

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Arbitration Application No. 13 of 2015

- T. M. Ghate, S/o Late Mahadev Ghate, age about 79 years, R/o B-104, Vineet Estate, Shanker Nagar, Police Station Shankar Nagar, Raipur Chhattisgarh

---- Applicant

versus

1. Sarguja University, Through its Registrar, Ambikapur (Chhattisgarh)
2. Executive Council, Sarguja University, Ambikapur (Chhattisgarh)

---- Non-Applicants

For Applicant : Shri Rakesh Shrotri, Advocate

For Non-Applicants : Shri Hemant Gupta and Shri Neeraj Choubey, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Order on Board

12.01.2017

1. This application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 has been filed by the applicant for appointment of Arbitrator.
2. The petitioner, who is an architect, claims that he was appointed by the Respondent / University for providing comprehensive architect services for setting up of the university administrative building in terms of the agreement dated 06.10.2012 which was preceded by an order dated 05.05.2012. The agreement dated 06.10.2012 contains an Arbitration clause which provides that all disputes arising out of the agreement shall be referable to Arbitration. The petitioner's claim is that he did the work as per the agreement, but the payment has not been made to him.
3. The stand of the University is that the then Vice Chancellor of the University without any authorization of the State Government or the Medical Council of India or the Executive Council of the University entered into this agreement for extraneous reasons. It is alleged that

the Vice Chancellor acted beyond his jurisdiction in entering into the agreement and therefore, this agreement is tainted by fraud and hence Arbitrator should not be appointed.

4. The question whether the agreement is tainted by fraud is a disputed question of fact which cannot be decided without recording evidence. This question can be raised by the University before the Arbitrator also and the Arbitrator will also decide whether the agreement is fraudulent and therefore, not binding upon the University. However, it is only the Arbitrator who can properly and expeditiously decide the issue and this Court in exercise of jurisdiction under Section 11(6) of the Arbitration and Conciliation Act, 1996 cannot decide this issue.
5. In view of the above discussion, I appoint Shri Justice Dharendra Mishra, residing at "Shyam Sadan" Tilak Nagar, Bilaspur, a retired Judge of High Court of Chhattisgarh, as Arbitrator in the case.
6. The Applicant and the Non-Applicants may file their claim / counter-claim before the aforesaid Arbitrator within a period of four weeks from today who is requested to dispose of the matter within the time prescribed in the Arbitration and Conciliation Act, 1996, as amended.
7. The parties are directed to appear before the Arbitrator on 20th February, 2017.
8. Registry is directed to send a copy of this order to Shri Justice Dharendra Mishra so as to reach within one week from today.
9. The Arbitration Application stands disposed of.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE