

HIGH COURT OF CHHATTISGARH, BILASPUR

Arbitration Application No.55 of 2017

M/s Kailash Sharma, S/o Duli Chand Sharma, Age about 58 years,
Occupation Contractor, R/o Lakshmi Kripa House, Jindal Road, Raigarh,
District Raigarh (C.G.)

---- Applicant

Versus

1. Engineer In Chief, Public Work Department, Raipur, District Raipur (C.G.)
2. Chief Engineer, Public Work Department, Bilaspur Range, Bilaspur (C.G.)
3. Executive Engineer, Public Work Department, Raigarh, Division Raigarh (C.G.)

---- Non-applicants

For Applicant: Mr. Amit Sharma, Advocate.

For Non-applicants/State: -

Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/11/2017

1. This is an application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') for appointment of Arbitrator.
2. Learned counsel for the applicant submits that clause 28 of the terms and conditions entered into between the parties contains arbitration clause and within a period of 30 days from the date of raising dispute, the respondents have not appointed arbitrator to decide the dispute, therefore, this Court is the appropriate court to appoint arbitrator under the Act of 1996.

3. Learned State counsel would submit that the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (for short, 'the Adhiniyam, 1983') has been enacted and pursuant to that the Chhattisgarh Madhyastham Adhikaran has been constituted to arbitrate in disputes to which the State Government or a Public Undertaking wholly or substantially owned or controlled by the State Government, is a party.
4. Present dispute falls within the terms of "work-contract" as defined in Section 2 (i) of the Adhiniyam, 1983, as the dispute is between the applicant and the Public Works Department, State of Chhattisgarh. Therefore, the dispute would be cognizable by filing a reference under Section 7 of the Adhiniyam, 1983. Clause 28 of agreement between the parties clearly provides that the aggrieved party against the order of the Chief Engineer can file the petition for resolving the dispute through arbitration in the arbitration tribunal.
5. Mr. Sharma, learned counsel appearing for the applicant, would submit that it will not be cognizable by the Chhattisgarh Madhyastham Adhikaran, as the matter has been referred to larger Bench by the Supreme Court and relied upon the order of the Supreme Court dated 17-4-2017 in S.L.A.(C)No.5076/2017 (M/s Lal Babu Singh v. State of Chhattisgarh and another).
6. Since the dispute is between the petitioner and the Department of State Government which is a works contract and agreement between the parties provides for resolution of dispute through arbitration tribunal and therefore, it would be cognizable by the Arbitration Tribunal constituted under the Adhiniyam, 1983. Accordingly, no arbitrator can be appointed under Section 11(6) of the Act of 1996.

The application is accordingly rejected. However, the applicant is at liberty to file application before the Chhattisgarh Madhyastham Adhikaran. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma