

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ARBR No. 8 of 2020**

M/s. High Rocks Security Services, Bishrampur through the Manager, Sanjeet Kumar Yadav, S/o Shri Harihar Prasad Yadav, aged about 32 years, R/o JMQ Colony, Bishrampur, District Surajpur, Chhattisgarh.

---- Applicant

Versus

1. South Eastern Coalfields Limited, through the Chairman-cum-Managing Director, Seepat Road, Bilaspur, Chhattisgarh.
2. The General Manager, SECL Gevra Area, Korba, District Korba, Chhattisgarh.
3. The Director (Personnel) SECL, Head Office, Seepat Road, Bilaspur, Chhattisgarh.

---- Respondents

(Cause-title taken from Case Information System)

For Applicant	: Mr. Ashok Kumar Shukla, Advocate
For Respondents	: Mr. Vinod Deshmukh, Advocate

Hon'ble Shri Arup Kumar Goswami, Chief Justice**Order on Board****10.12.2021**

Heard Mr. Ashok Kumar Shukla, learned counsel for the applicant. Also heard Mr. Vinod Deshmukh, learned counsel appearing for the respondents.

2. The applicant is a registered Security Services Agency and provides security service. An agreement was entered into by the applicant with respondent No. 1 for providing round the clock security of SECL offices/ installations/ units/ coal mining Premises/ work center and other premises at

Gavra Project of SECL AREA Gavra with complete Coal Mining Area/ administrative offices/ residential colonies, etc.

3. The case of the applicant is that whenever bills are raised by the applicant, the respondent authorities deduct certain amount from the bills on a false allegation of theft. With the aforesaid grievance, a writ petition was filed before this Court, registered as WPC No. 1064 of 2018, which was disposed of on 16.04.2018 by directing the respondent authorities to decide the representation filed by the applicant expeditiously. The respondents having not been disposed of the representation, a contempt case being CONT No. 388 of 2019 was filed. Subsequently, by an order dated 22.04.2019, claim of the applicant was rejected. The applicant filed an application dated 08.08.2019 before the respondent authorities praying for appointment of an Arbitrator as per Clause 17 of the agreement dated 16.11.2013. Such prayer of the applicant had been rejected by an order dated 10.09.2019 on the ground that deduction made by the respondent authorities is justifiable and it will not be appropriate to appoint an Arbitrator.

4. In the reply filed by the respondents, it is stated that during the period of contract with the applicant till May 2017, 45 instances of theft had occurred and in connection with such theft, FIR had been lodged and therefore, for the loss caused, deductions were made from the bills of the applicant. It is further stated that during the period of contract, the applicant did not raise any objection with regard to such deduction and thus, had accepted liability.

5. In the rejoinder-affidavit filed by the applicant, it is stated that mere filing of FIR is not a proof of theft and further, at the time of assignment of

contractual work, there was no handing over/ taking over by making an inventory and therefore, the plea set up that loss was occasioned, is not tenable in law.

6. A perusal of the letter dated 08.08.2019 goes to show that the applicant had requested for referring the matter to sole Arbitrator under clause 17 of the agreement with regard to the dispute arising on account of deduction of Rs. 14,95,725/- from the bills. The petitioner claimed the aforesaid amount of Rs. 14,95,725/- alongwith interest.

7. Clause 17 of the agreement is on the subject 'Arbitration'. Clause 17.1 which is relevant for the purpose of this case, reads as follows:

"17.1 If any dispute, difference, question or disagreement shall at any time here after arise between the parties hereto or the respective or assigns in connection with arising out of or in respect of contract, application or provision thereof, anything there under contained or arising there under or as to ringlets, liabilities or duties of the said parties here under or any matter what so ever incidental to this contract shall be referred to the sole Arbitration of the person appointed by Director (Personnel) of SECL. CONTRACTOR shall have no objection to any such appointment that the arbitrator so appointed is an employee of SECL or that he had dealt with the matter to which the contract related and that in the course of his duties as SECL employee he has expressed view on all or any of the matter of disputes or difference."

8. The aforesaid provision envisages sole Arbitration by a person appointed by Director (Personnel) of respondent No. 1.

9. Mr. Ashok Kumar Shukla, learned counsel for the applicant submits that as there is a dispute between the parties and as the respondents have refused to appoint an Arbitrator, this Court may appoint an Arbitrator for resolution of the dispute.

10. Mr. Vinod Deshmukh, learned counsel for the respondents submits that as the deductions have been effected in accordance with law, it cannot be said that there is a dispute between the parties.

11. Having regard to the submissions made by learned counsel for the parties, it is clear that while the applicant is contending that deductions from the bills are wholly unjustified, contrary stand is taken by the respondents. That by itself goes to show that there is a dispute in relation to the deduction from the bills of the applicant on the alleged ground of loss caused to the respondents because of thefts committed during the time when the applicant was providing security service.

12. As there is an arbitration clause, I am of the considered opinion that in view of the dispute between the parties, appointment of an Arbitrator is called for.

13. Learned counsel for both the parties submit that as this Court had decided to appoint an Arbitrator, the dispute between the parties may be referred to the sole arbitration of Mr. V. K. Shrivastva, retired Judge of this Court.

14. In view of above, Mr. V.K. Shrivastava, retired Judge of the High Court, is appointed to act as the sole Arbitrator to resolve the dispute between the parties.

15. The Registry is directed to communicate this order to Mr. V.K. Shrivastava, retired Judge of this Court in His Lordship's proper address.

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

17. The arbitration application, accordingly, stands allowed. No cost.

Sd/-

(Arup Kumar Goswami)
Chief Justice