

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Request No. 26 of 2019**

M/s D.D. Singhal, through it is Proprietor D.D. Singhal, aged about 88 years, S/o Late Motilal Singhal, 30 Industrial Estate, Nandani Road, Bhilai, District Durg (C.G.)

---- Petitioner

Versus

1. Municipal Corporation, through its Commissioner, Municipal Corporation, Raigarh (C.G.)
2. Executive Engineer, Municipal Corporation, Raigarh (C.G.)

---- Respondents

(Cause-title taken from Case Information System)

For Petitioner	:	Mr. Parag Kotecha, Advocate.
For Respondents	:	Mr. Sudeep Agrawal, Advocate.

Hon'ble Shri Arup Kumar Goswami, Chief Justice**Order on Board****03.12.2021**

Heard Mr. Parag Kotecha, learned counsel for the petitioner and Mr. Sudeep Agrawal, learned counsel appearing for the respondents.

2. The petitioner was awarded a work order dated 19.01.2012 for doing work of Laying and Jointing of Distribution DIK7 Pipe Line along both Side of Gourav Path at Raigarh from Judge Mill ROB to Chhatamunda Chowk and an agreement was, accordingly, entered into on that very day.

3. Clause 11 of the agreement provides that if there is any dispute with regard to the work order, same shall be resolved by way of arbitration and the arbitrator is to be appointed by the Commissioner, Municipal Corporation. It is not in dispute that form A of the Municipal Corporation, Raigarh, Public Works Department relating to General rules and direction for the guidance of the contractors, for short, general rules, is also applicable. Clause 28 of the same provides for the arbitration clause, which reads as follows:

“28. Except as otherwise provided in this contract all question and dispute relating to the meaning of the specification, designs, drawings and instruction therein before mentioned as to thing whatsoever in any way arising out of or relating to the contract designs, drawings, specification, estimate, concerning the works, or the execution or failure to execute the same, whether arising during the progress of the work, or a after the abandonment there of shall be referred to Commissioner, Municipal Corporation for his decision, within a period of 30(thirty) days of such an occurrence(s). There upon the Commissioner, Municipal Corporation shall give his written instruction and/or decisions, after hearing the contractor and Executive Engineer within a period of 15(fifteen) days of such request. This period can be extended by mutual consent of parties.

Upon receipt of written instruction or decisions, of Commissioner, Municipal Corporation the parties shall promptly without delay to comply such instructions or decisions. If the Commissioner, Municipal Corporation fails

to give his instruction or decision in writing within a period of 15(fifteen) days or mutually agreed time after being requested and/or if the part(es) is/are aggrieved against the decision of the Commissioner, Municipal Corporation the aggrieved party may within 30 days prefer an appeal to the Mayor-in-Council, who shall afford an opportunity to the parties of being heard and to offer evidence in support of this appeal. The Mayor-in-Council will give his decision within 30(thirty) days, or such, mutually agreed period.

If any party is not satisfied with the decision of Mayor-in-Council he can file the petition for resolving the dispute through arbitration in the arbitration tribunal.

A reference to Arbitration Tribunal shall be no ground for not continuing the work on the part of the contractor payment as per original terms and conditions of the agreement shall be continued by the Executive Engineer in accordance with clause 8 above.”

4. Mr. Kotecha submits that a dispute has arisen, amongst others, in relation to not releasing payment to the petitioner and forfeiture of security deposit and in that connection, the petitioner had issued a letter dated 15.03.2019 for appointment of an Arbitrator, but no action has been taken and therefore, recourse is taken by filing this petition for appointment of arbitrator.

5. Mr. Agrawal submits that letter dated 15.03.2019 was addressed to the Director of Department of Urban Administration & Development with a request to appoint an Arbitrator though he had nothing to do with the appointment of Arbitrator. It is further submitted that though the copy of the same was given to the Commissioner of the Municipal Corporation with similar prayer, the

Commissioner could not act upon the same, as the prayer was made for the appointment of the Arbitrator to the Director, his superior.

7. I have perused the letter dated 15.03.2019 and on perusal of the same, I am in agreement with the submission of the Mr. Agrawal.

8. When Clause 11 of the agreement and Clause 28 of the general rules stipulate that appointment of arbitrator is to be made by the Commissioner, letter addressed to the Director for appointment of arbitrator cannot be said to mean that request for appointment of arbitrator was made to the Commissioner only because copy was marked to him with a similar prayer. That apart, if it is held that the Commissioner, Municipal Corporation was requested to appoint the arbitrator, in that event, it has to be held that he had failed to give instruction within a period of 15 days in terms of Clause 28 as required and therefore, approach should have been made to the Mayor-in-Council. Instead, without exhausting the pre-condition, the application is filed before this Court.

9. In that view of the matter, I find no merit in this application and accordingly, the application is dismissed. No cost.

Sd/-
(Arup Kumar Goswami)
Chief Justice