NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBR No. 37 of 2019

M/s Patil Construction And Infrastructure Ltd. Having Its Office At 3rd Floor, P M P M L Commercial Building No. 1, Pune (Through Its Authorized Signatory, Shaliwan Chandrakant Surwase),

---- Petitioner

Versus

1. Union Of India Through The Secretary Ministry Of Road Transport And Highways, Transport Bhawan No. 1, Parliament Street, New Delhi
2. Chief Engineer (L W E) M O R T And H, Transport Bhawan No. 1, Parliament Street, New Delhi
3. Regional Officer (North) M O R T And H, N H Campus, Pension Bada, Raipur, Chhattisgarh
4. The Superintending Engineer, P W D, Kanker Circle, Kanker, Chhattisgarh
5. Engineer Liaison Officer, M O R T And H, N H Campus, Pension Bada, Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Harsh Wardhan, Advocate
For Respondents No.1 & 2	:	Mr. B. Gopa Kumar, Asstt. S.G.
For State	:	Mr. Jitendra Pali, Dy. A.G._

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/12/2019

1. Present is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 requesting for appointment of an Arbitrator. According to the applicant, the application has been filed as the respondents have failed to appoint an Arbitrator for redressal of the dispute between the parties.

2. The facts which led to the filing of the present application is that the applicant is a Public Limited Company duly incorporated under the provisions of Companies Act, 1956 with its registered office at Pune, Maharashtra. The applicant/Company is an Infrastructure Company involved in the construction of various road projects in the State of Chhattisgarh and its

surrounding States like; Jharkhand, Orissa and Maharashtra. The applicant is also apart from being in the construction of road, undertakes construction of buildings, bridges, dams, cements pipes, pavement blocks and soler energy projects, etc. The Government of India, Ministry of Road Transport and Highways came up with a scheme for development of the road conditions, particularly the naxalite inflicted areas in the State of Chhattisgarh, Jharkhand, Orissa and Maharashtra. Under the said scheme, the substantial portion of the cost for the said construction of roads were to be borne by the Union of India for the purpose of execution of the work. The Union of India appointed the State Government to execute the contract and act as an employer. The Union of India further ordered for appointment of a Chief Engineer as the Regional Officer for the monitoring and supervision of the work and also for the approval of the payments to be released. One such work to be executed was the widening of two lane and improvement of PV 79 Chhotebetiya Rangavahi Taraveli Road from Km 0.00 to Km 36.0 (under LW Scheme). Tenders were floated for the improvement of this road. The applicant participated in the bidding process and the applicant's bid was accepted and they were directed to furnish performance security, which too was duly submitted by the applicant. The applicant was issued with a notice to proceed work on 30.06.2010 and the time allotted for completion of the work was 18 months. An agreement in this regard was entered into between the applicant and the respondents. The agreement also had an arbitration clause. According to the applicant, the respondents did not provide a working atmosphere right from the beginning and there were lot of difficulties, which the applicant faced for completing the project within the stipulated time. According to the applicant, the respondents did not provide regular frontage of work, clear possession of all parts of sight. The respondents also did not provide sufficient security and safety measures in

naxal prone forest areas. All of which led to the delay in the completion of the projects. Meanwhile, the applicant also faced several incidents of naxalite attack, torching of vehicles, plants and machineries, sabotage of the equipments, etc. which all the more led to the delay being caused in the completion of the work. The respondents meanwhile had also granted extension of time for completion of work from time to time.

3. Because of the prevailing compelling circumstances on account of the non-cooperation on the part of the respondents, as alleged by the petitioner, the petitioner could complete only around 68% of work with a bill of Rs.8.5 crores pending with the respondents. On account of the continued hostile situation, the petitioner requested for the closing of the contract and the respondent No.4 even had recommended for closure of the contract, but the final decision was not taken. Later on, the contract of the petitioner was terminated by the respondent No.5 vide order dated 09.02.2018. Subsequently, the petitioner raised a dispute under the terms & conditions of the contract and inspite of repeated letters being issued, there was no response from his side.

4. Later on the petitioner preferred a writ petition i.e. WPC No. 1598/2018. The said writ petition stood disposed of on 20.06.2018 directing the parties to constitute a Dispute Review Board in terms of the contract. Even thereafter there was no further progress made i.e. when the petitioner was compelled to initiate proceedings and they issued a notice to the respondents for appointment of an Arbitrator in terms of clause 25 of the general conditions of Contract, to which also there was no response from the respondents, which has led to the filing of the present application under Section 11(6) of the Arbitration and Conciliation Act, 1996. Notices were issued to the respondents.

5. The learned Assistant Solicitor General Mr. B. Gopa Kumar entered appearance on behalf of the respondents and both the parties agreed upon in view of Clause 25 of the General Conditions of Contract for settlement of the dispute by way of an Arbitration. Both the parties i.e. the applicant as well as the respondents proposed the name of Hon'ble Justice Satish K. Agnihotri, retired Chief Justice, High Court of Sikkim and who also is a former Judge of this High Court, as an Arbitrator.

6. In view of the joint proposal made by the parties in exercise of the powers conferred under Section 11(6) of the Act of 1996 under the authority given by Hon'ble the Chief Justice, I hereby appoint Hon'ble Mr. Satish K. Agnihotri, retired Chief Justice of the High Court of Sikkim and a former judge of this High Court to act as an Arbitrator and arbitrate the dispute between the parties in accordance with the provisions of Arbitration and Conciliation Act, 1996.

7. The Registry is directed to communicate this order to Hon'ble Mr. Justice Satish K. Agnihotri to enter upon reference after complying with the provisions contained under Section 12(2) of the Arbitration and Conciliation Act, 1996 and to adjudicate upon the dispute as expeditiously as possible in accordance with the Act of 1996.

8. The remuneration of the Arbitrator shall be settled with the mutual consent by the parties.

9. The arbitration application accordingly stands allowed to the extent indicated herein above.

10. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

Ved