

HIGH COURT OF CHHATTISGARH AT BILASPUR

Arbitration Request No. 18 of 2018

M/s. S. K. Construction Through the Managing Partner Kadiveti Shridhar Reddy S/o Late Venkat Rami Reddy, Aged About 55 Years, R/o Flat No. P-1, Adresh Blooms No.6, First Main, Gopal Reddy Layout, Horamavu Main Road, Dodda Banaswadi, Bangalore 560043.

---Petitioner(s)

Versus

Union of India Through General Manager (Arbitration), South East Central Railway Bilaspur, District Bilaspur, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Rajkamal Singh, Advocate.
For Respondent	:	Shri HS Ahluwalia, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

16.07.2021

1. The present is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short, the Act, 1996) seeking appointment of an Arbitrator by the court for resolving the dispute between the parties.
2. According to the applicant, the need for filing of the present application arose on account of the inaction on the part of the respondent in appointing an Arbitrator for redressal of the disputes as raised by the applicant.
3. The facts relevant for the disposal of the present application is that, the applicant herein is a Contractor by profession. The contesting respondent in the instant case is the Divisional Railway by the name South East Central Railway under the Ministry of Railways, Government of India. The applicant herein was given a contract for construction of C.C. Drain, Sand Hump, Widening of cess and all other civil works in connection with isolation and upgradation/alteration of signaling at Udalkachhar, Paradol and Chirmiry Station, extension of platform and construction of C.C. Wall

and all other civil works in connection with provisions of Hot Axle/Saloon siding at Ambikapur, protection of track by widening of cutting to avoid boulder fall to KM 934/1-12 between Bijuri-Udalkachhar Section and provision of sand hump/dead end in line No.4 at West end of Boridand Station under the jurisdiction of ADEN/MDGR.

4. The contract agreement was entered into between the parties on 23.09.2014. In the process of the completion of the work, certain dispute arose in respect of the operation of rates in the payment for the works executed. Subsequently, the respondents seems to have refused the claim of the applicant and have also refused to accede to the request of the matter being put in for Arbitration. Thereafter, various notices were issued by the applicant seeking for settlement of dispute by way of arbitration and a final notice vide Annexure P/9 dated 10.07.2017 was issued by the applicant to the respondent stating it to be the notice under Clause- 63 and 64 of the General Conditions of Contract (in short, GCC). Admittedly Clause 63 and 64 of GCC pertain to resolution of dispute by way of arbitration. In view of the same, the applicant seeks for appointment of an Arbitrator for redressal of their grievance.
5. The respondents, on the contrary, opposing the claim application has questioned the maintainability of the application under Section 11(6) of the Act, 1996, as according to the respondent, the applicant have failed to resort to the provisions as stipulated under Clause 64 of the GCC. It was also the contention of the respondents that there is already 'no claim certificate' issued to the applicant and the final security deposit also have been released including the earnest money and the performance guarantee. Therefore, the applicant at this juncture cannot be permitted to again agitate his matter by way of an arbitration. It is also the contention of

the respondents that in terms of GCC, no dispute could be raised by the Contractor after issuance of no claim certificate.

6. Having heard the submissions put forth by the counsel appearing on either side what is undisputed is the awarding of the contract to the applicant by the respondent for the execution of the work as enumerated in paragraph 3 of this order. Further, from the correspondence that have been made between the applicant and the respondent it clearly reflects that the applicant had infact raised certain claims requesting for payment of the difference of rates for the particular nature of work which arose during the course of the execution of the contract. The correspondences entered into between the parties would also show that the applicant has been highlighting the situation to the respondent in respect of the difficulties that he was facing in the course of execution of the contract time and again and has also been seeking for extension of time and also in respect of the unpaid dues payable to the applicant.
7. From the documents it also appears that the applicant had also issued a notice to the respondent for settlement of their dispute in terms of clause 63 and clause 64 of the GCC. Undisputedly, Clause 63 and Clause 64 deals with settlement of dispute by way of an arbitration. Since the last notice that was issued by the applicant to the respondent was in the year, 2017 and since no further development took place on the part of the non applicant, neither was an Arbitrator appointed as per the agreement by the department, the present application for appointment of an Arbitrator by the court has been filed.
8. As regards the objections in respect of the maintainability of the application and also whether the claim of the applicant is sustainable in the light of the no claim certificate issued by the non applicant in favour of the

applicant, this court is of the firm view that these are all facts which are disputed in nature and it requires appreciation of the documents in this regard and which could only be looked into by the Arbitrator in the course of the arbitration proceedings.

- 9.** It goes without saying that under the provisions of Section 11(6) of the Act, 1996, the High Court i.e. the Chief Justice or his designate has got very limited scope of enquiry. That primarily all that this court under Section 11(6) of the Act, 1996 has to see is whether there is an Arbitration clause existing in the agreement between the parties. In the instant case admittedly there exist an arbitration clause under the GCC i.e. Clause 63 and Clause 64 of the GCC.
- 10.** Another aspect which may be looked into by the High Court under Section 11(6) of the Act, 1996 is whether the claim raised by the applicant is a stale claim or is a dead claim?. This again, if we look into the correspondences between the parties, it would clearly reveal that there has been continuous correspondence between the parties particularly from the side of the applicant in respect of the various difficulties and the excess cost that he had incurred in the course of execution of the contract and also for claiming of the difference of rates for the peculiar nature of work executed. All other matters touching the claim of the applicant in terms of the agreement that has been entered into between the parties are one which has to be exclusively dealt with by the Arbitrator in the course of the arbitration proceedings.
- 11.** Given the aforesaid legal position as it stands, this court is of the opinion that considering the nature of dispute and the stand of the respondent and also considering the arbitration clause in the GCC, this court is of the

opinion that it is a fit case where the dispute needs to be referred to the Arbitrator.

- 12.** Learned counsel appearing on either side proposed the name of Justice V.K. Shrivastava, Retired Judge from the High Court of Chhattisgarh as an Arbitrator. Therefore, in view of the joint proposal made by the parties, in exercise of the powers conferred under Section 11(6) of the Act, 1996 under the authorities given by Hon'ble the Chief Justice, I hereby appoint Hon'ble Justice Shri V.K. Shrivastava, Retired Judge from the High Court of Chhattisgarh to act as an Arbitrator and arbitrate the dispute between the parties in accordance with the provisions of the Act, 1996.
- 13.** The Registry is directed to communicate this order to Hon'ble Justice Shri V.K. Shrivastava to enter upon reference after complying with the provisions contained under Section 12(2) of the Act, 1996 and to adjudicate upon the dispute as expeditiously as possible in accordance with the Act, 1996.
- 14.** The remuneration of the Arbitrator shall be settled with the mutual consent of the parties.
- 15.** The arbitration application accordingly stands allowed to the extent indicated here in above. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

inder