

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**ARBR No. 44 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 (B&R), Baster Circle, Jagdalpur, 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****06/01/2020**

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 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 from 0.00 km to 70.00 km of Bijapur-Awaapali-Basaguda-Jagargunda road (SH-28) in Chhattisgarh under L.W.E. 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 22.02.2012 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. According to the petitioner, inspite of the compelling adverse conditions, the petitioner could complete work from 0.00 km to 40.00 km by 12.06.2015. However, on account of the continued adverse situations the petitioner could not proceed with the work and the petitioner has been continuously pursuing with the respondents for release of the pending bills and for finalization and closure of the contract. However, the respondent No.5 vide order dated 12.09.2017 terminated the agreement/contract entered into with the petitioner. Thereafter a High Level Evaluation Committee was constituted in respect of the unfinished work and as a result of the said meeting, the earlier order of termination of contract dated 12.09.2017 was withdrawn in the meeting held on 18.09.2017 and the agreement stood revived.
4. According to the petitioner, inspite of the agreement getting revived, the respondents did not provide sufficient frontage and sight and other support required for the execution of the balance of work. Therefore the petitioner had approached the respondents for releasing them from the performance of balance of contract and for releasing the payments in

respect of the work already executed by the petitioner. However, ignoring the request of the petitioner, the respondent No.5 again vide order dated 12.01.2019 rescinded the contract and ordered for forfeiture of the earnest money and the performance security. Immediately, thereafter the petitioner approached the respondents for constitution of a Dispute Resolution Board, which has not been considered by the respondents till date. The petitioner thereafter filed a writ petition before the High Court i.e. WPC No. 1316/2018. The High Court vide order dated 14.05.2018 disposed of the writ petition directing the respondents to constitute a Dispute Resolution Board. The respondents finally vide letter dated 23.03.2019 informed the petitioner about the constitution of the Board, which thereafter was disagreed by the petitioner and they requested for resolving the dispute by availing the recourse of Arbitration for settlement of dispute between the parties. The petitioner thereafter requested the respondents for appointment of an Arbitrator for settling the dispute. Since the respondents failed to respond to the request of the petitioner, the petitioner has approached this Court vide the present Arbitration Application under Section 11(6) of the Arbitration and Conciliation Act, 1996.

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 (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 (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