

Sr. No.01
Regular List.

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
Arb P No.5/2023

GHULAM MOHI-UD-DIN MALIK(Senior ...Appellant(s)/Petitioner(s)
Citizen)

Through: Mr. Areeb Javed Kawoosa, Advocate

Vs.

UNION TERRITORY OF J AND K AND ...Respondent(s)
ORS. (TOURISM DEPARTMENT)

Through: Mr. Illyas Nazir Laway, GA

CORAM:
HON'BLE THE CHIEF JUSTICE

ORDER
22-02-2024

- 01.Heard Mr. Areeb Javed Kawoosa, learned counsel for the petitioner as also Mr. Illyas Nazir Laway, GA, appearing on behalf of the respondents.
- 02.In-spite of giving sufficient opportunities, the respondents have not filed their reply and neither has deposited the cost of Rs.2000/- (Rupees Two Thousand only) imposed earlier, which was required to be deposited in the Litigants Welfare Fund.
- 03.Under the circumstances, this Court proceeds to consider the matter on the basis of available documents without the affidavit filed by the respondents.
- 04.The present petition has been filed by the petitioner for appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 to settle the dispute which according to the petitioner has arisen between the contesting parties in connection with the execution of work of collection of entry fee of

Children's Park at Gulmarg which was allotted to the petitioner being the higher bidder.

05. According to the petitioner, the allotment was made in his favour on 11.07.2020 pursuant to the auction notice No.GDA/2019/450-54 dated 08-05-2019.

06. According to the petitioner, though the said allotment was made in his favour because of unprecedented curfew and communication ban due to abrogation of Article 370 of the Constitution of India in the UT, and subsequent Covid-19 pandemic, the petitioner could not undertake the aforesaid work as he was restrained from executing the work with effect from 5th August, 2019 to 15th June, 2021 and because of the said reason the petitioner could not deposit the bid amount for the said period as a result, the authorities prevented him from doing any business.

07. According to the petitioner, the authorities unreasonably issued the demand notice on 10.06.2022 directing him to make payment of Rs.269300.00 relating to the said work which according to him, is not liable to pay.

08. Accordingly, being aggrieved by the said demand notice dated 10.06.2022, the petitioner approached this Court by filing the application under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim relief which application was registered as Arbitration Application No.6/2022. The said application was contested by the respondents-present respondents herein also, by contending that there is a provision for arbitration and as such, instead of approaching this Court, the petitioner can approach the

Court of learned Single Judge for appointment of an Arbitrator who will decide the issue.

09. Accordingly, the said application bearing AA No.6/2022 was disposed of by the Coordinate Bench of this Court on 09.10.2023 by way of a consensus order with the observation that the interim relief granted in the said petition shall remain in force till application is filed by the petitioner under Section 11 of the Arbitration and Conciliation Act.

10. Accordingly, it has been submitted by Mr. Areeb Javed Kawoosa, learned counsel for the petitioner that in view of the stand taken by the authorities in AA No.6/2022, the present petition can be disposed of in terms of the arbitration clause in the contract.

11. This Court has perused the documents and it has been clearly mentioned in Clause 19 of work allotment order dated 11.07.2020 that in case any dispute which arises between the executants, the same will be referred to the arbitrator and the Director Tourism Kashmir shall act as the arbitrator and his decision shall be final and binding on both the parties. The said Clause 19 reads as follows:

“.....That in case any dispute arising between the executants the same will be referred to the arbitrator. The Director Tourism Kashmir be an arbitrator and his decision shall be final and binding on both the parties.....”

12. This Court is satisfied that the said clause amounts to an arbitration clause. In that view of the matter, since the dispute has arisen between the parties as also is evident from application bearing AA No.6/2022, this Court proceeds to appoint Mr. Mushtaq Ahmad

Chashoo, Advocate, as the Arbitrator, who shall proceed in the matter to decide the dispute between the parties and make an award in accordance with law after hearing the parties and charging the prescribed fee along-with the incidental expenses to be shared by the parties.

13. Respondents shall pay the amount of Rs.2000/- to the learned Arbitrator who, thereafter, will deposit the same in the Litigants Welfare Fund of this Court.

14. Copy of this order be furnished to Mr. Mushtaq Ahmad Chashoo, learned Arbitrator for his information.

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR
22-02-2024
Shameem H.