

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 31.01.2019****Judgment pronounced on 15.02.2019****ARBA No. 86 of 2017**

- M/s Brijesh Agrawal, Sharda Sadan, Vinoba Nagar, Behind Gayatri Mandir, Talapara Road, Bilaspur, Chhattisgarh. Through Its Power Of Attorney Holder Shri Shailesh Agrawal, S/o Shri Madan Lal Agrawal, Aged About 48 Years., Chhattisgarh **---- Petitioner**

Versus

1. South East Central Railway (S E C R) Through Its General Manager, G. M. / S. E. C. R. Officer Complex, Bilaspur, Chhattisgarh.
2. General Manager (Arbitration), South East Central Railway, G. M. Annex Building, 5th Floor, Bilaspur, Chhattisgarh.
3. Divisional Railway Manager, Bilaspur Division, South East Central Railway, Bilaspur, Chhattisgarh.
4. Sr. Divisional Engineer Co Ordination, DRM Complex, Raipur, Chhattisgarh.,
5. Sr. Divisional Engineer (Line), Office Of Sr. Divisional Engineer Co-Ordination, D. R. M. Complex, Raipur, Chhattisgarh.,

---- Respondents

For Applicant	:Shri Harsh Wardhan, Advocate.
For Respondents	:Shri H.S.Ahluwalia, Standing counsel.

Hon'ble Shri Justice Sanjay Agrawal**C.A.V. Order/Judgment**

1. This petition has been made for appointment of Arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act, 1996')
2. Briefly stated the facts of the case are that a Notice Inviting Tender was issued by respondent No.5 Senior Divisional Engineer (Line) for undertaking the work of Provision of limited height subway near level

crossing No.388 at km. 771/23-25 of Raipur Division. In pursuance thereof, the Petitioner participated and the said tender work was awarded to him and thereafter an agreement being Agreement No. 63/DEN-R/2011-12 was accordingly executed between the parties on 20.09.2011 for the total value of Rs.1,72, 25,904/- (Rupees one crore seventy two lakhs twenty five thousand and nine hundred four only). The agreement so executed was, however, terminated by the respondents vide letter dated 21.08.2013. The Petitioner thereafter, while invoking arbitration clause, requested for arbitration for settlement of all the disputes including the claim for refund of security deposit and also the amount in respect of the execution of the extra work done by him vide its letter dated 30.10.2013. In pursuance thereof, the Arbitration Tribunal was constituted.

3. It is pleaded further in the petition that the arbitration proceedings thereafter commenced, however, the proceedings so initiated by the Arbitration Tribunal was terminated vide order dated 16.06.2014 while exercising the powers under Section 25 (a) of the Act, 1996 and was communicated to the Petitioner vide its letter dated 23.06.2014. After termination of the arbitration proceedings, the Petitioner, vide its letter dated 04.08.2014 had raised an objection regarding the constitution of the said arbitration tribunal. It was, however, rejected by respondent No.2 vide its letter dated 08.08.2014. The Petitioner again requested vide its letter dated 29.08.2014 for appointment of fresh panel of arbitrators, which was again rejected by the respondents vide its letter dated 04.09.2014.
4. It is pleaded further by the Petitioner that the respondents have reduced the contract value on 09.10.2014 after the termination of the said arbitration proceedings, from Rs.1,72,25,904/- to Rs.1,03,70,889/- and on the same day, i.e., on 09.10.2014 observed that a sum of Rs.53,993/- is

still recoverable from the Petitioner. However, they have no authority to act as such. It is submitted further by the Petitioner that when the contract value has been reduced as such then the recovery of sum of Rs.53,993/- is wholly unjustified without adjudication of the claims under clause 64 of General Conditions of Contract. The Petitioner has, therefore, prayed for reference of the matter under the said clause vide its letter dated 10.01.2015.

