

**HIGH COURT OF TRIPURA
AGARTALA**

Arb. P. No.5 of 2025

Sri Arun Kumar Dey, Contractor, son of Late Biraj Mohan Dey, resident of A.D. Nagar, Police Line, P.O. A. D. Nagar-799003, P.S. A. D. Nagar, District-West Tripura;

..... Petitioner(s).

V E R S U S

1. The Oil and Natural Gas Corporation Limited (ONGC), Tripura Asset, Badharghat Complex, Agartala, P.O. ONGC-799014, P.S. – Amtali, District-West Tripura, represented by the Executive Director;

2. The Chief Engineer (Civil), Oil and Natural Gas Corporation Limited (ONGC), Tripura Asset, Badharghat Complex, Agartala, P.O. ONGC-799014, P.S. – Amtali, District-West Tripura;

..... Respondent(s).

For Petitioner(s) : Mr. Abhijit Sengupta, Advocate.

For Respondent(s) : Mr. Jyotirmoy Das, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

11/07/2025

Heard Mr. Abhijit Sengupta, learned counsel for the petitioner and Mr. Jyotirmoy Das, for the respondents.

2. Petitioner has invoked Clause 25.1.12 of the agreement dated 27.01.2022 entered into between the parties pursuant to tender No.TC2EC 21003 floated for execution of the work 'Board purchase for construction of seven numbers of drill sites, its drill site accommodation and its approach road for drilling for exploratory location of Tripura Asset, Oil and Natural Gas Corporation Limited (for short, ONGC)'. Petitioner was awarded work for execution of three numbers of drill sites for a total value of Rs.8,56,33,802/- i.e. Rs.2,85,44,600/- for each site. The stipulated period of the work was 12 months from the date of handing over of the first site. The

agreement was executed on 27.01.2022. Petitioner deposited performance bank guarantee of Rs.25,69,015/- on 07.12.2021 in favour of GM (Mechanical), I/C, Tender and Technical Cell Engineering Service, ONGC, Tripura Asset. However, petitioner was handed over only two numbers of drill sites, namely, BMST and ROBJ.

3. It is submitted by learned counsel for the petitioner that petitioner completed the said work to the satisfaction of the ONGC and handed over two sites to them. Though petitioner submitted bank guarantee for three sites but third site was not handed over to him till then. Petitioner made reminders for handing over the third site as a result of which he had been incurring overhead expenses. He was informed vide letter dated 07.06.2024 that the third site will not be handed over to him since the contract period was for one year which is already over. Petitioner denied the allegations vide his letter dated 30.08.2024 (Annexure-4). Petitioner claimed 10% of the expected profit for non-execution of the work amounting to Rs.28,54,460/- from the respondent-ONGC. Petitioner submitted his demand contained in letter dated 31.08.2024 (Annexure-5) for a claim of Rs.33,34,460/- for loss of profit and remuneration of site engineer and supervisor. Thereafter, he submitted an application for referring the dispute to the respondent-ONGC under Arbitration Clause 25.1.12 (Annexure-6) dated 14.11.2024.

4. The respondent-ONGC asked the petitioner to submit application for mediation/re-conciliation vide communication dated 07.01.2025. On 03.05.2024 petitioner found that an amount of Rs.46,00,069.85/- was credited to his account against the bill dated

21.03.2024 but they were short in payment of his full bills. On verification it was found that an amount of Rs.77,55,760/- has been deducted from his bills without assigning any reason. Thereafter, petitioner filed a writ petition bearing WP(C) No.500 of 2024 which was disposed of vide judgment dated 26.07.2024 directing the respondent-ONGC to consider his case in the light of his legal notice dated 14.05.2024 within a period of two months (Annexure-11). The respondent-ONGC replied vide communication dated 06.11.2024 that the amount of Rs.77,55,760/- has rightly been recovered from his bills as per the terms of the contract (Annexure-12).

