSE NO. 2, SEWALI PATH,
F.A. AHMED NAGAR, SIXMILE, GUWAHATI, KAMRUP(M), ASSAM,
PIN- 781022
BEING REPRESENTED BY ITS DIRECTOR SRI BHASKAR GOSWAMI,
AGED ABOUT 42 YEARS, S/O- SRI AMBIKA PRASAD GOSWAMI,
R/O- VILL- BARGAON, P.O.- BIHDIA, P.S.- BAIHATA CHARIALI,
DIST.- KAMRUP(R), ASSAM.

2: MD. MATLEBUDDIN AHMED
S/O- MD. GIASUDDIN AHMED
R/O- HOUSE NO. 2 SEWALI PATH
F.A. AHMED NAGAR SIX MILE
GUWAHATI- 781022 P.S.- DISPUR
DISTRICT- KAMRUP(M)
ASSAM

VERSUS

STATE OF ASSAM AND 4 OTHERS
REPRESENTED BY COMMISSIONER AND SPECIAL SECRETARY,
P.W.(N.H WORKS AND BUILDING) DEPARTMENT, ASSAM
SECRETARIATE DISPUR GUWAHATI 781006

2:CHIEF ENGINEER
P.W.D.(N.H. WORKS) DEPARTMENT
CHANDMARI
GUWAHATI- 781003.

3:SUPERINTENDENT ENGINEER
NALBARI N.H. CIRCLE

P.W.(N.H. WORKS) DEPARTMENT
NALBARI- 781335.

4:EXECUTIVE ENGINEER
RANGIA N.H. DIVISION
P.W.(N.H. WORKS) DEPARTMENT
RANGIA- 781354.

5:THE AUTHORITY ENGINEER CUM ASSTT. EXECUTIVE
ENGINEER
PATHSALA
N.H. SUB-DIVISION
P.W.(N.H. WORKS) DEPARTMENT
PATHSALA- 781325 BARPETA ASSAM

Advocate for the Petitioner : MR. S P CHOUDHURY

Advocate for the Respondent : SC, PWD

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
ORDER

Date : 13.03.2024

Heard Mr. S. P. Choudhury, learned counsel for the petitioner No. 1 and Mr. D. Nath, learned counsel for the State respondents.

2. The instant petition is for appointment of an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act').

3. The petitioner No. 1 is a Private Limited Company registered under the Companies Act, 1956 and is represented by its Director Sri Bhaskar Goswami. The petitioner No. 2 is the Managing Director of petitioner No. 1, as reflected in the affidavit-in-reply dated 17.03.2024, which has however mistakenly typed as affidavit-in-opposition.

4. The petitioners' case is that the petitioner had been awarded the contract for execution of periodical renewal from km0.00 to km.29.200 of NH-127A under Rangia NH Division, Rangia in the State of Assam for the year 2021-22 (29.20km). Job No. TA/127A/AS/2021-22/262.

5. The petitioners prayed for release of their final bill after completion of the contract work, as well as for issuance of completion certificate and Forest Royalty. However, the respondent authorities raised objection, with regard to the work of the petitioners, without issuing completion certificate. As a dispute arose between the parties, the petitioners, vide letter dated 27.07.2023, requested the respondents to resolve the disputes through arbitration, in terms of Clause 26.4 of the contract agreement. As no attempt was made by the respondent authorities to resolve the issue raised by the petitioners through arbitration, the present case has been filed for appointment of an Arbitrator under Section 11(6) of the Act.

6. Learned counsel for the petitioners submits that the grievance of the petitioners, as reflected in letter No. PBPL/20/24/225 dated 15.07.2023, is that while the completion certificate issued by the respondent shows that work had been completed on 18.05.2023, the work had actually been completed on 30.04.2023. The second dispute is with regard to the refund of Forest Royalty, wherein the respondents have deducted forest royalty from the petitioners running bill @ 3%, while the correct deduction that was to be made was @ 2%. The petitioners' counsel thus submits that these two issues would have to be

decided by an Arbitrator.

7. Mr. D. Nath, learned counsel for the State respondents submits that the Arbitrator has no role to play in the present case, inasmuch as, there is no dispute. He submits that with regard to the date of the issue of the completion certificate, there is no consequential effect to the petitioners' claim, if the date of completion is 18.05.2023 or 30.04.2023. With regard to whether the deduction of forest royalty would be @ 3% or 2%, the same has been clarified, vide letter No. EE/RAN/2022/T/632/1005 dated 10.07.2023, issued by the Executive Engineer, PWD, Rangia Division, wherein Forest Royalty to be adjusted by deducting 2% as per CE's letter dated 15.02.2023. He further submits that even though the affidavit filed by the respondents shows that the forest royalty was to be deducted @ 3%, the forest royalty would have to be deducted @ 2%.

8. I have heard the learned counsels for the parties.

9. The Supreme Court in the case of ***NTPC Limited vs. SPML Infra Limited***, reported in ***(2023) 9 SCC 385***, has held that the Pre-referral jurisdiction of the Court under Section 11(6) of the Act shows that the same is very narrow and inheres two enquiries. The primary inquiry is about the existence and the validity of an arbitration agreement, which also includes an inquiry, as to the parties to the agreement and the applicant's privity to the said agreement. These are matters, which require a thorough examination by the referral Court. The secondary inquiry that may arise at the reference stage itself, is with respect to the

non-arbitrability of the dispute, which should appear on a prima facie examination. As a general rule and a principle, the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. As an exception to the Rule, and rarely as a demurrer, the referral Court may reject claims, which are manifestly and ex-facie non-arbitrable. The standard of scrutiny to examine the non-arbitrability of a claim is only prima facie. Referral Courts must not undertake a full review of the contested facts; they must only be confined to a primary first review and let facts speak for themselves. This also requires the Courts to examine whether the assertion on arbitrability is bona fide or not. The prima facie scrutiny of the facts must lead to a clear conclusion that there is not even a vestige of doubt that the claim is non-arbitrable. On the other hand, even if there is the slightest doubt, the Rule is to refer the dispute to arbitration.

10. In the present case, the affidavit submitted by the State respondents is to the effect that forest royalty has to be deducted @ 3%. Though the learned counsel for the State respondents has tried to allay the fears of the petitioners that the forest royalty would have to be deducted @ 2%, the fact remains that the affidavit filed by the respondents has been made under oath and as such, in the view of this Court, there is a doubt, with regard to whether the submission of the learned Counsel for the respondents would prevail over the stand of the respondents in their affidavit. Further, the finality on the issue can be decided by an Arbitrator. Thus, in keeping with the law laid down by the Supreme Court in the case of ***NTPC Limited (supra)***, this Court is of

the view that the matter referred to is arbitrable. Accordingly, Sri Ajoy Chandra Bordoloi, Retd. Commissioner & Special Secretary, PWD, Government of Assam, who is in the Panel of Arbitrators, as per the Notification No. 99 issued by this Court, is appointed as an Arbitrator to decide the dispute between the parties.

11. The neutrality of the Arbitrator, so appointed, shall be ascertained by the parties, in terms of Section 12(1) of the Act. The parties shall appear before the concerned Arbitrator, within a period of 1 month from today.

12. The arbitration petition is accordingly disposed of.

JUDGE

Comparing Assistant