5. Countering the aforesaid averments, it is submitted by the respondents that after the termination of the alleged agreement on 21.08.2013, the Arbitration Tribunal was constituted on the request of the Petitioner and the Arbitration Tribunal so constituted had terminated the proceedings vide its order dated 16.06.2014 while exercising the powers enumerated under Section 25 (a) of the Act, 1996 as the Petitioner had failed to submit his statement of claims within the extended period. It is contested further on the ground that instead of questioning the same, the Petitioner has again requested for appointment of Arbitrator for the same dispute on same cause of action, and therefore, the petition as framed after invoking the arbitration clause is not maintainable.
6. Shri Harsh Wardhan, learned counsel for the Petitioner submits that the dispute arose between the parties when the alleged contract was closed by the respondent-authorities and despite the request being made for appointment of Arbitrator vide its letter dated 10.01.2015, the respondents have failed to appoint the Arbitrator. It is, therefore, contended that for settlement of the dispute, an Arbitrator be appointed.
7. On the other hand, Shri H.S.Ahluwalia, learned counsel for the respondents, while reiterating the submissions made in the return, submits that the petition as framed seeking appointment of Arbitrator after

termination of the earlier arbitration proceedings based upon the same cause of action is not at all sustainable and deserves to be rejected.

8. I have heard learned counsel for the parties and perused the entire relevant papers annexed with the petition as well as with the return.
9. Undisputedly, after accepting the Petitioner's tender, the alleged work of Provision of limited height subway near level crossing No.388 at km. 771/23-25 of Raipur Division was provided to the Petitioner and an agreement in pursuance thereof was executed on 20.09.2011. It is also not in dispute that a dispute arose between the parties when the alleged agreement was terminated by the respondent-authorities vide order dated 21.08.2013. The Petitioner, therefore, while invoking the arbitration clause, demanded for appointment of Arbitrator for settlement of dispute including the claim for refund of his security deposit and also in respect of extra work executed by him. Based upon the Petitioner's request, the Arbitration Tribunal was constituted. In the said arbitration proceedings, the Petitioner had participated and failed to furnish the statement of claims within the extended period. As such, the Arbitration Tribunal vide its order 16.06.2014 terminated the said arbitration proceedings while exercising the powers enumerated under Section 25 (a) of the Act, 1996.
10. Pertinently to be noted here that after the termination of the arbitration proceeding, the alleged contract value has been reduced by the Respondent vide its letter dated 09.10.2014 and demanded the recovery amount to the tune of Rs.53,993/- from the Petitioner. The alleged demand was refuted by the Petitioner vide its letter dated 10.01.2015 alleging that no demand as such could be made without the reference of it under clause 64 of the General Conditions of Contract.

11. Having considered the facts and circumstances of the case, considering further the demand as made by the Respondent vide its letter dated 09.10.2014 for recovery of sum of Rs.53,993/- after the termination of the arbitration proceeding without referring the matter to the Arbitrator under clause 64 of the General Conditions of Contract despite being made by the Petitioner vide its letter dated 10.01.2015, I am of the view that the Arbitrator is required to be appointed for adjudication of this dispute in so far as its relates to the recovery of said amount of Rs.53,993/- is concerned.
12. In view of the foregoing discussions, the application is allowed in part. I hereby appoint Shri Justice V.K.Shrivastava, Retired Judge, High Court of Chhattisgarh, 'Mridu Villa', Warehouse Road, Bilaspur, as Arbitrator in the case.
13. The Petitioner and Respondents may file their claim/counter claim before the aforesaid Arbitrator to dispose of the matter within a period of six weeks from today, who is requested to dispose of the matter within the time prescribed in the Act, 1996, as amended.
14. The parties are directed to appear before the Arbitrator on 05.03.2019.
15. Registrar General is directed to send a copy of this Order to Shri Justice V.K.Shrivastava, Retired Judge, High Court of Chhattisgarh, 'Mridu Villa', Warehouse Road, Bilaspur, so as to reach as early as possible. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge