

HIGH COURT OF CHHATTISGARH AT BILASPUR**ARBR No. 19 of 2021**

R. Murgesh S/o Late Raju Acharya, Aged About 59 Years R/o Shubham Vihar, Mangla Chowk, Bilaspur Chhattisgarh. 495001

---- Applicant

Versus

M/s Sunil Kumar Agrawal, Through - Sunil Kumar Agrawal, Proprietor, Near New Girls College, Raigarh Chhattisgarh - 496001

----Non-applicant

For Applicant : Mr. Bidya Nand Mishra, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

06/08/2021

1. The present is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996. The applicant through the present application has sought for appointment of an Arbitrator for resolving the dispute between the applicant with the non-applicant.
2. The contention of the applicant is that the non-applicant M/s. Sunil Kumar Agrawal is an A-5 contractor registered in the State of Chhattisgarh. The non-applicant had got certain contracts awarded by the Water Resources Department of the Government of Chhattisgarh for construction of canals from RB-12510 M. to RD 20970 M. including 19 numbers of masonry structures of Salka Diversion Scheme. Present applicant claimed himself to have got a sub-contract from the non-applicant for execution of the said work. According to the applicant, for execution of the said work huge amount of money was invested by the present applicant on behalf of the respondent-contractor and a power of attorney also was executed in favour of the

present applicant in the course of the execution of the contract. However, down the line there seems to be certain disputes which have arisen, so far as the non-settlement of the claim raised by the applicant against the work, which he has executed on behalf of the respondent.

3. The contract was awarded to the non-applicant in the year 2012 and the entire work was got completed somewhere in the year 2016. It is claimed by the applicant that the dues receivable by the applicant from the non-applicant were being made periodically up till 2017 and thereafter there has been no further payment made by the non-applicant and as on date also there is a huge amount of money recoverable from the non-applicant. According to the applicant, the parties in between had gone to the “मध्यस्थता अधिकरण” established in the State of Chhattisgarh. However, subsequently the non-applicant, who had gone to the “मध्यस्थता अधिकरण” withdrew the application and the dispute still stands undecided, which has led to the filing of the present petition.
4. The perusal of the pleadings between the parties would show that whatever nature of work, which was executed by the applicant for and on behalf of the non-applicant, (against the contract entered into between the non-applicant with the State of Chhattisgarh), was on the basis of an oral understanding followed by a couple of power of attorney executed for the same. Perusal of the pleadings would further reveal that there does not seem to be any written agreement entered into between the parties specifying the terms and conditions of the contract or the sub-contract, which the applicant had entered into with the non-applicant. In the absence of any written agreement between

the parties, there is also no written agreement for settlement of dispute by an arbitration proceeding.

5. It is at this juncture that Section 7 of the Arbitration and Conciliation Act, 1996 and the provisions of Section 11(6) of the said Act need to be considered. For ready reference Sections 7 & 11(6) are being reproduced herein under:

“7. Arbitration agreement. —

(1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”

“11. Appointment of Arbitrators.-

(1) xxxxxxxxxxxx

(2) xxxxxxxxxxxx

(3) xxxxxxxxxxxx

(4) xxxxxxxxxxxx

(5) xxxxxxxxxxxx

(6) Where, under an appointment procedure agreed upon by the parties,

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.”

6. The plain reading of the aforesaid two statutory provisions would clearly make it emphatically clear that for the purpose of invoking the arbitration proceedings under the act of 1996, the primary requirement is firstly to have an written agreement between the two rival parties specifying the terms and conditions in respect of the nature of contract entered into and the specific nature of duties to be executed by either parties to the contract. In addition to the written agreement between the parties in respect of the contract, there has also to be a written clause in the agreement between the parties, whereby either parties accept resolving of their dispute arising out of the contract, if any, between the parties by resorting to the arbitration proceedings.
7. In the instant case, firstly there does not seem to be any written agreement entered into between the applicant and the non-applicant and in the absence of which, there is also no occasion of any agreement between the parties resorting to the arbitration proceedings for resolving their dispute between them applicant. Merely because the non-applicant have an agreement with an arbitration clause executed between the non-applicant and the State of Chhattisgarh or any of the Department of the State of Chhattisgarh, would not be of any advantage to the applicant for the purpose of invoking the arbitration clause and the arbitration proceedings on the basis of that agreement entered into between the non-applicant with

the Government of Chhattisgarh. In the absence of written agreement between the parties and also in the absence of a agreed terms and conditions of resolving the dispute by an arbitration proceeding, the application under Section 11(6) of the Arbitration and Conciliation Act, 1996 moved by the present applicant would not be maintainable. Section 11(6) specifically enumerates that under a procedure of appointment agreed upon between the parties and thereafter in the event of any failure on the part of one of the parties, the party can approach the Court under Section 11(6) for appointment of an Arbitrator. Here again there is no such appointment procedure agreed upon the parties.

8. Given the said facts that there is no agreement entered into between the parties and there being no arbitration clause available between the parties for resolving the dispute, if any, the application under Section 11(6) would not be tenable and the application thus deserves to be and is accordingly rejected, leaving open the rights of the applicant to avail other appropriate remedies available to him for redressal of his grievances, if any.

Sd/-
(P. Sam Koshy)
Judge