

GAHC010220532019



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

Case No. : WP(C)/6807/2019

M/S. NEHERBS AND ANR.
A REGISTERED PARTNERSHIP FIRM HAVING ITS OFFICE AND PRINCIPAL
PLACE OF BUSINESS AT H.NO. 111, R.G.BARUAH ROAD, GANESHGURI,
GUWAHATI-75 AND REP. BY ITS PARTNER SHRI DIGANTA KUMAR
ADHIKARI

2: DIGANTA ADHIKARI
S/O LT. BHAGAWAN CH. ADHIKARI
R/O OF NAYANPUR ROAD
KALYANPUR
GANESGURI-78100

VERSUS

UNION OF INDIA AND 2 ORS.
REP. BY ITS GENERAL MANAGER,ENGINEERING DEPTT. N.F.RAILWAY,
MALIGAON, GUWAHATI-11

2:THE CHIEF MEDICAL DIRECTOR
HQ OFFICE COMPLEX
MALIGAON
GUWAHATI-11

3:THE MEDICAL DIRECTOR
CENTRAL HOSPITAL
N.F.RAILWAY MALIGAON
GUWAHATI-1

Advocate for the Petitioner : MR. S P ROY, MR K F VIZO,MS. N RAI

Advocate for the Respondent : SC, NF RLY,

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 08.08.2024

1. Heard Mr. S. P. Roy, learned counsel for the petitioner and Mr. B. Sarma, learned counsel for the N.F. Railway.
2. The petitioner has prayed for refund of the security deposit, performance guarantee and the vehicles including machineries, which was utilized for performance of a contract, pursuant to a tender notice dated 20.01.2023 issued by the Northeast Frontier Railway for garbage free maintenance of the Railway colony in Maligaon area. The petitioner had been awarded the contract. However, the same was terminated, vide letter dated 10.03.2017. The petitioner was also debarred from participating in the tender for executing the balance work and the security deposit was forfeited and performance guarantee was encashed.
3. The petitioner's counsel submits that he would like to make a challenge to the termination of the contract and as such, he may be allowed to file an application for amendment of the writ petition.
4. Mr. B. Sarma, learned Standing Counsel, N.F. Railway submits that the contract in question was terminated by following the due process of law, after being given due notices. He also submits that as there is an alternative dispute mechanism by way of arbitration, in terms of Clause 15 of the Contract Agreement, the present writ petition should be dismissed and the petitioner should avail of the arbitration clause. He further submits that there are disputed

questions of facts involved and as such, this Court would not be able to decide the issues pertaining to disputed questions of facts.

5. The respondent's counsel submits that the termination of the contract has not been put to challenge by the petitioner in the present writ petition.

6. On considering the submissions of the parties, this Court is of the view that as there is an alternative dispute mechanism for resolving the dispute between the parties, the petitioner should avail the alternative remedy available.

7. Clause 15 of the contract agreement executed between the parties states a follows:-

“15. ARBITRATION AND SETTLEMENT OF DISPUTES:

15.1 Arbitration and settlement of disputes shall be governed as per clause 63, 64 of General Condition of Contract, N.F. Railway 2013 edition with up to date corrections.

15.2 Following clauses shall be added to the existing clauses under settlement of disputes vide General Conditions of Contract N.F. Railway 2013 edition.

15.2.1 In the event of any dispute or difference between the parties hereto as to the construction or operation of this construction the respective rights and liabilities of the parties on any matter in question dispute or difference on any account, or as to the withholding by the railway of any certificate to which the contractor may claim to be entitled to, or if the railway fails to make decision within a reasonable time, then any in any such case, except the "Excepted matter" reference to in clauses 63 of General Condition of Contract, 2013 the contractor after 120 days but within 180 days of his presenting his final claim on disputed matter, shall demand in writing that dispute or difference be referred to arbitration

15.2.2 The demand for arbitration shall specify the matters, which are in question dispute or difference. Only such disputes or difference(s) in respect of which the demand has been made shall be referred to arbitration and other matters shall not be included in the reference.

15.2.3 If the contractor(s) does/do not prefer his / their specific and final claims in writing within a period of 120 days receiving the information from the Govt. that the final bill is ready for payment he/they will be deemed to have waived his/their claims and the railway shall be discharged and released of all liabilities under the contract in respect of these claims.

15.2.4 The contractor shall not be entitled to make any claim out of this contract nor shall the railway entertain or consider any such claim, if made by the contractor, after he shall have signed a "No Claim" Certificate in favour of the Railway, in such form as shall be required by the Railway, after the works are finally measured up. The contractor shall be debarred from disputing the correctness of the items covered by the "No Claim Certificate" or demanding a reference to arbitration in respect thereof."

8. In view of the alternative dispute mechanism, the petitioner should avail of the arbitration clause, to resolve any of his grievances including the termination of his contract.

9. In view of the reasons stated above, the writ petition stands dismissed, with liberty to the petitioner to avail of the arbitration clause, if so advised.

JUDGE

Comparing Assistant