5. Petitioner again submitted an application for reference of the dispute for arbitration under Clause 25.1.12 vide letter 18.01.2025 (Annexure-14). The respondents have once again asked him to submit application for conciliation/mediation vide letter dated 12.02.2025 (Annexure-15). However, learned counsel for the petitioner submits that since the petitioner has opted to invoke the Arbitration Clause he is not inclined to go for mediation/conciliation through Outside Expert Committee (OEC). The details of the disputes have been furnished at paragraph 6 in the form of a chart. Earlier, the petitioner had approached this Court in Arbitration Petition No.01 of 2025 for reference of the dispute to an independent arbitrator but the same was withdrawn vide order dated 19.02.2025 as the entire claims were not incorporated in the petition. Thereafter, the present petition has been filed by the petitioner.

6. Learned counsel for the petitioner submits that in these facts and circumstances in view of the Arbitration Clause entered into between the parties, since the respondents have not nominated an arbitrator he has been

compelled to approach this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996.

7. Respondents have appeared on notice and filed their counter-affidavit. Mr. Jyotirmoy Das, learned counsel for the respondents has referred to the contents of the counter-affidavit and submitted that the petitioner had served a legal Demand Notice under Section 80 (1) on the Executive Director, Respondent ONGC through his Advocate on 30.03.2024 for handing over of the 3rd drill site as per the contract when the contract period was over and termination of contract already affected much earlier, under Clause-40 of General Conditions of Contract (GCC, for short).

8. On receipt of the reply of that Demand Notice issued by ONGC on 07.06.2024, wherein the demand for handing over of 3rd drill site to the contractor was rejected on the ground of expiry period of the contract and also having his doubtful credibility, the contractor then by a letter dated 30.08.2024 had shifted his demand for handing over the 3rd drill site and tried to defend himself by simply denying and disputing the factual allegations of inferior workmanship, already verified against him by a team of engineers headed by ONGC Vigilance Department.

9. The petitioner then by a demand notice dated 31.08.2024 claimed for the payment of infrastructure expenses on overhead cost, being the salary for Supervisors and Site Engineers, amounting to Rs. 4,80,000.00 and Loss of profit @10% on the 1/3rd total contract amount for the 3rd drill site amounting to Rs. 28,54,460.00 and the total amount of claim of Rs.33,34,460.00 was raised.

10. Respondents contend that after expiry of the contract period such a claim for the above infrastructure expenses for the period from 11.01.2022 to 10.01.2023 have been raised when whole of his infrastructure set up was already engaged for execution of the other two drill sites namely ROBJ and BMST. Therefore, no question arose for deployment of infrastructure during that period of contract for the 3rd drill site. Moreover, the contractor never approached the ONGC authority within the contract validity period to take over the 3rd drill site. The contractor never prayed for any extension of the contract period nor the ONGC authority has exercised its option to extend the contract period by issuing any order. The agreement is automatically terminated once it expires.

11. The contractor, after submitting his demand notice dated 31.08.2024, i.e. after the expiry of contract period, served another notice invoking arbitration Clause 25.1.12 of the contract without waiting for the response from the ONGC authority. The petitioner, thereafter hastily has approached this Court vide petition No. Arb.P.01/2025 filed on 10/01/2025, under Section 11(6) for appointment of an impartial arbitrator for adjudication of that particular claim/dispute.

12. The above-mentioned dispute was not an arbitrable dispute as is an 'Excepted Matter' as per the contract clause No. 40.1 and 40.8 of GCC. Moreover, the contractor after receipt of payment advice amounting to Rs.46,00,069.85 dated 16/04/2024 against 2nd RA Bill, served a demand notice on ONGC dated 14.05.2024 claiming the refund of withheld amount of Rs.77,55,760.15 which the respondent-ONGC rejected vide letter dated 06.11.2024. Therefore, this dispute already existed before filing the petition Arb.P.01/2025 on 10.01.2025.

13. The petitioner approached this court by making the false plea that 'certain more disputes have cropped up during this period' for withdrawal of Arb.P.01/2025 with liberty to file a fresh petition. To cover up the circumstances and to tag along with the earlier dispute the petitioner served another notice again on 18.01.2025, repeatedly invoking the arbitration clause for the same contract in order to approach this Court under section 11(6) of the Arbitration and Conciliation Act, 1996.

