

GAHC010268542022



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

Case No. : Arb.P./1/2023

M/S B N SHARMA
REPRESENTED BY ITS PARTNER SHRI DEEPAK SHARMA AGED 50 YEARS
A PARTNERSHIP FIRM REGISTERED UNDER THE INDIAN PARTNERSHIPS
ACT, 1932, HAVING ITS PRINCIPAL PLACE OF BUSINESS AT SADGURU
BHAWAN, 77, A.K. AZAD ROAD, REHABARI, GUWAHATI-781008

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SPECIAL SECRETARY TO
THE GOVERNMENT OF ASSAM, PWD, DISPUR, GUWAHATI-781006

2:THE CHIEF ENGINEER
PWD
ARIASP AND RIDF
ASSAM
CHANDMARI
GUWAHATI-3

3:THE EXECUTIVE ENGINEER
PWD
GUWAHATI
AACPL
GUWAHATI-

Advocate for the Petitioner : MR. R HUSSAIN

Advocate for the Respondent : SC, PWD

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

05.02.2024

1. Heard Mr. R. Hussain, learned counsel for the petitioner and Mr. D. Nath, learned Standing Counsel, PWD appearing for all the respondents.
2. This petition under Section 11[6] of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '1996 Act') is for appointment of an Arbitrator, to decide the dispute between the parties in terms of Clause 25.3 (a) (f) of the Contract Agreement made between the parties on 28.02.2013.
3. Pursuant to a Tender Notice dated 01.09.2013, a Contract Agreement dated 28.02.2013 was executed between the parties for the work "Upgradation of Mukalmua Addattary via Narayanpur Road in Nalbari District (package no. AF-NL-7)" @ a Bid Price of Rs.2,09,30,683.00/- (Rupees Two Hundred Nine Lakhs Thirty Thousand Six Hundred and Eighty Three only). As the Contract awarded to the petitioner had been terminated, the petitioner being aggrieved by the same has now prayed for invocation of the Arbitration Clause, to resolve the dispute between the parties.
4. Mr. D. Nath, learned Standing Counsel, PWD submits that he has got no objection to the prayer of the petitioner's counsel for invoking the Arbitration Clause in view of Para 15 of the affidavit-in-opposition, wherein it has been stated that the appointing authority does not have any reservation on appointment of a Sole Arbitrator.

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

6. Clause 25.3(a) & (f) of the Contract Agreement reads as under :-

“(a) In case of Dispute or difference arising between the Employer and a domestic contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The arbitral tribunal shall consist of 3 arbitrators one each to be appointed by the Employer and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties and shall act as Presiding arbitrator. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the President of the Institution of Engineers (India).

(f) Where the value of the contract is Rs.50 millions and below, the disputes or differences arising shall be referred to the Sole Arbitrator. The Sole Arbitrator should be appointed by agreement between the parties; failing such agreement, by the appointing authority, namely the President of the Institution of Engineers (India).”

7. The amended Section 12(1) of the 1996 Act provides for the disclosures that a would be/proposed arbitrator is to make, regarding any doubts that may arise in his selection as an independent/impartial Arbitrator. Section 12(1) is reproduced hereinbelow as follows-

“12. Grounds for challenge.- [(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,-

(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or

other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

Explanation 1.- The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

Explanation 2.- The disclosure shall be made by such person in the form specified in the Sixth Schedule.”

8. Thus, as per Section 12 of the 1996 Act and the law laid down by the Supreme Court in ***Perkins Eastman Architects DPC & Anr. Vs. HSCC (India) Ltd.***, reported in ***(2020) 20 SCC 760***, any person who falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an Arbitrator. Further, a person who is statutorily ineligible to be an Arbitrator cannot nominate a person as an Arbitrator.

9. Accordingly, the appointment of an Arbitrator in terms of Section 11 and the amended Section 12 of the 1996 Act would require an independent Arbitrator to be appointed.

10. The Notification No. 99 dated 04.08.2023 issued by the Registry of this Court shows that Hon'ble Mr. Justice C.R. Sarma, Former Judge of the Gauhati High Court is among the panel of Arbitrators, who can be appointed as an Arbitrator. As the parties do not have any objection to the Hon'ble Mr. Justice C.R. Sarma being appointed as the Arbitrator to decide the dispute between them, Hon'ble Mr. Justice C.R. Sarma is appointed as the Arbitrator in this case.

11. Consequently, the parties shall take steps, in terms of Section 12 of the 1996 Act, to ascertain whether there is any circumstance or fact regarding the inability of Hon'ble Mr. Justice C.R. Sarma (Retired) to act as an Arbitrator in terms of the amended Section 12 of the 1996 Act.

12. The arbitration petition is accordingly disposed off.

JUDGE

Comparing Assistant