

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

PRESENT

THE HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

ARBITRATION APPLICATION No.95 OF 2015

DATED: 10.06.2016

Between:

M/s.Contec Syndicate Private Ltd.

... Applicant

and

Government of Andhra Pradesh and others

... Respondents

THE HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

ARBITRATION APPLICATION No.95 of 2015

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PC:

Heard learned counsel for the parties.

Respondent No.2 awarded work to the applicant-company of the construction of four high level Bridges at Km 240/6, 252/6, 255/2 and 258/10 of Hyderabad-Guntur Road under BOT scheme through agreement, dated 26.02.2003. After completion of the construction of Bridges, as per the agreement, the applicant was entitled to collect toll for a period of 11 years from 01.08.2004. During those 11 years, disputes arose between the parties, as stated in the affidavit filed by the applicant dated 10.08.2015, and in view thereof, a notice was issued on 03.07.2015 seeking appointment of their Arbitrator. The applicant in the notice named Sri Justice G. Bhavani Prasad, former Judge of this Court as their nominee, in terms of Article 19.2 read with 19.1 of the agreement, dated 26.02.2003.

Respondent No.2 has filed counter-affidavit.

Mr. Suresh Kumar Routhu, learned counsel holding for Sri Bathula Raj Kiran, advocate on record for respondent

No.2, on the basis of counter-affidavit, raised only one contention, namely, that procedure as contemplated under sub-article (b) of Article 19.1 of the agreement was not complied, and therefore, the instant application for appointment of Arbitrator is premature.

Articles 19.1 and 19.2 read thus:

“19.1 Amicable Resolution

- (a) Save where expressly stated otherwise in this agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this agreement including incompleteness of the project between the parties and so notified in writing by either party to the other (the “Dispute”) in the first instance shall be attempted to be resolved amicably by the steering group and failing resolution of the same in accordance with the procedure set forth in sub-article (b) below.
- (b) Either party may require the dispute to be referred to the engineer-in-chief (R&B) Admn. & EAP. Government of Andhra Pradesh and the Chairman of the Board of Directors of the concessionaire, for the time being for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the dispute. If the dispute is not amicably settled within 15 (fifteen) days of such meeting between the two either party may refer the dispute to arbitration in accordance with the provisions of Article 19.2 below.

19.2 Arbitration

a) Arbitrators.

Any dispute which is not resolved amicably as provided in Article 19.1(a) shall be finally settled by binding arbitration under the arbitration and conciliation Act, 1996. the arbitration shall be pay a panel of three arbitrators, one to be appointed by each party and the third to be appointed by the two arbitrators appointed by the parties. A party requiring arbitration shall appoint an

arbitrator in writing, inform the other party about such appointment and call upon the other party to appoint the arbitrator, if the other party fails to appoint its arbitrator, the party appointing arbitrator shall take steps in accordance with Arbitration and Conciliation Act, 1996.”

It is not in dispute that the procedure as contemplated under sub-article (a) namely, an attempt to resolve dispute amicably through steering group was followed. The contention of the respondents is that the procedure set out in sub-article (b) was not followed. I would not like to enter into this controversy for one reason, that admittedly, steering group made some recommendations in favour of the applicant. Those recommendations were not accepted and turned down by the first respondent. In this view of the matter, if sub-article (a) of Article 19.2 is read carefully, it is clear that it provides, any dispute, which is not resolved amicably, as provided under Article 19.1(a), shall be finally settled by appointing arbitrator under the Arbitration and Conciliation Act, 1996. A plain reading of this Article clearly shows that if the dispute is not resolved amicably as provided for under Article 19.1 (a), it is open to the parties to seek appointment of Arbitrators/Arbitral Tribunal. Having perused this provision carefully, learned counsel for the parties have given names of Arbitrators. The applicant gave the name of Sri Justice G. Bhavani Prasad, retired Judge of this Court whereas Mr. Suresh Kumar Routhu, learned counsel for respondent No.2 gave name of Sri Justice R. Kantha Rao, retired Judge of this Court as their nominee arbitrators. The Arbitrators, as suggested by the parties are appointed as members of the Arbitral Tribunal. It is needless

to mention that in terms of Clause (a) of Article 19.2, both the Arbitrators may appoint third Arbitrator.

Learned Arbitrators shall fix their remuneration upon deliberation and consultation with the parties. The costs and expenses of the secretarial assistance of the arbitration proceedings shall also be determined by the learned Arbitrators. Each party will bear the expenses of the arbitration proceedings in all respects in equal share. Learned Arbitrators shall complete the arbitration proceedings by making publication of Award within the time stipulated under the provisions of Arbitration and Conciliation Act, 1996. Learned Arbitrators shall hold meetings at the arbitration centre in the High Court premises, 'C' Block.

The arbitration application is accordingly disposed of.

DILIP B. BHOSALE, ACJ

10th JUNE, 2016.

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