14. Mr. Jyotirmoy Das, learned counsel for the respondents, submits that the contractor has been lackadaisical in his approach in handling the contract. The ROBJ drill site upon completion of construction was handed over to ONGC on 25.4.2023; Post Rig building works were completed on 14.05.2023 and the BMST drill site was handed over on 20.05.2023 after retrofitting the RCC structure. But due to inferior quality of workmanship in the RCC work, huge horizontal crack developed on the Rig foundation of BMST drill site, even before the drilling rig could be deployed on the foundation. The matter was so serious that a vigilance inquiry was conducted. On inspection by the technical team of engineers and Vigilance department of ONGC Tripura Asset, it was found, that the failure has happened due to inferior quality of workmanship by the contractor without following the engineering standard and working procedure.

15. The delay in execution of the contract has attracted the Clause - 2 of GCC. Accordingly, the recovery was made from the contractor of a sum equivalent to ½ % (half percent) of the contract price/work subject to maximum of 10% by way of liquidated damages and withheld from the 2nd RA Bill. Under paragraph No.12 of the counter-affidavit the respondents have by way of tabular chart enclosed the total amount of Rs.77,55,760.15/-

recovered against the contractor for bad workmanship and liquidated damages etc.

16. Learned counsel for the respondents submits that the petitioner was fully aware of the other issues relating to non-handing over of the 3rd drill site during the validity of the contract period and had in fact referred to it in his notice dated 31.08.2024 (Annexure-5) while approaching this Court in Arb.P.01/2025. However, he has sought to withdraw Arb.P.01/2025 to raise additional claim in respect of the 3rd drill site by issuing another notice dated 18.01.2025 for reference of the dispute under Clause 25.1.12 of the agreement. It is submitted that the petitioner cannot be allowed to improve upon its claim relating to existing dispute as it is in teeth of arbitration Clause 25.1.12. Moreover, the approach of the petitioner in withdrawing Arb.P.01/2025 and thereafter raising additional claims for reference to arbitration under the present arbitration petition is mala fide.

17. Mr. Abhijit Sengupta, learned counsel for the petitioner, has sought to explain that the earlier arbitration application was made after invocation of the arbitration clause in terms of notice dated 14.11.2024 (Annexure-6). He submitted that in the said notice also the petitioner has taken a plea that the ONGC was bound to hand over the three numbers of sites immediately after work order was issued but it failed to deliver one site valued at Rs.2,85,44,600/- to him. Therefore, it had committed breach of contract with him. Learned counsel for the petitioner also submits that the petitioner had not raised any further additional claim in the present arbitration petition. If that be so there was no reason to withdraw the first arbitration petition.

18. I have considered the submission of the learned counsel for the parties and taken note of the relevant materials placed from record. The chronology of the events pleaded by the parties captured in the previous paragraphs of this order need no repetition. In order to appreciate the controversy, it is pertinent to refer to Clause 25.2.1 which falls under the head 'Arbitration and Conciliation' under Clause – 25. Clause 25.1 provides that if any dispute, difference, question or disagreement arises between the parties hereto or their respective representatives or assignees, in connection with construction, meaning, operation, effect, interpretation of the contract or breach thereof which parties are unable to settle mutually, the same may first be referred to conciliation through Outside Expert Committee ("OEC") to be constituted by CMD, ONGC as provided thereunder. Clause 25.1.12 provides that if the parties are not able to resolve the dispute through OEC or do not opt for conciliation through OEC, the party may invoke arbitration clause as provided in the contract. Clause 25.2 provides for arbitration (applicable in case of supply order/ contracts with firms, other than Public Sector Enterprises) (Not applicable in cases valuing less than Rs.5 lakhs). It further provides that Except as otherwise provided elsewhere in the contract, if any dispute, difference, question or disagreement arises between the parties hereto or their respective representatives or assignees, in connection with construction, meaning, operation, effect, interpretation of the contract or breach thereof which parties are unable to settle mutually, the same shall be referred to Arbitration as provided thereunder.

