

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Arb P No. 8/2024

M/S A.M. Contractors

...Petitioner(s)/appellant(s)

Through: Ms. Muzamil Jabeen, Advocate.

Vs.

Union of India and Ors

...Respondent(s)

Through: Mr. T.M. Shamsi, DSGI, with
Ms. Rehana Qayoom, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

O R D E R
09.05.2024

1. Heard Ms. Muzamil Jabeen, learned counsel for the petitioner. Also heard Mr. T.M. Shamsi, learned DSGI, assisted by Ms. Rehana Qayoom, learned counsel for the respondents.
2. The present petition has been filed by the petitioner seeking appointment of an Arbitrator under Section 11 of the J&K Arbitration and Conciliation Act, 1996, to resolve the dispute that has arisen between the parties.
3. According to the petitioner, he was awarded a contract for providing bulk and development (civil) services at G.C. CPSF(Lethpura) which included water supply lines, drainage and retaining wall, as per allotment letter dated 01.12.2011. The petitioner claims that the work has been duly executed, however, they have not received the payment for the work completed nor for the additional work performed.
4. The petitioner further states that under Clause 25 of the agreement, any dispute should initially be resolved by the Engineer in-charge. If the Engineer in-charge fails to settle the dispute, it is then to be escalated by the

Superintendent Engineer, and if unresolved at that level, it is to be referred for adjudication through arbitration. According to the agreement, the Arbitrator is to be appointed by the Chief Engineer, CPWD. The aforementioned Clause 25, upon which the petitioner relies, is reproduced below:

CLAUSE 25

Settlement of Disputes and Arbitration:

Except where otherwise provided in the contract, all questions and disputed related meaning of the specifications, design, drawings and instructions hereinbefore and as to the quality of workmanship or materials used on the work or as to question, claim, right, matter or thing whatsoever in any way arising out of or real contract, designs, drawings specifications, estimates, instructions, orders or these or otherwise concerning the works or the execution or failure to executed the same arising during the progress of the work or after the cancellation, termination, abandonment thereof shall be dealt with as mentioned hereinafter:

- (i) If the contractor considers any work demanded to him to be outside the requirements contract, or disputes any drawings, record of decision given in writing by the charge on any matter in connection with or arising out of the contract or carrying work, to be unacceptable, he shall promptly within 15 days request the Superintended Engineer in writing for written instruction or decision. Thereupon, the Superintending shall give his written instructions or decision with a period of one month from of the contractor's letter. If the Superintending Engineer fails to give his instructions or decision in writing will aforesaid period or if the contractor is dissatisfied with the instructions or decision Superintending Engineer, the contractor may, within 15 days of the receipt of Superintendent Engineer's decision, appeal to the Chief Engineer who shall afford an opportunity contractor to be heard, If the letter so desires and to offer evidence in support to his. The Chief Engineer shall give his decision within 30 days of receipt of contractors the contractor is dissatisfied with this decision, the contractor shall*

within a period days from receipt of the decision, give notice to the Chief Engineer for appointment of arbitrator on prescribed proforma as per Appendix XV, failing which the said decision shall be final and conclusive and not referable to adjudication by the arbitrator.

- (ii) Except where the decision has become final, binding and conclusive in terms of para (i) above, disputes or offences shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chief Engineer, CPWD in charge of the will thereof be no Chief Engineer, the Additional Director General of the concerned CPWD or if there be no Additional Director General, the Director General of works, if the arbitrator so appointed is unable or unwilling to act or resigns his appointment vacates his office due to any reason whatsoever, another sole arbitrator shall be applied in the manner aforesaid. Such person shall be entitled to proceed with the reference the stat oat which it was left by his predecessor.*

It is a term of this contract that the party invoking arbitration shall give a list of disputes amounts claimed in respect of each such dispute along with the notice for appointing arbitrator and given reference to the rejection by the Chief Engineer of the appeal.

It is also a term of this contract that no person, other than a person appointed by Chief Engineer CPWD or Additional Director General or Director General of works as aforesaid, should act as arbitrator and if for any reasons that is not possible, there shall not be referred to arbitration at all.

It is also a terms of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of nay claims in writing as aforesaid with 120 days receiving the intimation from the Engineer in-charge that the final bill is ready for put the claim of the contractor shall be deemed to have been waived and absolutely barred the government shall be discharged and released of all liabilities under the contract in any of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of

1996) or any statutory modifications or enactment thereof and the rules made thereunder and for the time being in force shall apply arbitration proceedings under this clause.

It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and given separate award against any dispute and claim referred to him and in all cases where're the total amount of the by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall paid equally by both the parties.

It is also a term of the contract that the arbitrator shall be deemed to have entered reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such as may be fixed by the arbitrator in his sole discretion. The fees if any, of the arbitrator if required to be paid before the award is made and publish, be paid half and half of the parties. The cost of the reference and of the award (including the fees if any of the arbitrator) shall be in the discretion of the arbitrator who may direct to nay by whom and what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.

5. The petitioner contends that despite multiple appeals to the authorities mentioned in Clause 25 of the agreement, there has been no response, leaving the petitioner with no other option but to approach this Court for appointment of the Arbitrator.

6. The respondents have not filed any objections, despite being given the opportunity to do so.

7. The fact that the petitioner has raised certain claims which, according to the petitioner, have not been addressed by the respondents, this Court is of the view that a dispute exists between the parties, which would require resolution in accordance with the aforementioned Clause 25.

8. On perusal of the Clause 25, it is apparent that the authorities designated to deal with the dispute are the Engineer In-charge, the Superintendent Engineer, as well as the Chief Engineer. Since none of these authorities have responded to the petitioner's claim, this Court is of the view that it has to be ultimately decided by an Arbitrator, as stipulated in Clause 25.

9. Accordingly, the present petition is disposed of by appointing Mr. Mr. Aijaz Ahmad Mir, Retd. District and Sessions Judge, to act as the sole 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 incidental expenses to be shared by the parties.

10. Registry to inform the Ld. Arbitrator accordingly.

11. With the above observation and direction, the petition stands disposed of.

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR

09.05.2024

Junaid