

HIGH COURT OF CHHATTISGARH, BILASPUR

ARBR No. 23 of 2018

- SMEC International Pty. Ltd. Through its Authorized Signatory Dr. Hasan Akbar Kazmi, age 64 Years, S/o Mr. Zameer Hassan Kazmi, R/o S-559, First Floor, Rear Side, Greater Kailash-2, Delhi.

---- Applicant

Versus

- State of Chhattisgarh Through Secretary Public Works Department, Represented by The Project Director, ADB Project, CGPWD, Mahandi Bhawan, New Mantralay, Raipur, Chhattisgarh.

---- Respondent

For Applicant : Mr. K. K. Sharma with Mr. Palash Tiwari,
Advocates.
For Respondent/State : Mr. H.S. Ahluwalia, Dy. Adv. General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

13/05/2019

1. This application has been brought under Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short 'the Act, 1996') praying for appointment of Arbitrator in this case to arbitrate dispute between the parties.
2. It is submitted by learned counsel for applicant that on 3.3.2015 applicant entered into a time-based contract for providing consultation services, for construction and supervision of rehabilitation and up-gradation of group A roads at Raipur. Copy of said contract is

Annexure-B. It was agreed that respondent will reimburse service tax which would be paid by applicant. The financial proposal amounted to Rs.25,6,90,736/-. The applicant has provided services and paid service tax to the tune of Rs.2,75,40,614/- and submitted invoices with the respondent for making payment of the same by way of reimbursement to applicant. Despite various reminders and correspondence, the respondent has not made any payment to applicant. Hence, this dispute.

3. Thereafter applicant proposed for amicable settlement which was not accepted and communicated vide letter dated 27.3.2018, therefore, applicant has become entitled to invoke Clause-49 of special conditions of contract, for adjudication of the dispute by an independent arbitrator. Applicant also issued a notice to respondent on 10.4.2014, which was replied by respondent stating, that the State Tribunal constituted under the State Madhyastham Adhikaran Adhiniyam, 1983.
4. It is submitted by learned counsel for the applicant that the matter to be referred to the State Arbitration Tribunal has to be strictly a work contract. A contract between the applicant and respondent is not a work contract. On the contrary, it is a consultancy services contract, therefore, the applicant is left with no other option but to approach this Court praying for appointment of arbitrator. Reliance has been placed on the judgment of Bombay High Court in Mrs. Henriqueta Maria Julieta vs State of Goa and others in 2008 Law Suit (Bom) 3264.
5. Learned counsel for respondent submits that 'works contract' defined in Section 2(i) of C.G. Madhyastham Adhikaran Adhiniyam, 1983 (for

short 'Adhiniyam, 1983') includes the contract, that is in existence between the applicant and the respondent and any dispute regarding to such contract will have to be referred to the Arbitration Tribunal therefore, present dispute is referable to State Arbitration Tribunal. Relying on the judgment of M.P. High Court passed in Landmark Engineering vs. The State of M.P. and Others, Arbitration Case No.12/2014 decided on 21.4.2015, in which, it was held that it is trite law that statutory provision would prevail over provisions of agreement. Therefore, contention of the petitioner that since agreement contains an arbitration clause under the provisions of the Act of 1996 cannot be accepted.

6. In reply, it is submitted by counsel for applicant, that in this case Doctrine of Waiver is applicable. It is a case of contractual waiver and there is no judgment on this point. It is also submitted before this Court that work under the contract was of consultancy only and not for any work as defined under Section 2(i) of Adhiniyam, 1983, therefore, it is prayed that petition be allowed.
7. I have heard both the parties and documents submitted in this respect.
8. The arbitration clause under special conditions of contract, which governs the contract between the parties, reads as under:-

“Any dispute or difference arising out of this Contract or in connection therein which cannot be amicably settled between the parties shall be finally settled under the Rules of Indian Arbitration and Conciliation Act, 1996.”
9. The time based contract agreement, which is annexed as Annexure-B, mentions very clearly that the respondent i.e. Public Works

Department, shall be referred to as 'client' and applicant, who is also a party, will be referred to as 'consultant'. In Clause-A it is very clearly mentioned that client has requested the consultant to provide consultation services as defined in this contract (hereinafter called as services).

10. Section 2(i) of C.G. Madhyastham Adhikaran Adhiniyam, 1983 is as under :-

"works-contract" means an agreement in writing for the execution of any work relating to construction, repair or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory, work-shop, powerhouse, transformers or such other works of the State Government or Public Undertaking as the State Government may, by notification, specify in this behalf at any of its stages, entered into by the State Government or by an official of the State Government or Public Undertaking or its official for and on behalf of such Public Undertaking and includes an agreement for the supply of goods or material and all other matters relating to the execution of any of the said works."

11. Section 3 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 is as under:-

"Constitution of Tribunal. - The State Government shall by notification constitute an Arbitration Tribunal for resolving all such disputes or differences pertaining to works contract or arising out of or connected with execution, discharge or satisfaction of any such works contract."

12. Now the question that arises for consideration is whether providing services of consultation can be regarded as a contract in connection with execution or discharge satisfaction of any work contract. The question can be answered very simply because there is no such averment made on the part of the respondents that respondent has any grievance with respect to execution, discharge or satisfaction of work contract regarding which applicant had to provide consultation

services. Dispute between applicant and respondent is very clear that there had been an agreement between both the parties that the entire service tax that would be paid by applicant, will be reimbursed by the respondents, therefore, it appears to be a case of breach of agreement between applicant and the respondents. There is no specific denial by the respondent regarding this agreement.

13. After due consideration on over all facts and circumstances of case and documents present on record, I am of this view that nature of the contract between the applicant and the respondent is not a contract as defined under Section 2(i) of Adhinyam, 1983 and as such, it is not a work contract, rather it is a service contract. Hence, on the basis of this finding, it is held that this dispute shall not be governed by the provisions of Adhinyam, 1983, hence, the application brought before this Court has merits and, further, this Court has jurisdiction and power to invoke section 11(6) of Arbitration and Conciliation Act, 1996.

14. Therefore, on the basis of above discussions, this conclusion is arrived at, that it is fit case for exercise of power under Section 11(6) of the Act, 1996. therefore, by exercising power under Section 11(6) of the Act, 1996 and under the authority given by Hon'ble the Chief Justice, I hereby appoint Hon'ble Shri Justice L.C. Bhadoo Former Judge of this High Court as Arbitrator to arbitrate dispute between the parties. Registry is directed to communicate this order to Hon'ble Shri L.C. Bhadu who shall enter into reference after complying with the provisions contained in Section 12(2) of the Act, 1996. Learned arbitrator is requested to dispose off the matter within the time prescribed in the Act, 1996, as amended.

15.The remuneration of the Arbitrator shall be mutually settled by the parties.

16.The petition is disposed off with the aforesaid directions.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nisha