

12.04.2021.
Item no. 52.
Court No.13
ap

**W.P.A. No. 3073 of 2021
(Through Video Conference)**

**M/s. Shyam Sundar Ghosh & Anr.
Versus
The Union of India & Ors.**

Mr. Debabrata Roy,
Mr. Kushal Chatterjee.

...For the petitioners.

Mr. Dipak Kumar Mukherjee,
Mr. Rajib Mukherjee,
Ms. Shreyasi Bhaduri,
Mr. Subhrojit Saha.

...For the respondent BSNL.

The writ petitioners are aggrieved by an order dated 5th December, 2020 issued by the Divisional Engineer, Cossipore/ID & OD, BSNL, Calcutta Telephones. The writ petitioner no.1 was admittedly a labour contractor engaged by the BSNL. The petitioners are aggrieved by non-receipt of payment from July, 2019 to June, 2020.

Admittedly, the tender conditions provide for Clause 19 of the Agreement, which is set out hereunder:

“19. In case of any dispute or differences, breach and violation relating to the terms of the agreement, the said dispute or difference shall be referred to the sole Arbitration of Chief General Manager, CTD, BSNL or any person appointed by him. That the award of the Arbitrator shall be final and binding on both the parties. In the event of such arbitrator to whom the matter is originally

referred to, vacates his office on resignation or otherwise or refuses to do works or neglecting his work being unable to act as Arbitrator for any reason whatsoever, the Chief General Manager, CTD, BSNL shall appoint another person to act as Arbitrator in the place of outgoing Arbitrator and the person so appointed shall be entitled to proceed further with the reference from the stage at which it was left by the predecessor. The Contractor will have no objection in any such appointment that the Arbitrator so appointed is an employee of BSNL. The adjudication of such Arbitrator shall be governed by the provision of the Arbitration & Conciliation Act, 1996 or any statutory modification or reenactment thereof or any rules made thereof.”

The petitioners’ case and claim would normally have been governed by such Clause.

Counsel for the petitioners would argue that the claims made by the petitioners have not been disputed. It is just that certain clarifications and further documents have been sought by the BSNL to address the petitioners’ claims.

This Court finds from the impugned order at Clause 1 states as follows:

“Attendance certificate supplied along with bills are not (SIC) accordance with actual attendance.”

The above sentence in no uncertain terms indicates that BSNL is not satisfied with the claims of the petitioners that its employees worked on a number of days claimed.

There is no clear denial or refusal of any claims made by the petitioners. The cause of action, if at all, on the petitioners could also be premature.

Counsel for the petitioners would argue that the Arbitration Clause does not cover acts or omissions of the parties post the issuance of work order and purpose of work.

This Court is reminded of a decision of the Hon'ble Supreme Court of India in the case of **Dresser Rand S. A. Vs. Bindal Agro Chemical Ltd.** reported in **(2006) 1 SCC 751** as applied in the decision of a Division Bench of this Court, of which I was a party, in **MD, West Bengal Poultry Development Corporation Vs. Jayanti Bose & Ors.** reported in **2018 SCC Online Cal 1357**.

It is prima facie clear that the Arbitration Clause in a tender condition essentially governs the cases and claims of the nature raised by the petitioners.

In any event, assuming for the sake of argument that the Arbitration Clause does not govern the instant claim, there are disputed question of facts noticed by this Court which cannot be gone into by a Writ Court under Article 226 of the Constitution of India.

Hence, the instant writ petition must fail and is hereby dismissed.

It is made clear that this Court has not entered into the merits or propriety of the claims made by the

petitioners and the same may be agitated by the petitioners in accordance with law before the appropriate forum.

Since respondents have not used any affidavit-in-opposition, the allegations in the writ application shall not be deemed to have been admitted.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(*Rajasekhar Mantha, J.*)