

THE HIGH COURT OF TRIPURA
A G A R T A L A

Arb. A. No. 04 of 2011

Appellant:

Sri Sanicharan Debbarma,
S/o. Budhha Debbarma,
Uday Kobrapara, Mandai, Jirania
West Tripura.

By Advocates :

Mr. D. K. Biswas, Adv.
Mr. G. K. Nama, Adv.

Respondent :

1. The State of Tripura,
Represented by the Secretary, Department of
Public Works, Agartala.
2. Chief Engineer,
Public Works Department, Public Health
Engineering, Kunjaban, Agartala.
3. Executive Engineer,
Public Health Engineering, Division No. IV,
Agartala.

By Advocate :

Mr. G. S. Bhattacharjee, Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **19th February, 2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

The short question which arises in this appeal filed by the contractor is whether the counter claim filed by the State amounts to a dispute in terms of Clause 25 of the agreement entered into between the parties.

[2] The undisputed facts are that the appellant-contractor was awarded a contract for construction of over head water tank at Mandai-II. It is also not disputed that after some time the contract was rescinded and disputes arose between the parties. The contractor initially raised dispute and he made certain claims claiming money for the amount of work which he had done. The State filed a counter claim, claiming the value of the amount of material which it had supplied to the contractor and which was lying unused at the time when the contract was rescinded. The claim of the State is that this material was not returned by the contractor and hence the State is entitled to this amount.

[3] Relevant portion of Clause 25 of the Agreement reads as follows:

“**Except where otherwise provided in the contract, all questions and disputes relating to the specifications design, drawing and instructions herein before mentioned and as to the quality of workmanship of materials used of the work or as to and other questions, claim, right matter or thing whatsoever, in any way arising out of or relating to the contract, design, drawings, specifications, estimates, instructions, order of this condition or otherwise concerning the work or the execution of failure to execute the same whether arising out of process of the work of after the completion of abandonment thereof shall be referred to the sole Arbitrator of the Chief Engineer, Tripura PWD, PHE to the Tripura and in case he is unable to act as Arbitrator to the sole arbitration of any person to be appointed by the Chief Engineer.....”**

[4] Sri D. K. Biswas, learned counsel appearing for the appellant-contractor contends that the claim of the State cannot be a dispute in terms of the Clause 25 of the Agreement as quoted hereinabove. His submission appears to be that only disputes related to specifications, design, drawing and instructions can be referred to arbitration.

[5] Mr. G. S. Bhattacharjee, learned counsel for the respondents has strenuously opposed the argument of Sri D. K. Biswas and contends that the issue is squarely covered by Section 25 of the Agreement.

[6] I am not at all in agreement with the submission of Sri Biswas because Clause 25 is couched in very wide language and the latter part of Clause 25 refers to "any other questions, claims , rights, matters or things whatsoever in any way arising out of or relating to the contract." The issue relating to the return of the unused material is definitely an issue relating to and arising out of the contract. Therefore, this is a dispute within the meaning of Clause-25 of the agreement. As far as other submissions are concerned the findings of fact arrived at by the Arbitrator are final and only legal issues can be gone into under Section 34 of the Arbitration and Conciliation Act, 1996 and no finding of fact can be challenged.

[7] Therefore, I find no merit in the appeal and the same is accordingly dismissed. No order as to costs.

Send down the LCRs forthwith.

CHIEF JUSTICE