

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Review Petition No. 151 of 2020**

The Superintending Engineer, P.W.D. Kanker Circle, Kanker,
Chhattisgarh

---- Applicant**Versus**

1. M/s Patil Construction And Infrastructure Ltd. Having Its Office At 3rd Floor, P M P M L Commercial Building No. 1, Pune (Through Its Authorized Signatory, Shaliwan Chandrakant Surwase)
2. Union Of India Through The Secretary, Ministry Of Road Transport And Highways, Transport Bhawan No. 1, Parliament Street, New Delhi
3. Chief Engineer (L W E) M O R T And H Transport Bhawan No. 1, Parliament Street, New Delhi
4. Regional Officer (North) M O R T And H N H Campus, Pension Bada, Raipur, Chhattisgarh
5. Engineer Liaison Officer, M O R T And H N H Campus, Pension Bada, Raipur, Chhattisgarh

---- Respondents

For Applicant	:	Mr. Jitendra Pali, Dy. Advocate General
For Respondent no.1	:	Mr. Harsh Wardhan, Advocate
For Respondents 2 to 5	:	Mr. Vivek Verma, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****30.09.2021**

1. The present review petition has been filed seeking review of the order dated 02.12.2019 passed by this Court in ARBR No. 37 of 2019. Vide the said order dated 02.12.2019 this Court had entertained an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 requesting for appointment of an Arbitrator in respect of the claim

raised by respondent no.1 herein against the applicant as also the Union of India in respect of the work executed by respondent no.1 pertaining to construction of various road projects in the State of Chhattisgarh.

2. Though the order was passed by this Court on 02.12.2019, the present review petition was filed after about one year on 19.10.2020. Meanwhile, in terms of the order passed by this Court on 02.12.2019, the sole Arbitrator appointed by this Court has already resumed the proceedings in the arbitration case. The applicant herein as also the concerned department of the Union of India have also entered appearance before the Arbitrator and the proceedings are going on.
3. It has also been informed to this Court by the learned counsel for respondent no.1 that the present applicant i.e. the State Govt. has already moved an application raising an identical objection under Sec.16 in respect of the maintainability of the proceedings before the Arbitrator, which is still pending and the learned Arbitrator has already framed issues for deciding the same.
4. The present review petition has been filed solely on the ground that the nature of contract and the work awarded to respondent no.1 Contractor is one which otherwise falls within the definition of "works contract" under the definition of Section 2 (i) of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred as "the Adhiniyam, 1983") and therefore the order passed by this Court in the arbitration application on 02.12.2019 in ARBR 37/2019 was not legally tenable and hence it needs to be reviewed.
5. The point of issue that has to be considered at this juncture is whether this Court in exercise of its power conferred upon it under Section 11

(6) of the Arbitration and Conciliation Act (hereinafter referred as “the AC Act”) can entertain a review petition after the application under Section 11(6) stands decided and the order also having been acted upon.

6. It would be relevant at this stage to take note of the fact that the order of this Court was passed upon the submission made by the counsel appearing for the parties before this Court. For ready reference the relevant portion of the order passed by this Court while deciding the application under Section 11(6) is reproduced hereinunder:

“3. Because of the prevailing compelling circumstances on account of the non-cooperation on the part of the respondents, as alleged by the petitioner, the petitioner could complete only around 68% of work with a bill of Rs.8.5 crores pending with the respondents. On account of the continued hostile situation, the petitioner requested for the closing of the contract and the respondent No.4 even had recommended for closure of the contract, but the final decision was not taken. Later on, the contract of the petitioner was terminated by the respondent No.5 vide order dated 09.02.2018. Subsequently, the petitioner raised a dispute under the terms & conditions of the contract and in spite of repeated letters being issued, there was no response from his side.

4. Later on the petitioner preferred a writ petition i.e. WPC No. 1598/2018. The said writ petition stood disposed of on 20.06.2018 directing the parties to constitute a Dispute Review Board in terms of the contract. Even thereafter there was no further progress made i.e. when the petitioner was compelled to initiate proceedings and they issued a notice to the respondents for appointment of an Arbitrator in terms of clause 25 of the general conditions of Contract, to which also there was no response from the respondents, which has led to the filing of the present application under Section 11(6) of the Arbitration and Conciliation Act, 1996. Notices were issued to the respondents.

5. The learned Assistant Solicitor General Mr. B. Gopa Kumar entered appearance on behalf of the respondents and both the parties agreed upon in view of Clause 25 of the General Conditions of Contract for settlement of the dispute by way of an Arbitration. Both the parties i.e. the applicant as well as the respondents proposed the name of Hon'ble Justice

Satish K. Agnihotri, retired Chief Justice, High Court of Sikkim and who also is a former Judge of this High Court, as an Arbitrator.

6. In view of the joint proposal made by the parties in exercise of the powers conferred under Section 11(6) of the Act of 1996 under the authority given by Hon'ble the Chief Justice, I hereby appoint Hon'ble Mr. Satish K. Agnihotri, retired Chief Justice of the High Court of Sikkim and a former judge of this High Court to act as an Arbitrator and arbitrate the dispute between the parties in accordance with the provisions of Arbitration and Conciliation Act, 1996."

7. As has been informed by the learned counsel for respondent no.1, the sole Arbitrator appointed by this Court has already initiated proceedings. All the parties have entered appearance and the pleadings have also been made. The State authorities have already raised an objection under Section 16 before the Arbitrator itself in respect of the maintainability of the proceedings, which is also subjudice before the Arbitrator. Moreover, this Court is of the firm view that once an application under Section 11(6) of the AC Act stands decided, this Court thereafter becomes "functus officio" and would not have any control in respect of the proceedings initiated thereafter. If at all if the order was not acceptable to the parties, they had a remedy of assailing the same at the appropriate stage before the appropriate forum, if not they also now have a remedy of raising this very objection before the Arbitrator which they in fact have raised and thereafter if the order of the Arbitrator goes against the objector, the remedy would be still available to the parties under Section 34.
8. If the contention of the learned counsel for respondent no.1 is to be accepted that the objection of the State under Section 16 had been raised much before the review petition itself was filed and that the application under Section 16 has been entertained by the Arbitrator and issue has also been framed, under the circumstances, it would not be

within the powers of this Court at this juncture to entertain the review petition in the given factual matrix of the case.

9. The review petition therefore deserves to be and is accordingly rejected reserving the right of the applicant State to avail other appropriate remedies available to them at the appropriate stage in case if the objection raised by them before the Arbitrator stands decided against them.

**Sd/-
P. Sam Koshy
Judge**