

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT
HYDERABAD

—
THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA

—
ARBITRATION APPLICATION No. 42 of 2014

DATE: 30.01.2015

Between:

M/s. Water Health India Pvt., Ltd.,
Hyderabad.

... Applicant

And

Telaprolu Gram Panchayat,
Krishna District.

... Respondent

This Court made the following:

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THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

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ARBITRATION APPLICATION No. 42 of 2014
-

ORDER:

This is an application for appointment of arbitrator under Section 11(4)(a) of the Arbitration and Conciliation Act, 1996.

Counter has been filed, wherein the only point raised is that the arbitration clause contained in the agreement is not signed by the Secretary of the Gram Panchayat, who is the only authorized person to sign any agreement or order. This statement and averment has been denied and disputed in the affidavit in reply. Rather it has been stated that the resolution adopted by the Panchayat on the same day authorizing Sarpanch to sign it. Such statement has not been denied and disputed by the respondent Panchayat.

After hearing the learned counsel for the parties, I am of the view that the contention of the respondent shall be overruled since nothing has been produced either by way of a document or provision of law that only the Secretary of the Gram Panchayat is competent to sign and no other person. The onus lies on the respondent to establish this fact with regard to competency as it is within its special knowledge under Section 106 of the Evidence Act. In that view of the matter, I reject this contention.

I have seen the arbitration agreement, which reads as follows:

“8.1. In the event a dispute or difference arises in connection with the interpretation or implementation of this agreement, either party may refer the dispute by arbitration according to the Arbitration and Conciliation Act, 1996 as amended from time to time or any other law for the time being in force.

The arbitration proceedings shall consist of three arbitrators, one to be appointed by WHIN and the other to be appointed by the Panchayat. The two appointed arbitrators shall appoint the third arbitrator. The Arbitration shall be conducted in Hyderabad.”

The said arbitration agreement is otherwise valid and subsisting and the disputes raised by the petitioner are also covered by the aforesaid agreement. Under these circumstances, I direct the parties to choose their respective nominee arbitrator within fortnight from the date of receipt of a copy of this order in terms of the arbitration agreement. After formation of the arbitral Tribunal, two nominee arbitrators shall appoint the third arbitrator in terms of the aforesaid arbitration agreement. Failure to do so by any of the party, Sri R. Damodar, a retired District Judge residing at Hyderabad shall be as nominee Arbitrator of such party.

The remuneration of the respective nominee Arbitrators of the respective parties shall be borne by the respective parties individually.

However, so far as the third Arbitrator is concerned, the learned Arbitrator shall fix his own remuneration upon deliberation and consultation with the parties. He shall also estimate the cost and expenses of the secretarial assistance and other incidental expenditure for the arbitration proceedings. The parties shall bear the expenses of the arbitration proceedings in equal share. The learned Arbitrators are directed to complete the arbitration proceedings by making and publishing an award within a period of five months from the date of entering upon the reference.

The arbitration application is accordingly disposed of.

Kalyan Jyoti Sengupta, CJ.

Date: 30.01.2015
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