19. The clause 25.2.1 which has been invoked by the petitioner, reads as under:

“25.2.1 A party wishing to commence arbitration proceeding shall invoke Arbitration Clause by giving 60 days notice to the other party. The notice invoking arbitration shall specify all the points of disputes with details of the amount claimed to be referred to arbitration at the time of invocation of arbitration and not thereafter. If the claim is in foreign currency, the claimant shall indicate its value in Indian Rupee for the purpose of constitution of the arbitral tribunal.”

A careful reading of the aforesaid provision clearly indicates that the notice invoking arbitration shall specify all the points of disputes with details of the amount claimed to be referred to arbitration at the time of invocation of arbitration and not thereafter.

20. Clause 25.2.2 provides for the number of the arbitrators to be appointed depending upon the value of the claim.

21. The chronology of the dates and events referred to hereinabove indicates that the petitioner has initially approached this Court in WP(C) No.500 of 2024 against the amount deducted from his bills allegedly without any reason. On the basis of the direction passed by the writ Court the legal notice issued by the petitioner was replied by the ONGC vide communication dated 06.11.2024 stating that an amount of Rs.77,55,760/- has rightly been recovered from his bills as per the terms of the contract (Annexure-12). Petitioner had thereafter, invoked the jurisdiction of this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 on the basis of the dispute raised vide letter dated 14.11.2024 (Annexure-6) upon the respondent ONGC invoking arbitration Clause 25.1.12. The said petition was later on withdrawn by the petitioner with a plea that the entire claims were not incorporated in that petition. In order to improve upon his case, petitioner had in the meantime issued another arbitration notice under

Clause 25.1.12 dated 18.01.2025 (Annexure-14). That was also replied by the respondents asking him to submit to conciliation mediation which the petitioner refused as he had opted to invoke the Arbitration Clause and chosen to remain outside the mediation/conciliation process through Outside Expert Committee (OEC). The details of the disputes were furnished at paragraph-6 in the form of a chart. The aforesaid background facts indicate that the petitioner has indulged in raising arbitration claims through multiple notices served upon the respondent-ONGC under Clause 25.1.12. This is impermissible in view of clause 25.1.12 quoted hereinabove. Petitioner was required to specify all the points of the disputes with details of the amount to be referred to arbitration at the time of invocation of arbitration and not thereafter. In the earlier arbitration application based upon the notice dated 14.11.2024, the respondents had filed a counter affidavit and taking a particular stand. The petitioner, perhaps becoming wise, chose to improve upon his case by withdrawing Arb.P.01/2025 to present a fresh petition as his entire claims were not incorporated in the said petition. For this purpose, he also had issued another notice invoking arbitration Clause 25.1.12 vide letter dated 18.01.2025 (Annexure-14) which was not permissible. Arb.P.01/2025 was permitted to be withdrawn on the request of the petitioner with liberty. However, the withdrawal of the writ petition with liberty could not override the specific arbitration clause agreed between the parties under the agreement in question. Clause 25.1.12 provides that the notice invoking arbitration should specify all the points of disputes with details of amount claimed to be referred to arbitration at the time of invocation of the arbitration and not thereafter.

22. Perusal of the notices dated 14.11.2024 and 18.01.2025 would also give an impression that the petitioner has raised further claim than originally raised in his notice dated 14.11.2024 which is impermissible under the arbitration clause. Respondents are therefore right in contending that the petitioner has tried to improve upon his claim despite being conscious for the reasons for recovery of the amount of Rs.77,55,760.15 from his outstanding bills and also the reasons for non-handing over of the 3rd drill site. In such circumstances, the present petition seeking appointment of an independent arbitrator by successive notice issued in teeth of clause 25.1.12 cannot be allowed. The approach of the petitioner in seeking invocation of arbitration clause on repeated occasions under the same agreement by raising different claims is misconceived.

Accordingly, the instant petition is dismissed.

Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