

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**ARBR No. 39 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****10/12/2019**

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 solar 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 Bhanupratappur-Pakhanjur-Bande PV 109 road. 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 09.02.2011 and the time allotted for completion of the work was 28 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. In the process, on account of huge variation of quantity of items, it became necessary for the reestimating of the project and finally the re-estimated work was approved by the Ministry of Road Transport and Highways vide its order dated 15.03.2016 and the cost of the project was enhanced from 97.99 crores to 147.38 crores. According to the applicant, they completed the entire work within the extended period and the total amount of work executed was of about Rs. 128 crores, out of which the payments released to the applicant was around 110.27 crores. According to the applicant, as on date an amount of Rs.18.5 crores is still to be received by the applicant. According to the applicant, he has been repeatedly making representations to the respondents for release of the pending bills, preparation of the final bills and finalization and closure of the contract. According to the applicant, the respondents initially accepted the request of the applicant for preparation of the pre-final bills and in this regard, the applicant on 31.07.2018 had submitted OGL measurement book for preparation of the final bills and release of the payment.
4. Subsequently, in pursuance to an order passed by this Court on 26.11.2018 in WPC No. 2793/2018, a joint inspection of the work

completed by the applicant was made. In spite of the order passed by the Writ Court on 26.11.2018, the applicant preferred another writ petition i.e. WPC No. 1132/2019, which too got disposed of by the Division Bench of this Court in the light of the contention of the counsel for the respondents of the applicant's pending bill to be examined and a decision to be taken in terms of the contract.

5. The State counsel further submitted that still if the grievance of the applicant is not redressed, they have the liberty to invoke the arbitration clause. Even after the disposal of the said writ petition, the respondents did not take any further action for the release of the dues payable to the applicant and later on the joint inspection as agreed upon was also conducted, however even thereafter also there was no further development.
6. Under the circumstances, the applicant raised a dispute in terms of the contract and in spite of repeated requests and reminders, the respondents did not pay any heed to the applicant's request for settlement of the dispute in terms of the contract.
7. Thereafter, again the applicant issued the respondents with a notice for appointment of an Arbitrator under 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.
8. 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.

9. 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.
10. 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.
11. The remuneration of the Arbitrator shall be settled with the mutual consent by the parties.
12. The arbitration application accordingly stands allowed to the extent indicated herein above.
13. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

Ved