

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

ARBITRATION APPLICATION No.21 of 2017

ORDER:

This application is filed, under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator to resolve the *interse* disputes between the parties.

The concession agreement between the applicant and the respondent dated 19.08.2008, to design, finance, build, operate, maintain and market the Kotla Vijaya Bhaskar Redy Botanical Garden at Kothaguda Reserve Forest, Hyderabad contained, in Clause 17.2, the Arbitration Clause. Clause 17.2(a) stipulated that any dispute, which was not resolved amicably as provided in Article 17.1 shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996; the arbitration shall be by 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 its arbitrator; and if the other party fails to appoint its arbitrator, the party appointing the arbitrator shall take steps in accordance with Arbitration and Conciliation Act, 1996.

On the ground, that despite their request no arbitrator was appointed, the applicant invoked the jurisdiction of this Court. Sri K. Prabhakar Rao, Learned Standing Counsel for the respondent-Telangana State Forest Development Corporation, would submit that the contract itself was terminated for failure of the applicant to abide by the terms and conditions of the agreement; and, consequently, the

applicant is not entitled to invoke the arbitration clause of the concession agreement.

Under Section 11(6-A) of the Arbitration and Conciliation Act, as inserted by Act 3 of 2016 with effect from 23.10.2015, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6) of Section 11, shall confine its examination only to the existence of an arbitration agreement. As it is not in dispute that there exists an arbitration agreement, all other contentions, including whether termination of the concession agreement was on account of the failure of the applicant to abide by its terms, are all matters for the arbitrator to decide, and not for this Court to adjudicate in an application under Section 11(5) and (6) of the 1996 Act. In terms of the arbitration agreement, the applicant herein has appointed Sri DSS Reddy, Former Chief Secretary, Conservation of Forests as their arbitrator. The present application is filed seeking appointment of an arbitrator on behalf of the respondent. Both Ms. V. Uma Devi, Learned Counsel for the applicant and Sri K. Prabhakara Rao, Learned Counsel for the respondent, would agree that Sri H.C. Mishra, IFS (Retd), Principal Chief Conservator, Forests be appointed as the arbitrator on behalf of the respondent.

I consider it appropriate, therefore, to appoint Sri H.C. Mishra, IFS (Retd), Principal Chief Conservator, Forests, as the arbitrator on behalf of the respondent. Both the arbitrators, appointed on behalf of the applicant and the respondent, shall together nominate a third arbitrator. The Learned Arbitrators shall fix their remuneration, and the incidental expenses for the arbitration proceedings, in consultation with the parties. They are requested to complete arbitration proceedings, and pass an award at the earliest, preferably within six months from the date

of commencement of the arbitral proceedings. They are also requested, to the extent possible, to hold sittings in the mediation centre of the High Court.

The arbitration application is disposed of accordingly. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

Date: 29.03.2018

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